PAPER – 2: CORPORATE AND OTHER LAWS

Part I - Multiple Choice Questions

Case Scenario - I

Mr. David an Indian doctor residing in Panjim, Goa was married to Ms. Ruby another resident in the same profession in 1996. The couple had three children by the name of Christopher, Sebastian and Aliana. Mrs. Ruby left India in 2020 with her daughter Aliana and son Sebastian to the United States of America to pursue her Master Degree in the field of medicine, leaving behind Mr. David in India along with Christopher.

In 2021 Sebastian purchased a piece of land in the city of Chicago as an investment. Meanwhile, Christopher had incorporated a public limited company in India engaged in medical research and manufacture of life-saving drugs with its head office in Panjim, Goa having earned foreign exchange worth USD 12,500,000 in the past three years and was also planning to extend business by collaborating with an American Company engaged in the same field. Hence, he called back Sebastian to India on 31.05.2023 to help him in his business venture after being inducted as a director in his company.

The American company has offered to purchase the land owned by Sebastian in Chicago wherein the production facility can be set-up. Mr. John, the CEO of the American company, acting on advice of Mr. Christopher has shown interest to invest USD 150,000 in Bio-Seeds Ltd., an Indian company engaged in plantation and harvest of medicinal plants and herbs in the hills of Kangra in Himachal Pradesh.

Mr. John suggested that the Company owned by Christopher should donate an amount towards sponsoring of annual salary of a professor at the Chicago Institute of Medical Sciences to gain popularity and fame amongst the medical fraternity in Chicago, thereby creating a chair in medicine, which would ultimately help him and his newly formed venture in the same city to gain a foot-hold.

Meanwhile, Mr. David now being aged, had been suffering with a life-threatening disease himself and has urged his wife residing in Chicago, USA to search a suitable hospital where he can be treated for his ailments and get

cured. Mrs. Ruby being a doctor herself has suggested the name of Pennsylvania Institute of Research and Medicine. She has consulted the specialized doctors in the institute who are of the view that the cure of disease of Mr. David is possible but the patient must spend a minimum of six months in the hospital of the above research institute.

The institute has given an estimate of expenses of USD 269,000 for the treatment and the said estimate has been provided on the letterhead of hospital under seal. The cost of emigration as certified by the authorities for Mr. David has been calculated at USD 15,000. Mr. David has urged the Pennsylvania Institute of Research and Medicine to reduce his treatment expenses to USD 200,000 but the same has been refused by the above Institute. Mrs. Ruby decided to help her husband and is willing to sell a property owned by her in Panjim, Goa which was earlier bought while she was in India along with Mr. David.

Based on the facts given in above case scenario and by applying the relevant provisions of the Foreign Exchange Management Act, 1999 (FEMA, 1999), choose the correct answer of the following questions: (Q. No. 1 to Q. No. 3)

1. *Whether Mr. Sebastian as well his mother Mrs. Ruby can be allowed to transfer their respective properties in Chicago, USA and Panjim, India towards achievement of their separate motive?*

   (A) Mr. Sebastian would be allowed to sell his property in Chicago to the American company but Mrs. Ruby would not be allowed to sell her property in India as its being sold for non-commercial purposes.

   (B) Mr. Sebastian and Mrs. Ruby must apply to the Reserve Bank of India for its approval prior to selling their respective properties.

   (C) Mr. Sebastian and Mrs. Ruby can only sell their properties to each other and not to third parties.

   (D) Both Mr. Sebastian and Mrs. Ruby can freely sell their respective properties to buyers of their choice without any intervention or approval of the Reserve Bank of India. ***(2 Marks)***

2. *Decide whether both Mr. John and Mr. Christopher can act on the advice of each other for an investment of USD 150,000 in Bio-Seeds Ltd. as well as donating one year salary to a medical chair abroad respectively?*

(A) *Mr. John would not be able to invest USD 150,000 in Bio-Seeds Ltd. although Mr. Christopher can very well donate a year's salary to the medical chair abroad without approval.*

(B) *Mr. John would be able to invest USD 150,000 in Bio-Seeds Ltd. although Mr. Christopher cannot donate a year's salary to the medical chair abroad.*

(C) *Both Mr. John and Mr. Christopher would not be able to act on advice of each other as the same are in defiance of the provision of the FEMA, 1999.*

(D) *Mr. John would not be able to invest USD 150,000 in Bio-Seeds Ltd. although Mr. Christopher can only donate a year's salary to the medical chair abroad after prior approval from the Reserve Bank of India.* ***(2 Marks)***

3. *Whether it is possible to pay Pennsylvania Institute of Research and Medicine and the emigration authorities the respective amounts of money for the purpose of medical treatment of Mr. David?*

(A) *Pennsylvania Institute of Research and Medicine can be paid USD 269,000 against a certificate to be issued under seal that the medical procedure would require the above stated amount. Emigration expenses of USD 15,000 can be paid under the LRS Scheme.*

(B) *Pennsylvania Institute of Research and Medicine cannot be paid USD 269,000 under any circumstances. Emigration expenses of USD 15,000 can be paid under the LRS Scheme.*

(C) *There is no limit towards payment for medical expenses hence Pennsylvania Institute of Research and Medicine can be paid USD 269,000 without any certificate from the Institute. Emigration expenses of USD 15,000 can be paid under the LRS Scheme.*

(D) *No Payments for the above concerns can be allowed under the Act.*

(2 Marks)

Case Scenario - II

Adolescent Ltd., a public limited company is an Indian multinational retail company focused on infant, maternity and child-care products. The company was found in 2009 and is headquartered in Valsad, Gujarat. It sells products

through its website, mobile app and over 256 stores, which operate under Busy Baby and Brainy Baby brands. It has a paid up capital of ₹ 126.00 crore in Equity shares issued at a premium of ₹ 6 per share as well as ₹ 112 crore in Preference shares redeemable after 7 years of issue.

Toddler Ltd. another Gujarat based company was founded by Mr. Toddler an Anglo-Indian gentleman with no legal heir. Toddler Ltd. was engaged in the manufacture of medicine specifically focused to children under the age of 3 months. Adolescent Ltd. acquired 100% equity in Toddler Ltd. in the year 2011 thereby becoming its holding company. In 2024, Mr. Toddler purchased 5% stake in equity shares of Adolescent Ltd. in his individual capacity and decided to assign trustee rights to Toddler Ltd. which would take care of his stake after his death as he did not have any legal heir. In July 2024, Mr. Toddler died leaving behind the company as well his 5% stake in Adolescent Ltd.

Toddler Ltd., being the trustee to the 5% stake of Mr. Toddler, claimed its stake in the shares earlier held by Late Mr. Toddler. Mr. Quick, one of the directors of Adolescent Ltd. opposed the transmission of shares of Adolescent Ltd. held by Mr. Toddler to its subsidiary company on the plea that the subsidiary company cannot purchase the shares of the holding company with voting rights.

Adolescent Ltd. is planning to enhance its production capacity by installation of plants in various parts of the country including Jamnagar, Pune, Hissar and other industrial cities. The banks have refused to fund the projects and hence the company is planning to raise money from the public by issue of fully paid equity share capital. A Shelf Prospectus was thus issued to raise ₹ 76.00 crore from the public for the Jamnagar Plant in December 2024. Such prospectus had mentioned the contracts entered by Adolescent Ltd. for development of plant infrastructure in Jamnagar.

Meanwhile Adolescent Ltd. is also planning to commence the development of the Hissar Plant in January 2025 thereby raising ₹ 95 crore through the same Shelf Prospectus. An information memorandum was thus issued containing details of the contract for development of the Hissar plant infrastructure, with no mention of the earlier contract for Jamnagar Plant. The Registrar rejected the information memorandum as incomplete.

The Board of Directors of Adolescent Ltd. has called a meeting of Preference Shareholders of the company to resolve upon changing of the conversion ratio of preference shares into equity share. The meeting was called and consent in

writing favoring such variation has been obtained from preference shareholders worth ₹ 84 crore although a special resolution towards the same could not be passed. No separate consent of equity shareholders was obtained despite that they argued such conversion shall cast an effect on their rights as well.

The equity shareholders on the other hand have argued that changing of the conversion ratio would affect the number of equity shares that preference shareholders receive after conversion and hence have shown their dissent towards the above decision and are planning to apply to the Tribunal for redressal of their grievance.

Based on the facts given in above case scenario and by applying the relevant provisions of the Companies Act, 2013, choose the correct answer of the following questions: (Q. No. 4 to Q. No. 6)

4. *Whether in the current scenario Toddler Ltd. can become the assignee to the shares of Adolescent Ltd. in transmission from Mr. Toddler after his death as well as get rights to vote in the meetings of the holding company?*

   (A) Toddler Ltd. can enjoy the rights of an assignee or legal representative in the event of death of Mr. Toddler but would not get the right to vote in the meetings of Adolescent Ltd.

   (B) Toddler Ltd. can enjoy the rights of an assignee or legal representative in the event of death of Mr. Toddler and would also get the right to vote in the meetings of Adolescent Ltd.

   (C) The contention of Mr. Quick opposing the transmission is correct as a subsidiary company cannot acquire share in the holding company.

   (D) Toddler Ltd. can itself acquire the shares in Adolescent Ltd. but cannot become an assignee. ***(2 Marks)***

5. *Whether the Registrar is justified in rejecting the Information Memorandum as incomplete?*

   (A) The Registrar is correct as the Information Memorandum should have contained not only the details of latest contract for the Hissar Plant but also details of contract of Jamnagar Plant.

   (B) The Registrar cannot reject the Information Memorandum as the same has been correctly filed with details of the latest contract.

(C) *The Registrar is correct as a new Shelf Prospectus should have been filed for money raised for every new project as in the present issue filing of information memorandum is not the correct compliance.*

(D) *The Registrar is incorrect as there is no requirement for issue of a Shelf Prospectus for any money raised within a period of one year.*

(2 Marks)

6. *Whether Adolescent Ltd. be allowed towards variation of class rights of the preference shareholders, considering the fact that a special resolution could not be passed by the preference shareholders in background of the provision of the Companies Act, 2013?*

(A) *The Registrar of companies shall not order the variation as special resolution has not been passed by the preference shareholders.*

(B) *The Registrar of companies shall not order the variation as although requisite number of preference shareholders have agreed but consent of dissenting equity shareholders has not been obtained whose rights are affected by such variation.*

(C) *The Registrar of companies shall order the variation of class rights of Preference shareholders as 75% of Preference shareholders have agreed to such variation.*

(D) *The Registrar of companies shall refer the matter to the Tribunal rather than passing an order itself.* ***(2 Marks)***

Case Scenario - III

Mr. Famous owned a firm operating a fleet of eighteen taxis engaged in the transportation of passengers in and across the state of Madhya Pradesh. The business had started way back in 1986 wherein the vehicle permits were obtained and the business was being run successfully. The registration for the vehicle expired in the year 1988 and the firm applied for renewal of registration of the vehicles under section 58 of the Motor Vehicles Act, 1939. The application under the aforesaid Act was still pending when such Act was replaced by the Motor Vehicles Act, 1988. To get the application processed, Mr. Famous applied to the authorities to consider the application under the Motor Vehicles Act, 1988 taking plea of section 6(c) of the General Clauses Act, 1897. The application was not entertained by the authorities on the pretext that since the application was filed under the repealed law, the old application would not be considered and

that the application should have been filed within time. Later, Mr. Famous died leading to the closure of business. The family of Mr. Famous still lives in one of the flat bought by Mr. Famous during his life-time from Mr. Rich, a builder and contractor dealing in construction and selling of flats.

Mr. Rich was the owner of six flats in the city of Indore. He was advised by one of his finance consultants to rent his unoccupied flats and thereby earn handsome passive income in form of monthly rents. The advice was given to him in the year 2017 and he has been renting out the properties since then. Deebee Motors Ltd., an automobile dealer opened his office in one of the flats for commercial purposes in the year 2019 for a rent of ₹ 3.15 Lakh per month. Initially the rental dues were timely paid by the dealer but later the automobile dealer defaulted in paying the above resulting in cumulative arrears of rent being ₹ 1.20 crore as on latest date. Mr. Rich, filed a suit for recovery of rental arrears on immovable property pleading the court to treat such arrears as benefit out of land as defined in under section 3(26) of the General Clauses Act, 1897, under the head of "Immovable Property". The defendant submitted that arrears of land revenue in this case cannot be termed as "benefits from land".

Deebee Motors Ltd. offered Mr. Rich a passenger family car worth ₹ 3.00 crore at ₹ 1.80 crore to compensate the loss incurred by Mr. Rich on rental dues. Unfortunately, color selected by Mr. Rich was unavailable at the selected purchase date. The marketing manager informed and assured that the color will be available after a waiting period of 3 months. Deebee Motors Ltd. further asked Mr. Rich for an advance cheque of minimum 50% of the sale value to shield the purchaser from any future price enhancement. A postdated cheque of ₹ 90 Lakh was handed over to the dealer as the booking amount. The cheque was kept with the showroom owners but could not be deposited by them in their account until the last day of third month when Mr. Rich came to know about the above failure on part of the car dealer. The car dealer insisted that Sunday being the last day of the third month, the bank was closed and the cheque could not be deposited thus showing his inability to deliver the car which had arrived on Saturday. The dealer insisted on issuing of fresh cheque.

Based on the facts given in above case scenario and by applying the relevant provisions of the General Clauses Act, 1897, choose the correct answer of the following questions: (Q. No. 7 to Q. No. 9)

7. *Which of the following is true on the validity of the rejection of the application made by the firm of Mr. Famous regarding renewal of*

registration of the vehicles under section 58 of the Motor Vehicles Act, 1939?

(A) The rejection was not justified and the same old application should have been considered as per the new Motor Vehicles Act, 1988.

(B) The rejection was justified as Mr. Famous should have filed a fresh application for renewal in this case.

(C) The form can either be accepted or rejected at the discretion of the authorities which in this case have opined to reject the form.

(D) The form will be rejected in case the delay in filing cannot be justified by Mr. Famous. ***(2 Marks)***

8. *Whether the plea of Deebee Motors Ltd. towards refusal to treat arrears of rent as "Immovable Property" as per the General Clauses Act, 1897, shall hold good? Whether the future rental income be included under the above definition as provided in the aforesaid Act?*

(A) The plea of Deebee Motors Ltd. shall not hold valid in this case and arrears of land revenue shall be included in the definition of immovable property under the aforesaid Act. Future rent payable cannot be treated as immovable property under the Act.

(B) The plea of Deebee Motors Ltd. shall hold good as rent have already been arisen and hence cannot be termed as benefits from land although future rent can be included in the definition of immovable property.

(C) Neither the arrears nor the future rent shall qualify within the definition of "Immovable Property" as provided in the aforesaid Act.

(D) Both arrears and future rent shall qualify within the definition of "Immovable Property" under the aforesaid Act. ***(2 Marks)***

9. *Which of the following is true on the validity of cheque which could not be deposited on the last day of the third month being a holiday?*

(A) The cheque is valid as the last day of the third month being a Sunday hence the same can be deposited on the next working day.

(B) The old cheque is invalid as the period of three-month validity would expire by the day when the bank would open.

(C) *The cheque can only be deposited only if the dealer applies to the bank for condonation of delay.*

(D) *The cheque can only be accepted by the bank, in case the issuer files a suit against the dealer.* ***(2 Marks)***

Case Scenario - IV

Mr. Lepang an Indian having knowledge of tea-farming went to China in the year 2006 and established his tea manufacturing business by the name of Sweet Leaf Ltd. The business has grown since then and he has been persistently trying to connect to his original roots in India. Kadak Chai Ltd. is an Indian public limited company established in Darjeeling owning two tea estates and engaged in the manufacture and sale of Darjeeling tea throughout the country. On 20.06.2024 Kadak Chai Ltd. was bought by the Sweet Leaf Ltd. for redesigning the existing production facility and expand the cultivation and processing of flavored tea by Mr. Lepang.

Thus, the above production facility earlier owned by Kadak Chai Ltd. gained the status of foreign company and filed Form FC-1 declaring the details of its incorporation and the information as laid therein the above-mentioned form with Registrar of Companies situated at New-Delhi. As a result of the acquisition, the details of the company including new name and address of the head office were updated outside the office of the acquired company at Darjeeling. The details were mentioned in English, Mandarin and in local language Assamese. The Indian subsidiary (formerly Kadak Chai Ltd.) updated the above details in other documents including business letters, billheads and letter paper in English language only and neither local language nor Mandarin was used. The Legal team made an objection on such non-usage of local language and Mandarin. It further suggested that other than the provisions of Chapter XXII of the Companies Act, 2013, no other provision in the aforesaid Act would be applicable to such newly registered foreign company situated at Darjeeling.

The foreign company has recently entered a contract with Speed Robotics Ltd. engaged in the manufacture of robotic machinery and other facilities, to be installed in tea processing plant to enhance the pace of production. The foreign company has planned to raise money in India through the issue of Indian Depository Receipts (IDR). The IDR are thus planned to be issued by DDL Bank to act as a depository bank to such instrument. As the IDR is a new issue, the

same must be accompanied with a prospectus as well. The prospectus contained details of the company, its board of directors and other annexures including the comments of Mr. Jack an expert in the field of finance on the current financial matters affecting the company. Mr. Renzo one of the members in the legal team at the Darjeeling production facility have suggested that the prospectus for issue of such IDR should also contain details of the contract entered in with Speed Robotics Ltd. and the copy of power of attorney as the above prospectus has been signed by Mr. Rick on behalf of directors. The officials at the Head-Office have opposed inclusion of the details as above on the pretext that the same is not required as per the law. The prospectus thus drafted has been sent to the Registrar of Companies situated as New Delhi for approval so that the IDR can be issued thereafter for inviting investments from the public in India.

Based on the facts given in above case scenario and by applying the relevant provisions of the Companies Act, 2013, choose the correct answer of the following questions: (Q. No. 10 to Q. No. 12)

10. *Whether the legal team was correct in suggesting that only provisions of Chapter XXII of the Companies Act, 2013 shall apply for the foreign company?*

    (A) The Legal Team is correct in its view that only Chapter XXII provisions shall apply to the foreign company.

    (B) The Legal Team is incorrect as provisions of Chapter XXII shall not apply to foreign company.

    (C) The Legal Team is incorrect as provisions of Chapter XXII shall apply to Chinese company with no applicability for the foreign company situated in India.

    (D) The Legal Team is incorrect as provisions of Chapter XXII shall apply to foreign company along with other provision as may be prescribed regarding business carried on by it as if it were an Indian company.

(2 Marks)

11. *Whether the act of mentioning of name of the newly formed foreign company and other details at outside the office in English, local and Mandarin, as well as, on other documents including business letters, billheads and letter paper only in English, is in correct compliance of the related provisions under the Companies Act, 2013?*

(A) *The name of company has been correctly written in English, local and Mandarin outside the office at Darjeeling but even the other documents should mention the details in all the three languages.*

(B) *The name of company has been correctly written in English, local and Mandarin outside the office at Darjeeling. The other documents can mention the details in English only and there is no requirement for usage of other languages on the same.*

(C) *Details in documents as well as at outside the office can be given in local language only and there is no compulsion regarding usage of other languages.*

(D) *The company can give details of company on both outside the office as well in the documents in the language of its choice after obtaining permission from the Registrar of Companies.* ***(2 Marks)***

12. *Choose the correct option from the following on the validity and the adequacy of the details mentioned in the prospectus prior to issue of IDR, and whether it will be accepted or rejected by the Registrar of Companies at New Delhi?*

(A) *Details mentioned in the prospectus about the company and other credentials including non-filing of power of attorney are correct and sufficient and the same shall be accepted by the Registrar of Companies at New Delhi.*

(B) *The details of contract with Speed Robotics Ltd. as well as the copy of power of attorney should be mandatorily annexed along with other documents without which the above prospectus, shall be rejected by the Registrar of Companies at New Delhi.*

(C) *The details of contract with Speed Robotics Ltd. can be skipped as being one entered in the ordinary course of business but the copy of power of attorney should be mandatorily annexed along with other documents without which the above prospectus, shall be rejected by the Registrar of Companies at New Delhi.*

(D) *No need to issue the prospectus as the company Kadak Chai Ltd. is an existing company and only the status from domestic to a foreign company has changed in this case.* ***(2 Marks)***

13. *Super Tork Engineering Ltd. is a public sector company engaged in the manufacture of domestic and commercial automobiles. The company has been providing automobile dealerships in and across the country to various business entrepreneurs. Out of 56 such dealerships, LD Motors Ltd. situated in the city of Jaipur, Rajasthan, is one of the prime selling joints for domestic automobiles namely sedan and hatchback cars.*

Super Tork Engineering Ltd. has entered into a contract with the above said dealer for the provision of warranty services to its customers at local level and has provided the advances namely of ₹1.20 crore and ₹ 1.25 crore to the aforesaid dealer. The former advance being for provision of warranty relating to engine fault repair within a period of 2 years from the date of purchase and the latter being for providing general services on domestic cars for a period of 6 years. A period of 7 years of provision of such warranty and maintenance services is taken as a common business practice in the automobiles sector. In consonance with the provision of the Companies Act, 2013, decide which of the above advances be treated as deposits by LD Motors Ltd.?

(A) Neither of the above two advances be treated as deposit as both are being valid for providing warranty services to vehicle owners within a period of 6 years, being common business practice in this regard.

(B) The advance of ₹ 1.25 crore can only be treated as deposit within the meaning of the Companies Act, 2013.

(C) Both the above advances of ₹1.20 crore and ₹ 1.25 crore be treated as deposits within the meaning of the Companies Act, 2013.

(D) LD Motors Ltd. has the sole discretion of treating any of the above advances as deposits in compliance with the provisions of the Companies Act, 2013. ***(2 Marks)***

14. *Boro-tuff Glasses Ltd. is a public limited company engaged in the manufacturing of doors and panels made from toughened glass. The company was incorporated on 01.11.2022 with the requisite members and capital. The first Annual General Meeting was held on 01.05.2023. Mr. F, the Company Secretary has decided to call the next Annual General Meeting for the Financial Year 2023-24 on 01.08.2024.*

On 31.07.2024, the company applied to the Registrar of Companies (ROC) for an extension of 4 days to hold the meeting on 05.08.2024 on the

grounds that the accounts department was asking for another couple of days more for finalizing the annual accounts, but the plea was rejected by the RoC. The company went on to conduct the aforesaid meeting on 05.08.2024.

Considering the provisions of the Companies Act, 2013, resultant effect of convening meeting on the above date shall be:

(A) The company and every officer in default shall be liable to total penalty of ₹ 1,30,000 for delay in the convening of Annual General Meeting.

(B) The company and every officer in default shall be liable to total penalty of ₹ 1,00,000 for delay in the convening of Annual General Meeting.

(C) The Company and every officer in default shall be liable to total penalty of ₹ 1,20,000 for delay in convening of Annual General Meeting.

(D) The convening of meeting on the above date shall not attract any penalty as the same has been convened within the prescribed time limits. ***(2 Marks)***

15. *KLP & Associates LLP comprises of three partners Kamlesh, Luvkush and Pradeep and was incorporated under an agreement in the year 2020. Mr. Pradeep one of the partners has decided to leave the LLP and start his own business. He has informed Mr. Luvkush, one of the Designated Partner of the LLP, of his decision to leave and has urged to proceed with the formalities. Even after one month of leaving the LLP, Mr. Pradeep was continuously receiving phone calls from creditors of LLP for payment of the dues thus convincing him to believe that the LLP has neither informed the outsiders nor the Registrar about his leaving the LLP. The LLP was also not responding to Mr. Pradeep's queries. Referring to the provisions of the Limited Liability Partnership Act, 2008, what is the step that Mr. Pradeep can take to escape his liability post quitting the LLP?*

(A) Mr. Pradeep should further follow-up with LLP and ask it to submit Form 4 to the Registrar informing about the above event as he himself cannot file Form 4 with the Registrar.

(B) Mr. Pradeep should himself file Form-4 with the Registrar who would then send a show-cause notice to the LLP.

(C) *Mr. Pradeep can himself issue a public notice in the one English and one vernacular newspaper disclosing his status as an outsider to the LLP.*

(D) *The Registrar would himself contact the LLP and enquire about Mr. Pradeep's status.* ***(2 Marks)***

Answer Key

MCQ. NO.	CORRECT OPTION
1.	D
2.	A/D
3.	A
4.	B
5.	A/B
6.	B
7.	A
8.	B
9.	A
10.	D
11.	B
12.	B/C
13.	B
14.	C
15.	B

Part II – Descriptive Questions

*Question No. **1** is compulsory.*

*Attempt any **four** questions from the remaining **five** questions.*

Question 1

(a) Chicago Bricks Inc. is a company incorporated in Chicago, USA in the year 1985 engaged in the manufacture of cement and related products. On 10.04.2022, it commenced manufacture in India through its branch, engaged in the manufacture of fly-ash bricks used in construction of buildings and other infrastructural projects throughout the country. The operations of the branch have been growing at a fast pace.

The turnover of the branch as on 31.03.2025 since its commencement are:

FY 2022-23	*₹ 75 crore*
FY 2023-24	*₹ 65 crore*
FY 2024-25	*₹ 85 crore*

As per the data available, the branch works based on 20% net-profit margin.

Mr. Ramesh one of the directors of Chicago Bricks Inc. has advised the branch to comply with the requirements of Corporate Social Responsibility (CSR) and to form a CSR Committee as well for monitoring the aforesaid activities for the financial year 2025-26.

The branch is opposing the above view and has submitted that although the CSR provisions are applicable in the present case but there was no requirement to constitute a CSR Committee and the above CSR functions can be discharged by the Board of Directors themselves.

Considering the provisions of the Companies Act, 2013, whether Chicago Bricks Inc. is correct in the view as to non-applicability of formation of the CSR Committee in this case? ***(5 Marks)***

(b) Forward Troopers Ltd. is a public limited company engaged in the manufacturing of wearable protective gear and accessories including helmets and shields for supply to the armed forces in the country. It is a subsidiary of Security Troopers Ltd. The financial position of Forward Troopers Ltd. as per the latest audited Balance Sheet is as follows:

Fully paid-up Equity Share-capital	*₹ 1145 crore*
Reserve & Surplus (Available for payment of dividend)	*₹ 1012 crore*
Loan from GHB Pvt. Ltd. Bank	*₹ 120 crore*
Sundry Creditors	*₹ 14 crore*

The board of directors of Forward Troopers Ltd. have planned upon the following schemes of financial assistance to facilitate the purchase of its shares by its employees:

(1) To create an institution in form of a Trust which would be responsible for the purchase of shares of Forward Troopers Ltd. with help of a loan of ₹ 110 crore by the aforesaid company itself. The trustee therein would purchase the shares worth the above-mentioned amount on behalf of employees in accordance with an employee share scheme.

(2) To provide loan directly to the employee to the maximum of their 5 months' salary to enable them to buy fully paid shares in Security Troopers Ltd.

Mr. Strong one of the directors has although approved the first scheme but have opposed the second one, claiming that the employees can be granted loan for purchase of Forward Troopers Ltd. but not of its holding company.

Considering provisions under the Companies Act, 2013 along with the applicable rules/regulations, answer the following:

(i) The validity of the decision by the Board of directors of Forward Troopers Ltd. to provide a loan worth ₹110 crore to the trust to aid the employees to buy its shares.

(ii) The validity of the contention of Mr. Strong on grant of loan for purchase of shares of Security Troopers Ltd. ***(5 Marks)***

(c) Heavy Loaders Ltd. is a public limited company incorporated in India and engaged in the manufacture of loader vehicles used for commercial construction purposes. It is planning to expand its business outside India and hence has come in contact with Mr. Fred, an American citizen working as an agent of companies planning to secure business in USA. Mr. Fred has informed the directors of Heavy Loaders Ltd. that another Indian company engaged in the commercial construction business has a requirement of 25 loader vehicles for its wholly owned American subsidiary company. Heavy

Loaders Ltd. supplied the required loader vehicles with an invoice value of USD 350,000 in exchange of allotment of equity capital of the same worth in the American company. Mr. Fred has asked for an export agent commission of 15% of the invoice value of goods supplied from Heavy Loaders Ltd. to which Heavy Loaders Ltd. has refused the payment on grounds that maximum commission that can be paid can be 10% of the invoice value of goods supplied.

Considering the provisions of the Foreign Exchange Management Act, 1999 decide:

(i) Whether the above transaction of supplying machines in exchange of equity investments can be treated as "export" keeping in mind the absence of monetary factor in the transaction?

(ii) Whether the rate of export agent commission demanded by Mr. Fred be paid or confined to only 10% of the invoice value of goods supplied?

(4 Marks)

Answer

(a) As per the facts given in the question, we have to answer whether Chicago Bricks Inc. (advised through its Director Mr. Ramesh) is correct as to applicability of formation of the CSR Committee or as to non-applicability of formation of the CSR Committee (by the Indian branch) is correct.

The question can be answered by analysing the provisions of section 135(1), 135(5) and 135(9) of the Companies Act, 2013 read with Rule 3(1) of the Companies (Corporate Social Responsibility Policy) Rules, 2014.

According to section 135(1) of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.

As per Rule 3(1) of the Companies (Corporate Social Responsibility Policy) Rules, 2014, every company including its holding or subsidiary, and a foreign company defined under clause (42) of section 2 of the Act having its branch office or project office in India, which fulfills the criteria specified in sub-section (1) of section 135 of the Act shall comply with the provisions of section 135 of the Act and these rules.

According to section 135(5), the Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

According to section 135(9), where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

In terms of the above provisions of section 135(1) of the Companies Act, 2013 read with Rule 3(1) of the Companies (Corporate Social Responsibility Policy) Rules, 2014, the provisions of section 135 will be applicable to the Indian Branch of Chicago Bricks Inc. since the branch has earned a net profit of ₹ 17 crore [20% of ₹ 85 crore] in the immediately preceding financial year (2024-2025), although its turnover was less than the stipulated ₹1,000 crore during the same period.

In terms of the above provisions of section 135(5), we can calculate the amount to be spent by the branch, which will be at least two per cent. of the average net profits of the company made during the three immediately preceding financial years.

2% of [(20% of ((75+65 + 85)/3)] = ₹ 15 crore] i.e. ₹ 30 lakh.

In terms of the above provisions of section 135(9), since the amount to be spent by the Indian Branch of Chicago Bricks Inc. under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall

not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of the Indian Branch (company).

Therefore, the view of Chicago Bricks Inc. is not correct as to applicability of formation of the CSR Committee in this case and the functions of such Committee be discharged by the Board of Directors of the Indian Branch (company).

(b) (i) As per the provision of section 67(2) of the Companies Act, 2013, no public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.

But as per the provision of section 67(3)(b), the above provision of section 67(2) shall not apply to the provision by a company of money in accordance with any scheme approved by company through special resolution and in accordance with such requirements as may be prescribed, for the purchase of, or subscription for, fully paid-up shares in the company or its holding company, if the purchase of, or the subscription for, the shares held by trustees for the benefit of the employees or such shares held by the employee of the company.

As per Rule 16 of the Companies (Share Capital and Debentures) Rules, 2014, which deals with the provision of money by company for purchase of its own shares by employees or by trustees for the benefit of employees, states that:

Rule 16 (1)- A company shall not make a provision of money for the purchase of, or subscription for, shares in the company or its holding company, if the purchase of, or the subscription for, the shares by trustees is for the shares to be held by or for the benefit of the employees of the company, unless it complies with some conditions including that the scheme of provision of money for purchase of or subscription for the shares as aforesaid is approved by the members by passing special resolution in a general meeting and the value of shares to be purchased or subscribed in the aggregate shall not

exceed five per cent, of the aggregate of paid up capital and free reserves of the company.

In terms of the provisions of section 67(2), section 67(3)(b) read with the Rule 16 (1) as stated above, the value of shares that can be purchased or subscribed in the aggregate shall not exceed ₹ 107.85 crore, i.e. [5% of (₹ 1145+ ₹ 1012) crore]. Therefore, the decision by the Board of Directors of Forward Troopers Limited suggested to provide a loan of ₹ 110 crore to the Trust (responsible for purchase of shares of the Company itself), to aid the employees to buy its shares is not valid as the amount is beyond the maximum permissible limit.

(ii) As per the provision of section 67(3)(c), the above provision of section 67(2) shall not apply to the giving of loans by a company to persons in the employment of the company other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.

In terms of the above provision, the contention of Mr. Strong opposing the plan of the Board of Directors of Forward Troopers Limited providing loan directly to the employees to the maximum of their 5 months' salary to enable them to buy fully paid shares in its holding company Security Troopers Ltd. is not valid.

(c) (i) According to section 2(l) of the Foreign Exchange Management Act, 1999, 'Export', with its grammatical variations and cognate expressions means:

(1) the taking out of India to a place outside India any goods.

(2) provision of services from India to any person outside India.

In the given question, Heavy Loaders Ltd., an Indian company, supplied loader vehicles with an invoice value of USD 350,000 in consideration for the allotment of equity shares in an American Company, which is a wholly owned subsidiary of an Indian Company.

Since, the transaction involves 'the taking out of India to a place outside India the loader vehicles', the transaction will be treated as 'export'.

(ii) As per Schedule I of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, drawl of foreign exchange is prohibited for Payment of commission on exports made towards equity investment in Joint Ventures/ Wholly Owned Subsidiaries abroad of Indian companies.

Hence, the payment of any commission by Heavy Loaders Ltd. to Mr. Fred is prohibited in the given situation.

Question 2

(a) Autumn and Spring Ltd. is a public limited company engaged in the business of manufacturing traditional designer garments for men and women for various festivities and occasions. The company was incorporated in the year 2023 and has a paid-up capital base of ₹ 200.56 crore and revaluation reserve of ₹ 75.45 crore for the financial year 2023-24. Members holding share capital worth ₹ 36.52 crore have jointly applied for calling of an extra-ordinary general meeting for transacting some urgent matters of special business. In this connection a requisition by the above members were validly presented to the board of directors on 01.07.2024. The Directors did not pay heed to the above request till 24.07.2024 hence the requisitionists decided to go ahead with calling the meeting by themselves.

The requisitionists provided a notice signed by only one of them being duly authorized by others, of the said meeting through an email, but did not attach an explanatory statement as required under the act towards the special business to be transacted although reasons for the same were mentioned in the notice itself.

Sohan Lal, one of the shareholders who became member of the company on 10.07.2024 raised issue regarding the legality of the meeting as its notice was not mailed to him.

Referring to the relevant rules and provisions of the Companies Act, 2013 decide on the following:

(i) Whether the above requisition by the members was adequate towards calling an extra-ordinary general meeting by the requisitionists themselves?

(ii) Whether signing on the notice by only one of the requisitionists and non-attachment of the explanatory statement as mandated under section 102 of the Act have any effect on the validity of the aforesaid notice? Further whether the contention of Sohan Lal not receiving the notice is correct? ***(5 Marks)***

(b) Sridha Bookmarks Ltd. a public limited company engaged in the publication of books related to labour and industrial laws is planning to raise ₹ 10 crore from the public, to fund its upcoming projects.

Sridha Bookmarks Ltd. has assigned two different merchant bankers namely ZFG & Associates and Bull Investments Ltd. to act as intermediaries for 60% of the above fund and the rest to be directly issued to Mr. Kuber an investment banker who intends to offer the shares for sale (OFS) to the public through inviting bids above the floor price at the stock exchange platform.

ZFG & Associates is a partnership firm and were allotted equity shares worth ₹ 4 crore on 01.04.2024 to be sold by them to retail investors.

Bull Investments Ltd. a company by incorporation were allotted equity shares of ₹ 2 crore for the above purpose as well on the same date.

The offer documents were issued by ZFG & Associates and Bull Investments Ltd. on 10.10.2024 and 25.09.2024 respectively. The offer document in case of Bull Investments Ltd. was signed by only one director of such company. Both the intermediaries have paid off the full consideration to Sridha Bookmarks Ltd. till date of offer to the public.

Mr. Kuber to whom 40% of the balance shares were issued, further offered to the public shares through an offer document. The Board of Directors of Sridha Bookmarks Ltd. have opposed such offer document claiming that the same does not contain the name of the person or persons or entity bearing the cost of making such offer of sale.

In view of provisions of the Companies Act, 2013:

(i) Whether the offer for sale made by the intermediaries namely ZFG & Associates and Bull Investments Ltd. is valid at law?

(ii) Whether the objection made by the Board of Directors about defect in the offer document issued by Mr. Kuber sustain? ***(5 Marks)***

(c) *Jumbo Road lines Ltd. is a public limited company engaged in business of inter-state goods transportation. The company owns a fleet of more than ten heavy-duty trucks which have the capacity to transport up-to 1000 tons of goods in one consignment as per the registration. The transportation company received an order to transport 1000 tons of goods particularly plastic parts of automobiles to be loaded from a production facility in Surat, Gujarat and offloaded in an automobile factory in Pune, Maharashtra.*

The driver loaded the heavy-duty truck to its maximum capacity. On its way to Pune, the driver further loaded 100 tons of other goods from a local trader who lured him for some extra payment. The driver on his way with his overloaded truck rammed into a road divider causing damage to the public property.

The local traffic police charged Jumbo Road lines Ltd. for overloading the truck under the Motor-Vehicles Act, 1988 and filed a suit against the transport company. Further the Highway Authority filed another suit against the company under the Prevention of Damage to Public Property Act, 1984 for damaging the dividers and iron girders installed on the road-sides.

The Jumbo Road lines Ltd. opposed the suits on the plea of double-jeopardy and double punishment for the same act under two different legislations.

Whether the plea given by the road-lines of double-jeopardy be accepted by the court?

Discuss based on underlying principle and concepts referring the provisions of the General Clauses Act, 1897. ***(4 Marks)***

Answer

(a) (i) As per the provision of section 100(2) of the Companies Act, 2013, in the case of a company having a share capital, the Board shall, at the requisition made by such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting, call an Extra Ordinary General Meeting (EGM) of the company within the specified period.

As per the provision of section 100(4), if the Board does not, within twenty-one days from the date of receipt of a valid requisition in

regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition.

The requisition for calling of EGM was placed by members holding share capital worth ₹ 36.52 crore, which is more than 1/10th of paid-up share capital of Autumn and Spring Limited, i.e. [(1/10th of ₹ 200.56 crore)] = ₹ 20.056 crore. Therefore, the required number of members have validly presented the requisition for calling of EGM on 1.7.2024. The Board of Directors must start the process of calling the EGM within 21 days from 1.7.2024 i.e. by 22.7.2024. Since, the directors did not pay heed to call the EGM by 24.7.2024, the requisitionists were correct in calling the EGM on their own.

(ii) Rule 17 of the Companies (Management and Administration) Rules, 2014 deals with the provisions relating to Calling of Extraordinary general meeting by requistionists.

As per sub rule (4) of the above Rule, the notice (if given by requisitionists) shall be signed by all the requistionists or by a requistionist duly authorised in writing by all other requistionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.

As per sub rule (5) of the above Rule, no explanatory statement as required under section 102 need be annexed to the notice of an extraordinary general meeting convened by the requistionists and the requistionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.

As per sub rule (6) of the above Rule, the notice of the meeting shall be given to those members whose names appear in the Register of members of the company within three days on which the requistionists deposit with the company a valid requisition for calling an extraordinary general meeting.

Hence, signing on the notice by only one requisitionist (duly authorised by all requisitionists via email) and non- attachment of the

explanatory statement will not have any effect on the validity of the above notice.

Also, since Sohan Lal became a member of the company on 10.7.2024 and the requisition was presented to the Board on 1.7.2024, the contention of Sohan Lal raising the issue of legality of the meeting on the ground that the notice was not mailed to him, is not correct.

(b) (i) As per the provision of section 25(1) of the Companies Act, 2013, where a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company.

As per the provision of section 25(2), for the purposes of this Act, it shall, unless the contrary is proved, it shall be evidence that an allotment of, or an agreement to allot, securities was made with a view to the securities being offered for sale to the public if it is shown:

(a) that an offer of the securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.

As per the provision of section 25(4), where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document referred to in sub-section (1) is signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners in the firm, as the case may be.

Let us examine the situation in terms of the provision of Section 25(2) and Section 25(4).

Here, ZFG & Associates and Bull Investments Ltd., the two merchant bankers were allotted shares by Sridha Bookmarks Ltd. On the same day, i.e. 01.04.2024. Whereas ZFG & Associates issued the offer documents on 10.10.2024, i.e. beyond the period of six months after

the allotment, Bull Investments Ltd. issued the offer documents on 25.09.2024, i.e. within the stipulated period of six months after the allotment.

Both the intermediaries have paid off the whole consideration to Sridha Bookmarks Ltd. till date of offer to the public.

The offer document was signed by only one director of Bull Investments Ltd., whereas at least two directors were required to sign the same.

Offer of sale made by the intermediary (of Sridha Bookmarks Ltd.), ZFG & Associates is not in compliance with the requirements of section 25(2) since it issued the offer documents on 10.10.2024, i.e. beyond the period of six months after the allotment and therefore is invalid.

Whereas offer of sale made by the intermediary (of Sridha Bookmarks Ltd.) Bull Investments Ltd. is also invalid due to absence of signature of at least 2 directors thus not meeting the requirements mentioned above in the section 25(4).

(ii) Rule 8 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 deals with the offer of Sale by Members.

As per sub-rule (2) of the above Rule, the prospectus issued under section 28 shall disclose the name of the person or persons or entity bearing the cost of making the offer of sale along with reasons.

Since the offer document issued by Kuber did not contain the name of the person or persons or entity bearing the cost of making such offer for sale, the offer document will be treated as defective and therefore the objection raised by the Board of Directors in this regard will be valid.

(c) As per section 26 of the General Clauses Act, 1897, where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments but shall not be punished twice for the same offence.

As per Article 20(2) of the Constitution, no person shall be prosecuted and punished for the same offence more than once.

The combined reading of provisions of section 26 of the General Clauses Act, 1897 and Article 20(2) of the Constitution apply only when the two offences which form the subject of prosecution is the same, i.e., the ingredients which constitute the two offences are the same. If the offences under the two enactments are distinct and not identical, none of these provisions will apply.

In the given question, the local police charged Jumbo Road Lines Limited for overloading the truck under the Motor Vehicles Act, 1988. The Highway Authority filed another suit for damage of public property (iron girders installed on roadside), under the Prevention of Damage to Public Property Act, 1984. As the offences under the two enactments are distinct and not identical, hence the plea given by the road lines of double jeopardy cannot be accepted by the Court.

Question 3

(a) Fabulous Fabricators and Mechanics Ltd. is a listed public limited company incorporated in the year 2023 with the object to manufacture and engage in the construction of iron-ore based infrastructure for various industries on a contractual basis. The company is having a paid-up share capital of ₹ 200.30 crore divided in 865 members holding rights to vote in meeting.

The Annual General Meeting of the company was due to be held on 12.12.2023 at the registered office of the company in Raipur, Chhattisgarh. The Board of directors decided to provide the facility of E-Voting to its members in addition to other modes despite of the disagreement shown by Ms. Riddhi one of the directors who was of the view that in case of the above company, it was not mandatory to provide the facility of E-Voting.

On the day of the meeting Mr. Mohan, one of the members who had opted for E-Voting, could not exercise his option hence was physically present at the meeting to vote. The Chairman of the meeting did not allow him to physically cast his vote on the pretext that he had opted for E-Voting and now he cannot change his option and thus had to vote through E-Voting despite of being present.

Further a matter regarding appointment of Mr. Keshav as a small shareholders director was also to be discussed in the meeting therein, to

which the legal team suggested that the same can only be undertaken by voting through postal ballot and not otherwise.

Referring to the provisions of the Companies Act, 2013, elaborate:

(i) Whether the contention of Ms. Riddhi was correct as to the provision of E-Voting facility being optional in case of Fabulous Fabricators and Mechanics Ltd.?

(ii) Can the Chairman stop Mr. Mohan to physically vote at the meeting?

(iii) Is the suggestion of the legal team regarding appointment of Mr. Keshav by voting through postal ballot valid at law? ***(5 Marks)***

(b) Apirock Limited is a public company that has been performing well financially and has accumulated a substantial amount of cash reserves. The company's management has decided to buy-back some of its shares to improve earnings per share (EPS), return on equity (ROE) and enhance shareholder value.

Below are the financial details of Apirock Limited:

Paid up Share Capital - ₹ 50 crore

Free Reserves - ₹ 100 crore

Secured Loans - ₹ 30 crore

Unsecured Loans - ₹ 20 crore

Current Market Price of Shares - ₹ 500 per share

Total Number of Shares Outstanding - ₹ 1 crore

The company's management wants to buy-back 10% of its total shares at the market price of ₹ 500 per share. The company's articles have authorized the same. They have also passed an ordinary resolution, and its board has authorized the buy-back of shares. They plan to use free reserves to fund the buy-back.

(i) Whether the company can buy-back 10% of its shares as per the provisions of the Companies Act, 2013 under the given circumstances?

(ii) What is the maximum eligible amount allowed to be used by Apirock Limited as per section 68 of the Companies Act, 2013, to buy-back its shares as per the financial data provided? ***(5 Marks)***

(c) Explain and illustrate the terms 'Non-obstante' and 'Without prejudice'.

(4 Marks)

Answer

(a) (i) As per sub-rule (2) of Rule 20 of the Companies (Management and Administration) Rules, 2014, (w.e.f. 19.03.2015), every company which has listed its equity shares on a recognised stock exchange and every company having not less than one thousand members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.

The conditions stated above are disjunctive, not cumulative.

Applying the above rule, since its shares are listed on stock exchange, Fabulous Fabricators and Mechanics Ltd. will have to mandatorily provide option of E-Voting to its members although it is having less than 1,000 members. Therefore, the contention of Ms. Riddhi was not correct.

(ii) As per sub-rule (4)(iii)(B) of Rule 20 of the Companies (Management and Administration) Rules, 2014, the notice of the meeting shall clearly state- that the facility for voting, either through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting.

Also as per sub-rule (4)(xi), the Chairman shall, at the general meeting, at the end of discussion on the resolutions on which voting is to be held, allow voting, with the assistance of scrutinisers, by use of ballot or polling paper or by using an electronic voting system for all those members who are present at the general meeting but have not cast their votes by availing the remote e-voting facility.

In the given question, since Mr. Mohan could not exercise his option of e-voting, he can physically vote at the meeting. Thus, as per the circumstances given in the question, the Chairman cannot deprive Mr. Mohan from physically voting at the meeting as he has not cast his vote by remote e-voting earlier.

(iii) As per section 110(1)(a) of the Companies Act, 2013, a company shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot.

As per section 110(1)(b) a company may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot,

Pursuant to Rule 22(16)(h) of the Companies (Management and Administration) Rules, 2014, election of a director under section 151 of the Act (i.e. appointment of a director elected by small shareholders) shall be transacted only by means of voting through a postal ballot.

As per section (65) of the Companies Act, 2013, "postal ballot" means voting by post or through any electronic mode.

Considering the above provisions, we can conclude that the suggestion of the legal team that appointment of Mr. Keshav as a small shareholders director can only be undertaken by voting through postal ballot is valid.

(b) (i) As per the provision of section 68(1) of the Companies Act, 2013, subject to the provisions of sub-section (2), a company may purchase its own shares or other specified securities (hereinafter referred to as buy-back) out of:

(a) its free reserves;

(b) the securities premium account; or

(c) the proceeds of the issue of any shares or other specified securities:

As per the provision of section 68(2), no company shall purchase its own shares or other specified securities under sub-section (1), unless:

(a) the buy-back is authorised by its articles;

(b) a special resolution has been passed at a general meeting of the company authorising the buy-back:

Provided that nothing contained in this clause shall apply to a case where:

(i) the buy-back is ten per cent or less of the total paid-up equity capital and free reserves of the company;

(ii) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;

Analysing the above provisions we can conclude that Apirock Limited can buy-back 10% of its shares under the given circumstances since it is well within the stipulated limit of 10% of its the total paid-up equity capital and free reserves, which has been authorised by the Board by means of a resolution passed at its meeting and here passing of a special resolution is not required in terms of the proviso to section 68(2).

(ii) As per the provision of section 68(2)(c) of the Companies Act, 2013, no company shall purchase its own shares or other specified securities under sub-section (1), unless the buy-back is twenty-five per cent or less of the aggregate of paid-up capital and free reserves of the company.

Provided that in respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent in this clause shall be construed with respect to its total paid-up equity capital in that financial year.

In terms of the above provisions, the maximum eligible amount allowed to be used by Apirock Limited for buy-back of shares is: 25% of ₹ (50+ 100) crore = ₹ 37.5 crore subject to passing of a special resolution.

Note for (ii)-

Assumption 1. - Only ordinary resolution has been passed.

In this case, authorisation by a resolution passed at a meeting of the Board of Directors authorising the same is sufficient when the buyback amounts are up to 10% of the total paid-up equity capital and free reserves of the company, then the answer will be 10% of paid-up equity share capital and free reserves i.e., 10% of ₹ (50+100) crore i.e. ₹15 crore.

Assumption 2- A special resolution has been passed.

In this case, the maximum amount of buyback shall be 25% of the paid-up equity share and free reserves, i.e., 25% of ₹ (50+100) crore i.e. ₹37.5 crore.

Assumption 3- When the buy-back is of only equity shares.

If all the shares in the question are assumed to be equity shares, the maximum amount of buyback shall be 25% of the paid-up equity share, i.e., 25% of ₹ 50 crore i.e. ₹ 12.5 crore in that financial year.

(c) Non-obstante: A clause that begins with the words "notwithstanding anything contained" is called a *non-obstante* clause. Unlike the "subject to" clause, the notwithstanding clause has the effect of making the provision prevail over others. When this term is used then the clause will prevail over the other provision(s) mentioned therein.

Illustration: A notwithstanding clause can operate at four levels in various Acts as tabulated under.

S. No.	Clause	Effect
1	Notwithstanding anything contained in another section or sub- section of that statute.	The clause will override such other section(s)/ sub-section(s).
2	Notwithstanding anything contained in a statute.	The clause will override the entire enactment.
3	Notwithstanding anything contained in specific section(s) or sub-section(s) or all the provisions contained in another statute.	The clause will prevail over the other enactment.
4	Notwithstanding anything contained in any other law for the time being in force.	The clause will override all other laws.

Without prejudice: When certain particular provisions follow general provisions and when it is stated that the particular provisions are without prejudice to those general provisions the particular provisions would not

restrict or circumscribe the operation and generality of the preceding general provisions. In other words, the particular provisions shall operate in addition to and not in derogation of the general provisions.

Illustration: Section 4(3) of the Companies Act, 2013, "Without prejudice to the provisions of sub-section (2), a company shall not be registered with a name which contains.....".

This implies that while registering (and deciding) the name of the company [as per section 4(3)], provisions of section 4(2) shall also be operative.

Question 4

(a) Sharp Surgical Ltd. is a public limited listed company engaged in the manufacture of surgical instruments with a nation-wide chain of dealers and retailers to facilitate the trade. It was incorporated in the year 2020. It has a paid-up capital of ₹ 350.10 crore with free reserves worth ₹ 156.70 crore with a secured business term loan of ₹ 56 crore from GHL Bank Pvt. Ltd. as at 31.03.2025.

Lamp bell & Associates Chartered Accountants were appointed to conduct Statutory Audit for F.Y. 2024-25 of the aforesaid company. During the audit of accounts Mr. Lamp bell the senior partner of the auditing firm shared the following observations with Mr. Sharp one of the promoter directors of the aforesaid company:

No.	***Observation***
1.	*Out of the above term loan, ₹ 3.15 crore were suspected to be used for purposes other than business, in providing unsecured loan to private individuals in the company.*
2.	*Mr. Reet one of the officers in the company was suspected to have siphoned an amount of ₹ 0.15 crore.*

Mr. Lamp bell having reasons to believe for the above frauds, within 2 days of such detection, informed the Audit Committee and asked it for its reply so that the central government can be informed of the suspected fraud of ₹ 3.15 crore. Further he emphasized to mention the case of suspected siphoning of ₹ 0.15 crore to the audit committee.

Mr. Sharp requested the auditors not to report any matter to the central government, rather they can mention both above matters in the Director's Report to be prepared under section 134(3) of the Companies Act, 2013. The above request of Mr. Sharp was based on the reasoning that it was only a case of suspected fraud and the same is a matter of investigation on part of the company.

Considering the applicable provisions under the Companies Act, 2013, decide upon the following:

(i) Whether Lamp bell & Associates Chartered Accountants should restrict the reporting of the above suspected fraud of ₹ 3.15 crore as requested by Mr. Sharp? What is the correct procedure to be followed by the auditor in such cases?

(ii) What would be the correct procedure for the suspected siphoning of ₹ 0.15 crore by the auditor of the company? ***(5 Marks)***

(b) Harish, Priyam and Priyesh are three advertising professionals specialized in the field of creating short advertisement films for various Fast Moving Consumer Goods (FMCG) companies. They have been engaged in their businesses separately as sole-proprietors, but have now decided to join hands and form a Limited Liability Partnership. On 10.04.2024, the e-Form RUNLLP is filed thereby to reserve the name of the LLP as HPP & Associates LLP which has been approved by the Registrar along with e-Form. The e-form FiLLiP has also been filed containing details of partners and their consent.

Meanwhile even after incorporation as HPP & Associates LLP on 30.04.2024 the LLP could not finalize the LLP agreement as Harish and Priyam have agreed to contribute ₹1.15 crore to the LLP whereas Priyesh has desired and insisted to monetize his future services for one year to the LLP as his capital contribution, which has been opposed by the other two partners as beyond law. However, a consensus was drawn between the above three and a common consensus LLP agreement was submitted on 20.05.2024.

The LLP has further planned to induct Srijan Cooperative Society as one of its partners.

Considering the provisions of the Limited Liability Partnership Act, 2008, answer the following:

(i) *Whether the Registrar would accept the LLP agreement so submitted after 20 days of incorporation as in compliance with law?*

(ii) *Whether the opposition of the desire of Priyesh on matter and form of his capital contribution, correct?*

(iii) *Whether Srijan Cooperative Society can be inducted as a partner in the LLP?* ***(5 Marks)***

(c) *Explain the maxims 'Contemporanea Expositio est optima et fortissinia in lege' and 'Optima legum interpres est consuetude' as a rule of interpretation.* ***(4 Marks)***

Answer

(a) (i) As per section 143(12) of the Companies Act, 2013, read with Rule 13(1) of the Companies (Audit and Auditors) Rules, 2014, if an auditor in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving or is expected to involve individually an amount of ₹ 1 crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government within the stipulated time.

In the given question, since the amount involved in fraud is more than rupees one crore hence, Lamp bell & Associates Chartered Accountants should not restrict the reporting of the suspected fraud as requested by Mr. Sharp. The auditor must inform the same to the Central Government and should follow the following procedure.

(a) the auditor shall report the matter to the Board or the Audit Committee, as the case may be immediately but not later than two days of his knowledge of the fraud, seeking their reply or observations within forty-five days;

(b) on receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within fifteen days from the date of receipt of such reply or observations;

(c) in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations;

(d) the report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same. The report shall be filed electronically in form ADT-4.

(ii) As per the proviso to section 143(12) of the Companies Act, 2013, read with Rule 13(1) of the Companies (Audit and Auditors) Rules, 2014, in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases not later than 2 days from the date of his knowledge of the fraud.

The companies, whose auditors have reported frauds under this sub-section to the audit committee or the Board but not reported to the Central Government, shall disclose the following details about such frauds in the Board's report:

(a) Nature of Fraud with description;

(b) Approximate Amount involved;

(c) Parties involved, if remedial action not taken; and

(d) Remedial actions taken.

Under Rule 13(4), the company must disclose in the Board's Report all such frauds reported during the year.

(b) (i) As per section 23 of the Limited Liability Partnership Act (LLP), 2008, the LLP agreement shall be in writing and filed with the Registrar in such form and manner as may be prescribed.

As per Rule 21 of the LLP Rules, 2009, every limited liability partnership shall file information with regard to the limited liability partnership agreement in Form 3 with the Registrar within thirty days

of the date of incorporation. Proviso to the above rule also specifies that changes, if any, made therein shall be filed with the Registrar within thirty days of such change.

In terms of the above provisions, the Registrar will accept the LLP agreement which has been submitted after 20 days of incorporation in compliance with law.

(ii) According to section 32(1) of the Limited Liability Partnership Act, 2008, a contribution of a partner of the LLP may consist of tangible, movable or immovable or intangible property or other benefit to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed.

Thus, Priyesh's plea for contributing his future services for one year to the LLP as his capital contribution is tenable and therefore the other partners are not correct in opposing to Mr. Priyesh for the same.

(iii) According to section 5 of the Limited Liability Partnership Act, 2008, any individual or body corporate may be a partner in a LLP.

The definition of body corporate as given under the LLP Act, 2008, does not include a co-operative society registered under any law for the time being in force. Hence, Srijan Cooperative Society cannot be inducted as a partner in LLP.

(c) This doctrine is based on the concept that a statute or a document is to be interpreted by referring to the exposition it has received from contemporary authority. The maxim "*Contemporanea Expositio est optima et fortissinia in lege*" means "contemporaneous exposition is the best and strongest in the law." This means a law should be understood in the sense in which it was understood at the time when it was passed.

The maxim "*optima legum interpres est consuetude*" simply means, "Custom is the best interpreter of law". Thus, the court was influenced in its construction of a statute of Anne by the fact that it was that which had been generally considered as the true one for one hundred and sixty years. *(Cox Vs. Leigh 43 LJQB 123).*

In this regard, it is to be noted that this maxim is to be applied for construing ancient statutes, but not to Acts that are comparatively modern.

Question 5

(a) Arch-Support Ltd. is a public limited company incorporated in 2018 having its registered office in Nashik, Maharashtra and engaged in the manufacture of sports shoes and related accessories. It has the following breakup of equity and preference share-capital:

1,20,000 Equity Shares of 100 each;

1,50,000 10% Preference Shares of 10 each.

Ms. Martha, one of the elite members from Jaipur holds in her name equity shares worth ₹ 6,50,000 of the company as on date and also has beneficial interest in equity shares worth ₹ 3,00,000, is concerned about declaration to be made by her as mandated by the Companies (Significant Beneficial Owner) Amendment Rules, 2018 (SBO Rules).

She consulted CA. Ms. Marina, her friend on the above issue who advised that since she has significant beneficial ownership directly and indirectly in the company, she is required to file the declaration as mandated by the above rules.

Referring to the provisions of the Companies Act, 2013 and SBO Rules, decide on the following:

(i) Whether the advice given by CA. Ms. Marina, her friend on the above issue is in line with SBO Rules?

(ii) SBO Rules are applicable in every case. Comment and mention the instances if any, where these rules are not applicable. ***(5 Marks)***

OR

(a) SMTN Limited is a listed company that operates in the pharmaceutical sector. The company's annual accounts for the year 2023-24 were audited by a prominent audit firm, JJ & Co. Following an investigation by the Ministry of Corporate Affairs (MCA), it was discovered that the audit report issued by JJ & Co. contained several discrepancies, including failure to disclose material information regarding the company's liabilities and misstatements in its revenue recognition practices.

The issue was raised by a group of minority shareholders, who alleged that the audit firm had not complied with auditing standards and had failed to conduct a proper audit. The MCA referred the matter to the National Financial Reporting Authority (NFRA), a body established under Section 132 of the Companies Act, 2013, to investigate whether the audit of SMTN Limited's financial statements was conducted in compliance with accounting and auditing standards.

In the light of provisions of the Companies Act, 2013, explain any 3 functions and duties of NFRA and what actions can the NFRA take against the audit firm, JJ & Co., based on its findings upholding the allegations raised by the group of minority shareholders? ***(5 Marks)***

(b) *Sulagna, Sukanya & Associates LLP was formed on 1st November, 2024 to be engaged in the business of manufacturing affordable range of fashionable accessories for women. Sulagna a fashion designer had appointed Shreesh a qualified Chartered Accountant to maintain and finalize the accounts on a January to December basis thereby preparing the financial statements for first two months ending 31st December, 2024. Shreesh differed from the view and advised her for April to March as the financial year thereby urging upon such account finalization from November 2024 to March 2025 instead. Meanwhile Dilip a Karta of a HUF in which Sukanya is also a member has approached the LLP and offered to be admitted as a partner.*

Considering the provisions of the Limited Liability Partnership Act, 2008, answer the following:

(i) Whether the advice of Sulagna for maintaining the accounts on January to December basis hold good at law?

(ii) Whether the offer given by Dilip to induct the HUF as a partner be considered?

(iii) What would be your answer if instead of Dilip, a Charitable Trust had approached to become a partner in the LLP? ***(5 Marks)***

(c) *Explain the provision relating to making of rules or bye-laws after previous publications as laid in the General Clauses Act, 1897?* ***(4 Marks)***

Answer

(a) (i) As per section 90(1) of the Companies Act, 2013, every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five percent or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed.

As per Rule 2(1)(h) of the Companies (Significant Beneficial Owners) Rules, 2018, "Significant Beneficial Owner" means an individual, referred to in sub-section (1) of section 90 of the Act, who, acting alone or together, or through one or more persons or trust, satisfies one or more of the following:

(i) holds, indirectly, or together with any direct holdings, not less than ten per cent of the shares of the reporting company;

(ii) holds, indirectly or together with any direct holdings, not less than ten per cent of the voting rights in the shares of the reporting company;

(iii) has right to receive or participate in not less than ten per cent of the total distributable dividend or any other distribution payable in a financial year, through indirect holdings alone or together with any direct holdings;

(iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone.

In the question given, Ms. Martha is holding equity shares amounting ₹ 6,50,000 in her name (directly) and amounting ₹ 3,00,000 (having beneficial interest). Thus, her total holding considering both direct and indirect holding of shares amounts to ₹ 9,50,000, which is less than the stipulated amount of 10% of (1,20,000 shares of ₹ 100 each)

i.e. 10% of Rs 1,20,00,000, i.e. ₹ 12,00,000. Therefore, she is not required to file the declaration as mentioned by CA. Ms. Marina.

(ii) Rule 8 of the Companies (Significant Beneficial Owner) Amendment Rules, 2018 states that the 'SBO' Rules shall not be made applicable to the extent the share of the Reporting Company is held by:

(a) the Investor Education and Protection Fund Authority [constituted under section 125 (5)];

(b) its holding reporting company provided that the details of such holding reporting company shall be reported in Form No. BEN-2;

(c) the Central Government, State Government or any local authority;

(d) (i) a reporting company or (ii) a body corporate or (iii) an entity, controlled wholly or partly by the Central Government and/ or State Government(s);

(e) investment vehicles such as mutual funds, alternative investment funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InVITs) registered with and regulated by the Securities and Exchange Board of India; and

(f) investment vehicles regulated by Reserve Bank of India, Insurance Regulatory and Development Authority of India or Pension Fund Regulatory and Development Authority.

OR

(a) 1. Functions and Duties of National Financial Reporting Authority [NFRA]

Section 132(1A) of the Companies Act, 2013, provides that National Financial Reporting Authority shall perform its functions through such divisions as may be prescribed.

Further section 132(2) read with rule 4, 6 to 9 of the National Financial Reporting Authority Rules 2018 lays down the functions and duties that NFRA shall perform, namely:

The Authority shall protect the public interest and the interests of investors, creditors and others associated with the companies or bodies corporate by establishing high quality standards of accounting and auditing and exercising effective oversight of accounting

functions performed by the companies and bodies corporate and auditing functions performed by auditors.

Without prejudice to the generality, the Authority in particular shall:

(a) Maintain details of particulars of auditors appointed in the companies and bodies corporate governed by NFRA;

(b) Recommend accounting standards and auditing standards for approval by the Central Government;

(c) Monitor and enforce compliance with accounting standards and auditing standards;

(d) Oversee the quality of service of the professions associated with ensuring compliance with such standards and suggest measures for improvement in the quality of service;

(e) Promote awareness in relation to the compliance of accounting standards and auditing standards;

(f) Co-operate with national and international organisations of independent audit regulators in establishing and overseeing adherence to accounting standards and auditing standards; and

(g) Perform such other functions and duties as may be necessary or incidental to the aforesaid functions and duties.

2. As per section 132(4)(c) of the Companies Act 2013, where professional or other misconduct is proved, NFRA have the power to make order for:

(A) imposing penalty of:

I. not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and

II. not less than five lakh rupees, but which may extend to ten times of the fees received, in case of firms.

(B) debarring the member or the firm from:

I. being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or

II. performing any valuation as provided under section 247, for a minimum period of six months or such higher period not exceeding ten years as may be determined by the National Financial Reporting Authority.

NFRA can take the above actions against the audit firm JJ & Co. based on its findings upholding the allegations raised by the group of (even) minority shareholders.

(b) (i) As per section 2(1)(l) of the LLP Act, 2008, "Financial year", in relation to a LLP, means the period ending on the 31st day of March every year;

Provided that in the case of a limited liability partnership incorporated on or after the 1st day of October of a year, the financial year may end on the 31st day of March of the following year.

In terms of the above provision, advice of Sulagna for maintaining the accounts on January to December basis is not valid.

(ii) Section 5 of the Limited Liability Partnership Act, 2008 provides that any individual or body corporate can be a partner in LLP. However, it has been clarified vide MCA General Circular No. 13/2013 dated 29th July, 2013 read with MCA General Circular No. 2/16 dated 15th January, 2016 that a HUF cannot be treated as a body corporate for the purposes of LLP Act, 2008.

Therefore, a HUF or its Karta cannot become a partner or designated partner in LLP.

Hence, Dilip cannot be inducted as a partner to the LLP.

(iii) The answer would be the same as a trust is not a body corporate in India. A trust is a legal arrangement for managing property for the benefit of another person, called the beneficiary. The person who manages the property is called the trustee. Hence, in that case too such Charitable Trust could not be inducted as a partner to the LLP.

(c) Section 23 of the General Clauses Act, 1897 describes the provisions applicable to making of rules or bye-laws after previous publication. As per this section:

Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the conditions of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:

(1) The authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;

(2) The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes;

(3) There shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) The authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval, or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the person with respect to the draft before the date so specified;

(5) The publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

Question 6

(a) Referring the provisions for acceptance of deposits as laid under the Companies Act, 2013 and the relevant rules, define the term 'deposit' and examine the validity of each of the following proposals:

(i) SK Textiles Limited wants to accept deposits of ₹ 1 crore from its members for a tenure which is less than six months.

(ii) S, one of the directors of ATC Technologies Private Limited, a start-up company, requested K, one of his close friends to lend to the company 50 lakh in a single tranche by way of a convertible note repayable within a period of six years from the date of its issue. ***(5 Marks)***

(b) SDF Ltd. an unlisted company has shared the following financial data for the F.Y. 2024-25:

Equity Paid-up capital	*₹ 48 crore*
Turnover	*₹ 195 crore*
Deposits as on 31.03.2025	*₹ 20 crore*
Loans outstanding from IBL Bank Pvt. Ltd. as on 30.09.2024	*₹ 100.59 crore*
Loans outstanding from IBL Bank Pvt. Ltd. as on 01.02.2025	*₹ 96.50 crore*
Loans outstanding from IBL Bank Pvt. Ltd. as on 31.03.2025 after partial repayment	*₹ 75.10 crore*
Net worth	*₹ 149.25 crore*

The company has invited your expert advice on the following issues, considering the provisions of the Companies Act, 2013:

(i) Whether it would be mandatory to appoint an internal auditor for the company?

(ii) Further in case the answer is in affirmative, can G who is a professional but neither a CA nor an employee of the concern be appointed as an internal auditor? ***(5 Marks)***

(c) Enumerate the circumstances and the forms of business as mentioned in the Foreign Exchange Management Act, 1999, in which a person resident outside India is absolutely prohibited from making any investments in India. **(4 Marks)**

Answer

(a) Definition of Deposit: According to section 2(31) of the Companies Act, 2013, the term 'deposit' includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve bank of India.

(i) According to Rule 3(1) of the Companies (Acceptance of Deposits) Rules, 2014, a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in

less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty-six months.

However, as an exception to this rule, for the purpose of meeting any of its short-term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than six months subject to the conditions that:

- such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and
- such deposits are repayable only on or after three months from the date of such deposits or renewal.

In the given case, SK Textiles Limited wants to accept deposits of ₹ 1 crore from its members for a tenure which is less than six months. It can do so if it justifies that the deposits are required for the purpose of meeting any of its short-term requirements of funds but in no case such deposits shall exceed 10% ten per cent of the aggregate of its paid-up share capital, free reserves and securities premium account and further, such deposits shall be repayable only on or after three months from the date of such deposits.

(ii) In terms of Rule 2 (1) (c) (xvii) of the Companies (Acceptance of Deposits) Rules, 2014, if a start-up company receives rupees twenty-five lakh or more by way of a convertible note (convertible into equity shares or repayable within a period not exceeding ten years from the date of issue) in a single tranche, from a person, it shall not be treated as deposit.

In the given case, ATC Technologies Private Limited, a start-up company, received ₹ 50 lakh from K in a single tranche by way of a convertible note which is repayable within a period of six years from the date of its issue. In view of Rule 2 (1) (c) (xvii) which requires a convertible note to be repayable within a period of ten years from the date of its issue, the amount of ₹ 50 lakh shall not be considered as deposit.

(b) (i) According to the provisions of section 138 of the Companies Act, 2013, read with Rule 13 of the Companies (Accounts) Rules, 2014, the following class of companies shall be required to appoint an internal

auditor which may be either an individual or a partnership firm or a body corporate, namely:

(1) Every listed company;

(2) Every unlisted public company having:

(A) Paid up share capital of 50 crore rupees or more during the preceding financial year; or

(B) Turnover of 200 crore rupees or more during the preceding financial year; or

(C) Outstanding loans or borrowings from banks or financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or

(D) Outstanding deposits of twenty-five crore rupees or more at any point of time during the preceding financial year.

Referring to the above provisions we can conclude that the appointment of an Internal Auditor shall be mandatory as the loans outstanding on one instance i.e. 30.09.2024 is ₹ 100.59 crore, which is above ₹100.00 crore, as mandated in the above provisions for compulsory appointment of an Internal Auditor.

(ii) Section 138(1) provides that such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

Explanation to Rule 13(1) of Companies (Accounts) Rules, 2014 provides that the internal auditor may or may not be an employee of the company.

In terms of the above provisions, Mr. G can be appointed as an internal auditor of the Company.

(c) As per the Foreign Exchange Management (Permissible Capital Account Transactions) Rules, 2000, a person resident outside India is prohibited from making investments in India in any form, in any company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engage:

(i) In the business of chit fund; Registrar of Chits or an officer authorised by the State Government in this behalf, may, in consultation with the State Government concerned, permit any chit fund to accept subscription from Non-resident Indians. Non- resident Indians shall be eligible to subscribe, through banking channel and on non-repatriation basis, to such chit funds, without limit subject to the conditions stipulated by the Reserve Bank of India from time to time.

(ii) As Nidhi company;

(iii) In agricultural or plantation activities;

(iv) In real estate business, or construction of farm houses, or

Explanation: In "real estate business" the term shall not include development of townships, construction of residential/commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.

(v) In trading in Transferable Development Rights (TDRs).

'Transferable Development Rights' means certificates issued in respect of category of land acquired for public purpose either by Central or State Government in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole.