Company Law Solutions – June 2016 – ACLP

A Humble move towards developing the Profession of Company Secretaries…

Prepared by CS Richi M. Shah
E-mail: csrichimshah@gmail.com
Mo: 9722967872

Question 1 :

a). A group of persons desirous of forming a company wants to know the procedure for getting the name of the company approved by the Registrar of Companies. Advise the group about the e-form to be used and the procedure to be followed by the applicant group in this regard.

Ans. The Promoters of Proposed Company should;

1. Check the Name availability on MCA, by visiting MCA Services -> Check Company Name and check whether Name they propose does not match with existing Corporate (Company / LLP).
2. The Proposed Name should not attract provisions of Section 3 of Emblems and Names (Prevention & Improper Use) Act, 1950, or should not in any manner give impression that Name belong to or is connected with Government (Center /state).
3. In cases where Name matches with existing Company / LLP or contains name which shows connection with Government, prior Approval from that Company or Government should be taken respectively. Further where the proposed name includes Insurance, Bank, Stock exchange, Venture Capital, Asset Management, Nidhi, or Mutual Fund etc. prior approval from concerned authority is must.
4. Form INC -1 is to be filled and submitted on MCA Portal to reserve the Proposed Name.
5. Part A, B & C are to be filled to reserve name for a NEW COMPANY.
6. Fill up details like DIN/PAN/Passport Number, Category/sub-category of proposed Company, Registrar office applicable like Gujarat/Delhi/Maharashtra etc, Promoters (Minimum 1 for OPC, 2 for Private and 7 for public Company), Objects and Proposed Name (s) (Maximum 6).
7. No Mandatory Attachments. Only incase Promoters are more than 7, details of 8^{th} onwards to be provided as attachment.
8. It then requires Digital Sign by any one applicant (arrange for the same in advance)
9. It also advisable that all Proposed Directors apply for DIN through DIR-3 form and get their DIN well in advance for various procedural formalities.
10. Fees Rupees 1000 to be paid online, for which challan would be generated on payment. The form will be sent to Central Registration centre (CRC).
11. Approval / Rejection will be sent to registered mail with Reasons if required.
12. Name if approved will be reserved for 60 days from date of Application.

Applicable Sections – 4 of the Companies Act, 2013 read with Companies (Incorporation Rules) (updated can be viewed at http://ebook.mca.gov.in/default.aspx)

b). The Board of directors of Growmore Ltd. decides to invite deposits from public. You being the Company Secretary of the company have been asked to prepare and place before the Board, a detailed note on the conditions for inviting public deposits so that the legal requirements are duly complied with. Prepare a note advising the company.

Ans. Note on Public Deposits

To,
The Board of Directors
Growmore Limited

Dear Sirs,

In respect with proposal put up by Board Members for raising funds through Public Deposits, and requiring my views on the Legal formalities, I hereby provide for the same.

Provisions Applicable: Sections 73 to 76 of the Companies Act, 2013 readwith Companies (Acceptance of Deposit) Rules, 2014 as amended.

Procedure:

- As the Company is a Public Limited Company falling within the criteria mentioned for Eligible Company (Rule 2(e) of above mentioned Rules) i.e Company with net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees. Additionally a Ordinary Resolution (Special if amount breaches limit provided under Sec. 180(1)(c)) needs to be passed in a General Meeting of Members and the same is to be filed with RoC in form MGT-14 within 30 days from passing of Resolution.

- No eligible company shall accept any deposit, which is repayable on demand or upon receiving a notice within a period of less than six months or more than thirty-six months from the date of acceptance or renewal of such deposit, except for meeting any short term requirement subject to fulfilling certain conditions mentioned therein. (same is not being provided assuming our requirement is form term between 6 – 36 months).

- Limits for acceptance / Renewal for eligible Company :

  1. any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds ten percent of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company (Members – existing Deposits + New Maximum 10% of PUC+FR+SP of the Company)
  2. any other deposit, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds twenty five percent of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company (Others – existing Deposits + New Maximum 25% of PUC+FR+SP of the Company)

- Accept or renew any deposit in any form, carrying a rate of interest or pay brokerage thereon at a rate exceeding the maximum rate of interest or brokerage prescribed by the Reserve Bank of India for acceptance of deposits by non-banking financial companies.
- Every eligible company shall obtain, at least once in a year, credit rating for deposits accepted by it and a copy of the rating shall be sent to the Registrar of Companies alongwith the return of deposits in Form DPT-3.
- Issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in DPT -1, This circular is to be sent to RoC minimum 30 days before issuance and also it has to be advertised in English language in an English newspaper having country wide circulation and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated, and shall also place such circular on the website of the company.

CS Richi M. Shah
e-mail: csrichimshah@gmail.com
Mobile: 9722967872

- A circular or circular in the form of advertisement issued shall be valid until the expiry of six months from the date of closure of the financial year in which it is issued or until the date on which the financial statement is laid before the company in annual general meeting.
- Any Eligible Company inviting deposit shall allocate such sum which shall not be less than fifteen per cent of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account.
- A Deposit Insurance need to be Provided to safeguard Depositors.

This is an Overview to Regulations for Accepting Deposits under the Companies Act, 2013, there are certain procedural aspects to be looked into which are not mentioned here as they being not so relevant for decision making by the Board.

Thanking You,

ABC
Company Secretary

c). "Under the Companies Act, 2013, a company shall be eligible to apply for the status of dormant company upon fulfilment of certain conditions." Discuss the conditions so stipulated in the Act.

Ans. A company may make an application in Form MSC-1 along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455 after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value):

Provided that a company shall be eligible to apply under this rule only, if

(i) no inspection, inquiry or investigation has been ordered or taken up or carried out against the company;

(ii) no prosecution has been initiated and pending against the company under any law;

(iii) the company is neither having any public deposits which are outstanding nor the company is in default in payment thereof or interest thereon;

(iv) the company is not having any outstanding loan, whether secured or unsecured:

Provided that if there is any outstanding unsecured loan, the company may apply under this rule after obtaining concurrence of the lender and enclosing the same with Form MSC-1 ;

(v) there is no dispute in the management or ownership of the company and a certificate in this regard is enclosed with Form MSC-1;

(vi) the company does not have any outstanding statutory taxes, dues, duties etc. payable to the Central Government or any State Government or local authorities etc.;

(vii) the company has not defaulted in the payment of workmen's dues;

(viii) the securities of the company are not listed on any stock exchange within or outside India.

Text of Section 455 (1)is reproduced below:

455. (1)Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an

inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

Explanation – for the purpose of this secition –

(i) "inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;

(ii) "significant accounting transaction" means any transaction other than—

(a)payment of fees by a company to the Registrar;
(b)payments made by it to fulfil the requirements of this Act or any other law;
(c)allotment of shares to fulfil the requirements of this Act; and
(d)payments for maintenance of its office and records.

d). Good Homes Ltd. was registered as a public company with 195 members as follows :

No. of members Directors and their relatives 35 Employees 12 Ex-employees 08 (shares were allotted when they were employees) Others 140 Total number of members 195. Board of directors of the company takes a decision to convert the company into a private company. Being a Company Secretary in Practice, the Board of directors seeks your advice about the steps to be taken for conversion of the company into a private company including reduction in the number of members, if necessary, as per the Companies Act, 2013. Advise the Board.

Ans. Pursuant to Section 14 every alteration of Public Company to Private Company shall require to approval from NCLT for such conversion. The order of NCLT to be filed with ROC in INC-27 within 15 days from order.

Procedure:

1. Hold Board meeting, approve the conversion and move resolution for calling General Meeting, authorise PCS (or other representative for appearance),Authority for signing Documents.[Note that Notice for aforementioned General Meeting requires Special Notice with explanatory statement under section 102 while the Motion to be moved is to be passed as Special Resolution (75%).]
2. Hold General Meeting and pass Resolutions for; 1. Alteration of AOA, 2. MOA (Name Clause). [Here Section 13(2) provides that application to Central Government will not be required for addition or deletion of word "Private" in name, and thus formalities under Section 13 need not to be followed, except intimation of NCLT order in INC-27.]
3. File MGT-14 within 30 days of General Meeting.
4. If number is above 200 members bring it to below or equal to 200 (Note that shares held by previous employees shall not be counted for limits of members i.e. 200)

5. Prepare List of Creditors / Debenture holders (list should be not older than two months from date of petition being filed to Tribunal.)

6. File Petition to Tribunal in NCLT 1 with the Registrar at Tribunal alongwith Memorandum of Appearance (PCS or any other representative / advocate), General Affidavit verifying petition (NCLT-6) and Notice of Admission in prescribed format.
7. Advertise the petition atleast 14 days before the hearing in Newspaper in One English daily and one vernacular Language daily circulated in the District. (It contains details as date of hearing, details of Applicant, probable list of people to be affected by petition).
8. Serve the Copy of Petition to ROC, SEBI (if applicable), all the Creditors / Debenture holders (as per list created) atleast 14 days before hearing.
9. File Affidavit with Tribunal that Petitio has been advertised atleast before 14 days as per NCLT Rules.
10. File Affidavit proving correctness of list of Creditors / Debenture holders.
    [Note that main purpose of advertisement is to aware any creditor / Debenture holder if his Name is not included in list, he may apply to Company or RoC or any concerned authority.]
11. Appear for Hearing and take copies of Order.
12. File the order with Registrar in INC-27 within 15 days from Order.

    Note that any conversion of Private to Public is effective from date of Special Resolution passed by Members in General Meeting, while in case where Public is converted to Private it is effective from date of Order of NCLT.

CS Richi M. Shah
e-mail: csrichimshah@gmail.com
Mobile: 9722967872

Question 2

a). A group of persons, called promoters have submitted an application to the Registrar of Companies, New Delhi for getting a company incorporated as a public company. Pending the Registrar's decision of granting certificate of incorporation, the promoters enter into certain contracts for the purchase of some assets for the proposed company. Explain the legal position of promoters' liability and the liability of the proposed company after its incorporation, in this regard.

Ans. Companies Act, 2013 does not specifically contain any provisions about Promoter's Contract. The promoters of a company usually enter into contracts to acquire some property or right for the company which is yet to be incorporated, you may assume Property to mean Registered premises or Plant for Manufacturing etc., such contracts are called preliminary Contracts. The promoters generally enter into such contracts as agents for the company about to be formed but the legal position is that since presence of two consenting parties is necessary for a contract, and the company before incorporation is a non-entity, the promoters cannot act as agents for the company, which has yet to come into existence. As such, the company is not liable for the acts of the promoters done before its incorporation. When the company comes into existence, it is not bound by the preliminary contracts even when it takes the benefit of the work done on its behalf.

However, specific performance of a contract between a third party and the promoters may be successfully claimed by the third party against the company, when the company enters into possession of the property on the faith of the promoters' contract i.e. it accepts / ratifies the contracts made by Promoters in a Board Meeting held for the purpose.

Similarly, the company, after incorporation, cannot enforce any contract made before its incorporation, which means the company cannot sue the other party to the contract if the other party fails to carry out the contract. Promoters remain personally liable on the contract.

A company also cannot ratify a contract entered into by the promoters on its behalf before its incorporation. Therefore, it cannot by adoption or ratification obtain the benefit of the contract purporting to have been made on its behalf before it came into existence, as ratification by the company when formed is legally impossible. The doctrine of ratification applies only if an agent contracts for a principal who is in existence and who is competent to contract at the time of the contract by the agent. Where a contract is made on behalf of principal known to both parties to be non-existent, the contract is deemed to have been entered into personally by the actual maker, i.e. the agent. A company may, if it desires, enter into a new contract, after its incorporation, with the other party which is known as novation of promoter's contracts and if it makes a fresh contract in terms of the preliminary contract, the liability of the promoters comes to an end and if it does not make a fresh contract within a limited, period of time, either of the parties may rescind the contract. The essential feature of novation is that the right under the original contract is relinquished and a new right referable to a new contract is created. The substituted contract must, in order to effect a novation, be enforceable one. The pre-incorporation agreements entered into by the promoters acting on behalf of the intended company with third party cannot always be avoided for various reasons. These agreements affect the operation of the incorporated company.

CS Richi M. Shah
e-mail: csrichimshah@gmail.com
Mobile: 9722967872

b.) Board of directors of Bright Ltd. decides to change the name of the company to Shine Ltd. certain members of the company object to the Board's decision to change the name of the company on the ground that the change will affect their rights. Examining the provisions of the Companies Act, 2013, state: (i) The implications of change in name. (ii) Whether the objection of the members be tenable?

Ans. Primarily, the process of Changing the name would attract provisions of Section 13 and the same need to be followed.

As per Section 13, Board can change the Name of the Company (Except Private to Public Ltd. and vice versa) only after passing a Special Resolution in a General Meeting.

(i) Thus Implications of Change in Name:

1. **Continue Existence of Company**: The Change in name shall –
   - Shall not affect any rights or obligations of the company;
   - Shall not render defective any legal proceedings by or against the company; and
   - Shall not affect any legal proceedings continued or commenced by or against the company pending in its old name; they may continue in its new name.

   A change of name of a company does not result in its dissolution and incorporation of a new company under a new name. Section 13 permits a company to change its name in the manner as prescribed. Old case laws relating to earlier Acts may still valid regarding change of name of a company. On application as per Section 13(3) the Registrar shall enter the new name on the register in the place of the old name, and shall issue a fresh certificate of incorporation with the necessary alterations embodied therein and the change of name shall be complete and effective only on the issue of such a certificate.

2. **Right to sue**: A change of name under section 13 does not affect the rights and obligations of the company or render defective any legal proceedings by or against it, and any legal proceedings, which might have been continued or commenced by or against the company by its former name, may be continued by or against the company by its new name.(Pioneer Protective Glass Fibre P. Ltd. v. Fibre Glass Pilkington Ltd. - 1986 , Patel Roadways (P) Ltd. v. Bata Shoe Co. (P) Ltd. – 1979)
   After approval to the new name, Company can't sue in its old name.

3. **Tax Liability:** There is no substitution or succession of one legal person by another legal person in the instant case. It is only a change in name. Even in the absence of any special provision in the Income-Tax Act, the change does not affect the liability of the company to pay income tax arrears. [Economic Investment Corp. v. CIT – 1970]

4. **Execution of Decree**: The object of the section is to provide that notwithstanding the change in the name, there is no alteration in the constitution or the legal status of the company. Even after the name of a company is altered by special resolution and sanction by the Registrar is accorded under this section the company continues to possess the same rights and is subject to the same obligations as before the change.

   A decree obtained by a company in its former name can be executed by it in the new name after it has obtained a certificate for the altered name. The change of the name does not affect the rights of the company.

5. Shareholding by Company: Old Certificates to be substituted by ne ones consisting of New name of Company as Shareholder.

(ii) Legality of Members objection:

Now thus, as Members have power to reject the name in General Meeting it would serve the purpose of the Section. Further objecting members need to understand that what is purpose to change the name, and also that change in name would not affect any rights or liabilities neither of Member nor of any other third party or the Company itself. Even the sub-judice matters would continue on the Company.

In cases where percentage of objecting members is less than 25% i.e. they are not able to reject the Resolution, they can have the last resort – Class Action Suit, if genuinely they feel the matter is serious and oppressive in any manner to Members interests'.

They can file Class Action Suit with Tribunal under Section 241 read with section 244 of the Act.

The Tribunal after hearing the parties may pass an order in favor or against as it may think fit. It may even grant interim orders/relief as per merits of the case.

c.) During the course of audit of Jyoti Ltd., the auditor observes that the company has committed an offence resulting in fraud in which certain officers are involved. Analyse the extent of obligations of the statutory auditor and the manner in which he would comply with his statutory obligations in this regard.

Ans. Section 143(12) read with Rule 13 of the Companies (Audit and Auditors) Rules, 2014 provides that if an auditor of a company, in the course of the performance of his duties as statutory auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees one 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.

- The auditor shall report the matter to the Central Government as under:-

(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 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;

(e) the report shall be in the form of a statement as specified in Form ADT-4.

- In case of a fraud involving lesser than rupees one crore, the auditor shall report the matter to Audit Committee constituted under section 177 or to the Board immediately but not later than two days of his knowledge of the fraud and he shall report the matter specifying the following:

(a) Nature of Fraud with description;
(b) Approximate amount involved; and
(c) Parties involved

• The following details of each of the fraud reported to the Audit Committee or the Board during the year to be disclosed 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.

If Auditor acts in Good Faith, it shall not be taken as breach of duty. Practicing CS and CMA also ought to follow above mentioned procedure if they find any Fraud during their respective Audits. [Sec 143(15)]

d.) A company wishes to invest in the shares of other companies in excess of the prescribed limit as per the Companies Act, 2013. Draft required resolution to give authority to the Board of directors, mentioning the type of resolution required.

Ans. Section 186 provides that a Company through Board Authority can give Loans / Investment in securities of other Companies upto an amount equal to sixty percent of Paid up Capitals + Free Reserves + Securities Premium or hundred percent of Free Reserves + Securities Premium whichever is more.

Explanatory Statement for Special Resolution:

As per Section 186 of the Companies Act, 2013, a Company can invest/provide loans or give guarantees upto 60% of its paid up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is higher.

Consequently, it is proposed to authorise the Board of Directors of the Company to invest into securities of anybody-corporate and/or make loan(s) in connection with loan(s) made upto Rs. _________________.

None of the Directors, Managers and Key Managerial Personnel of the Company or their respective relatives is concerned or interested in the Resolution. Your Directors recommend the approval of proposed resolution by way of a Special Resolution.

Proposed Resolution:

To consider and if thought fit, to pass the following resolution as a Special Resolution:

"Resolved that pursuant to Section 186 of the Companies Act, 2013, read with the Companies (Meeting of the Board and its Powers) Rules, 2014 made thereunder, and subject to the Articles of Association of the Company, consent of the members of the Company be and is hereby accorded to the Board of Directors of the Company, to make investments upto an aggregate amount not exceeding Rs.________________, notwithstanding that the aggregate of the investments or loans or guarantees or securities so far given or to be given and / or securities so far acquired or to be acquired by the Company may collectively exceed the limits prescribed under Section 186 (2) of the Companies Act, 2013.

Resolved further that for the purpose of giving effect to this resolution, the Board of Directors of the Company be and is hereby authorised to negotiate and decide, from time to time, terms and conditions, to execute such documents, deeds, writings, papers and / or agreements as may be required and do all such acts, deeds, matters and things, as it may in its absolute discretion, deem fit, necessary or appropriate and settle any questions, difficulty or doubt that may arise in this regard."

(The mentioned Draft of Resolution is to be modified accordingly for placing before Board for its approval before General Meeting as the mentioned Draft of Resolution is for placing before the members at General Meeting).

CS Richi M. Shah
e-mail: csrichimshah@gmail.com
Mobile: 9722967872

Question 2A

(i) The authorised share capital of Amaze Ltd. is 10 crore divided into equity shares of 100 each. The Board of directors of the company decides to sub-divide these shares into shares of 10 each, so that the liquidity in dealing with shares at the stock exchange may become easier. Articles of association of the company are silent on the issue. The company is listed at Bombay Stock Exchange. As the Secretary of the company, what procedure you would follow to give effect to the Board's proposal under the provisions of the Companies Act, 2013 ?

Ans. The Board if decides to Sub-divide its shares, they can go ahead as Section 61 specifically permits for consolidation or sub-division of shares by a Company by altering its MoA. But in cases where Articles are silent or does not provide specific authority for the same, primarily they need to be altered as per Section 14 of the Companies Act, 2013.

Thus a Board Meeting should be convened and Resolution for altering the Articles to be passed, after that Board need to approve Resolution for Sub-division (mention specifically in Resolution that it is subject to Members Approval at GM for altering AoA.)

Duly Convene a General Meeting to pass Special Resolution for Altering AoA, and then an Ordinary Resolution for approving alteration of MoA as per Section 61, as Section 13 specifically starts with SAVE AS OTHERWISE PROVIDED IN SECTION 61 to mean except for matters provided in 61, thus only an Ordinary Resolution is enough.

The Resolution passed above for altering AoA (Sec 14) need to be filed in INC-27 with RoC within 15 days of General Meeting. File MGT-14 (Sec.117) and SH-7(Sec. 64) with RoC within 30 days of General Meeting.

General Procedures as 21 clear days Notice and other provisions as per SS-2 for GM, SS-1 for BM and LODR additionally for listed companies should be taken care.

(ii) Board of directors of Prince Ltd. decides to go for the issue of secured debentures of 100 each, to the extent of 10 crore. Further, as the company is going for the issue of secured debentures, it is required to create a debenture redemption reserve. The Board seeks your advice on the conditions to be fulfilled and compliance of the provisions of the Companies Act, 2013. Advise the Board.

Ans. Section 71(3) states that a company may issue secured debentures subject to terms and conditions as prescribed. According to Rule 18(1) of the Companies (Share Capital and Debentures) Rules, 2014, the company shall not issue secured debentures, unless it complies with the following conditions, namely:

(a) An issue of secured debentures may be made, provided the date of its redemption shall not exceed ten years from the date of issue [except for Companies engaged in setting up Infrastructure projects, Infrastructure Finance Companies, Infrastructure Debt Fund Non-Banking Financial Companies, Companies permitted by a Ministry or Department of the Central Government or by Reserve Bank of India or by the National Housing Bank or by any other statutory authority to issue debentures for a period exceeding ten years, these companies can issue for period upto maximum 30 years)

(b) such an issue of debentures shall be secured by the creation of a charge, on the properties or assets of the company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon. [charge to be created on immoveable property or specific moveable property in favour of Debenture Trustee, note that certain conditions defer for NBFC and Government Companies]

the company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than sixty days after the allotment of the debentures, execute a debenture trust deed to protect the interest of the debenture holders.
[To act as debenture trustee, the entity should either be a scheduled bank carrying on commercial activity, a public financial institution, an insurance company, or a body corporate. The entity should be registered with SEBI to act as a debenture trustee. SH-12 is format for Deed to be entered into with Trustee, also the Trustee is bound by its duties and also conferred with powers to suit its duty]

(c) the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures. The adequacy (maintenance of Balance) of DRR is to be 25% of amount raised through Debentures for public issue or privately placed issue of Debentures.
[For NBFC Companies with privately placed Debentures, no DRR shall be maintained, and for Companies registered as AIFI – All India Financial Institution regulated by RBI and Banking Companies No DRR is to be maintained whether Debentures placed Privately or publically issued].

(d) every company required to create Debenture Redemption Reserve shall on or before the 30th day of April in each year, invest or deposit, as the case may be, a sum which shall not be less than fifteen percent, of the amount of its debentures maturing during the year ending on the 31st day of March of the next year, in any one or more methods as prescribed (Deposit in Scheduled Bank or unencumbered securities of Central Govt. or State Govt.

These are general provisions as there is a lot to add for Debenture trustee its Duties, Powers and role.

(iii) Rohit, a member of Happy (Pvt.) Ltd. transfers his shares to Yash. Yash submitted the duly executed instrument of transfer. The Board of directors of the company at its meeting rejected the transfer arbitrarily without assigning any reason. The Articles of the company confer upon the Board to approve or disapprove the transfer. Examining the provisions of the Companies Act, 2013 :

(a) Advise Yash, the legal remedy available to him.

(b) What shall be your answer in case a relative of Yash wants to take any action against the company to register the transfer?

Ans. Primarily, in case of Private Limited Companies, it is the Articles who restrict the transfer of shares. It is not prohibited but restricted, in sense to mean primarily the member intending to sell need to offer them to existing members for purchase (through Board), if not he can sell to outside party. Problem here is Private Companies generally contain friends, relatives or closely connected persons, and when shares are sold to any outsider, other members may not be comfortable to run Business alongwith newly admitted person. Thus generally shares are firstly offered to existing members, and when none respond positively as a right to exit the selling member sells those shares to outsider. In our case neither Articles mention such a procedure nor any such proposal to existing members have been made, thus there arises no question to take such an excuse or reason to reject.

Thus, (a) Yash can apply to NCLT under section 58 (1) within 30 days from refusal to transfer, where the Tribunal after hearing may either dismiss the appeal or direct the company to register the transfer, if it is interest of members of the Company, and also pay any damages if suffered by any party due to such an act and also rectify its register of members. (b) Section 58(3) provides that only transferee can apply to NCLT for non registration, yes but in exceptional cases like Death / incapability of transferee NCLT can specially permit his representative to appear or file suit, it is pure discretion of tribunal.

(iv) Draft the resolutions required for appointment of Company Secretary for secretarial audit in the annual general meeting of a company.

Ans. A Secretarial Auditor i.e. PCS is appointed by Board and there is no need for Members Approval in a General Meeting. Section 179 read with Rule 8 of Companies (Meeting of Board and its power) Rules, 2014.

Proposed Resolution :

"**Resolved that** Mr./Ms.____________, Practicing Company Secretary, (Certificate of Practice Number __________) be and is hereby appointed as Secretarial Auditor/s of the Company for the year from 1st April _____ to 31st March _____

Resolved further that the Board of Directors / CEO /MD be and are hereby authorized severally to fix the remuneration payable to the said auditors."

CS Richi M. Shah
e-mail: csrichimshah@gmail.com
Mobile: 9722967872

Question 3

a.) During the financial year 2015-16, Deepak was holding 20% of the paid-up share capital in CML Ltd. He wants to increase his shareholding further by 10%, so that he becomes entitled to exercise more than 25% voting rights. Deepak seeks your advice on the obligations to which he and the company be subject to in this regard. Advise.

Ans. Assuming that the Company is a Listed Company, provisions of SAST 2011 will be triggered. Thus Primarily on triggering of Regulation 3 of said Regulations, an Open Offer in accordance with Regulation 12 and appoint Merchant Banker and follow the process mentioned therein including making an Public Announcement, Pricing etc.

Further, on side of the Company on change in two percent or more of paid up capital, with respect to either promoters or top ten shareholders, it shall file MGT-10 with RoC as per Section 93 of the Companies Act, 2013.

b). Paresh, a shareholder of Perfect Ltd. expired on 1st January, 2016. Raman, the legal heir informs the company about the death of Paresh and submits an application to the company along with the succession certificate issued by a Delhi Court having jurisdiction in the case. The Board of directors of the company considers Raman's application and approves the transmission of shares in his name. Draft a resolution to effect the above transmission of shares.

Ans. "RESOLVED THAT Transmission of ....no. of fully paid equity shares of the company bearing distinctive numbers ....to........(both numbers inclusive) presently registered in the name of Shri ....who has been reported as deceased on ....in the district of ....which is situated in the state of............, in the name of Shri ....son of Shri ....resident of .... be and is hereby approved.
RESOLVED FURTHER THAT since the company has received a letter from the said Shri........................, intimating to the company that he has decided to have the said shares registered in his name, the said shares be registered in his name; and
RESOLVED FURTHER THAT Shri ...., Company Secretary, be and is hereby authorized to enter the name of the said Shri ...., in the register of members of the company and send the relevant share certificates to him after appropriately endorsing them in his name."

c). Give a specimen of Board resolution appointing John as the Managing Director of a company, who is already the Managing Director of another company.

Ans. As per Section 204(3), A Company can appoint a person as Managing Director who is Managing Director of only one other company at that time of appointment, with approval of all members of the Board present at the meeting.

"Resolved that pursuant to Section 203 and other applicable provisions, if any, of the Companies Act, 2013 read with the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, Mr./Ms. __________ be and is hereby appointed as Managing Director/Chief Executive Officer/Chief Financial Officer/Company Secretary, a Key Managerial Personnel of the Company with effect from _______ on the remuneration and on the terms and conditions as embodied in the terms of appointment, a copy of which is tabled and authenticated by the Chairperson.

Resolved further that Mr./Ms __________, MD/Director/CEO/Authorised Signatory be and is hereby authorized to issue the letter of appointment to Mr./Ms________________

CS Richi M. Shah
e-mail: csrichimshah@gmail.com
Mobile: 9722967872

Resolved further that the Directors be and are hereby authorized severally to file necessary e-Forms with Registrar of Companies, _________________, take necessary steps to make entries in the Register of Directors and Key Managerial Personnel and their Shareholding and to do all such acts, deeds or things which are necessary to give effect to the said appointment."

d.) Examine the validity of the Board of directors' decision in respect of the following appointments of directors as per the provisions of the Companies Act, 2013

Ans. (i) No, the decision is not true as per the Law as the act requires every Listed Company and other Company with either Rs. 100 Cr of Paid up Capital or Rs. 300 Cr. of Turnover need to appoint a Women Director. (Section 149)

(ii) No, the decision is not valid as per law, because the provisions of Act provides there must be atleast one resident Director in the Company. [Section 149(3)]

(iii) The Company need to follow provisions of LODR and Companies Act, 2013 both and thus cant avoid to appoint Independent Directors. ½ in case of Executive Chairman and 1/3 in case of Non-Executive Chairman. Thus Decision is not valid and not as per law. [Sec 149 (4) and LODR provisions].

Question 3A

(i) Hypothecation of dematerialised shares

Ans. Primarily basic difference between Pledge and Hypothecation is Possession, in case of Pledge the possession of property (here stock) is transferred to lender/pledgee and in case of hypothecation the possession of stocks remains with borrower/pledgor, only charge is created. These involve only moveable property**.**

Process : Primarily the Borrower / Investor submits his details to the DP, then

DP checks the same and verifies whether Securities being Pledged/hypothecated actually exist in Beneficial Account of Hypothecator/pledgor.

Next, DP forwards application to Depository, here Depository (NSDL/CDSL) would inform to Lender/Pledgee/hypothecate, and get confirmation of Details provided, and records the same within 15 days of Application.

Next, Depository will send intimation to DP, and DP will intimate to both the parties to Agreement.

On default or occurrence of situation as mentioned in Agreement, Pledgee/Hypothecatee may invoke shares and get registered as Beneficial Owner on informing the same to Depository. But in case of Hypothecation, as the possession is still with Borrower/hypothecator, Depository primarily takes his permission before invoking the securities after receiving a request from hypothecator/lender.

No transfer shall be given effect in above cases without prior permission from lender, as it is his security against money given.

(ii) Procedure for appointing additional Director in a Company.

Ans. An additional Director is a person(individual), who is appointed in cases of urgency, as usually the Company appoints a Director in General Meeting, but in case Board requires any person on Board and a General Meeting is not possible immediately to ratify his appointment, he is appointed temporarily with Board Authority. His tenure is upto ensuing AGM or where AGM is not held, last date on which AGM should have been held i.e. 30^{th} September.

Process:

Step -1 Check the Articles of Association, whether they permit the appointment.

Step-2 Then, Issue Notices for Board Meeting following SS-1 and Companies Act, 2013

Step-3 Convene the Board Meeting and appoint the Additional Director. (His written consent to act as Director to be taken prior to Meeting in DIR-2. (Also apply for DIN, if does not have DIN)

Step-4 File DIR-12 within 30 days of appointment along with attachments which include letter of Appointment, his consent in DIR-2 and MBP-1 which is for Interest in other entities i.e. his directorship/shareholding in other corporate entities. [comply with LODR when Company is listed]. Pre-certification from PCS/PCS/PCMA is mandatory for filing above mentioned form.

CS Richi M. Shah
e-mail: csrichimshah@gmail.com
Mobile: 9722967872

(iii) Limited Liability Partnership:

Ans. LLP is an alternative business vehicle that gives the benefits of limited liability of a company and flexibility of a partnership firm. Since, LLP contains elements of both 'a corporate structure' as well as 'partnership firm structure'; it is many a times termed as a hybrid of a company and a partnership. LLP is a separate legal entity which can continue its existence irrespective of changes in its partners. LLP is an incorporated partnership formed and registered under the Limited Liability Partnership Act, 2008.

Owing to flexibility in its structure and operation, LLP is useful for small and medium enterprises, in general, and for the enterprises in services sector, in particular. LLP is also very suitable for professionals like company secretaries, chartered accountants, cost accountants, advocates etc. as it helps them to form multi disciplinary limited liability partnership firms.

(iv) Private Placement of Shares

Ans. Private Placement of securities is offering securities to selected group of persons to quickly pump in the finance required in Business. As allotees are limited process becomes easier for the company compared to an Public Offer. It should be noted that Private Placement can be done for maximum 50 allotees at a time and aggregate 200 persons in a Financial Year according to rule 14 of Companies (prospectus and allotment of securities) rules, 2014, where in calculating the limit mentioned, Qualified Institutional Buyers and Employees of Company are to be excluded.

Triggered Section : 42 for Private Placement

Process:

S-1: Hold a Board Meeting (follow SS-1) to pass agenda for recording proposed allotees and approve Notice alongwith Explanatory Statement (sec 102) for calling an EGM.

S-2: Convene EGM (follow SS-2), pass resolution for approving Private Placement (Special Resolution).

S-3: Prepare Letter of Offer (PAS-4 format) and send it alongwith application form to proposed allottees for their decision.

S-4: Each person/allotee shall not invest an amount less than Rs. 20,000. Investment shall be made through Cheque/DD or any banking method except cash.

S-5: Company to maintain all the Details of Investor like Name, PAN, Address, Occupation etc. and record the whole Private Placement Process in PAS-5.

S-6: File PAS-4 and PAS-5 with RoC within 30 days from circulation of Letter of Offer (PAS-4).

S-7: Allot securities within 60 days from subscription amount received, if not return the money within 15 days from completion of 60 days and if not paid back then repay with interest @12% p.a.

S-8: File PAS-3 return of allotment with RoC within 30 days from allotment.

Note that a Board Meeting will have to be called to allot the securities to persons from whom application form alongwith subscription amount is received.

Further for allotting non convertible Debentures, it is enough if Company takes permission from members once in a year and offers such securities for any number of times under that authority subject to limits mentioned above (200 persons).

CS Richi M. Shah
e-mail: csrichimshah@gmail.com
Mobile: 9722967872

Question 4

(a) In relation to filing of financial statements of a company in XBRL mode and by using the XBRL taxonomy, decide whether the following companies are required to file the financial statements in the said mode:

(i) Grand Ltd., the subsidiary company of Tiny Ltd. which is listed at Kolkata Stock Exchange.
(ii) Prime Ltd., a company which has paid-up share capital of Rs.100 crore.
(iii) Crafty Ltd., a company which has a turnover of Rs. 400 crore.
(iv) Comfort Ltd., a non-banking financial company.

Ans. i) Yes, Grand Ltd. Will have to file its financial statements in XBRL, as all Listed Companies Listed on any Stock Exchange in India alongwith their subsidiaries are required to file in XBRL.
ii) Yes, as Prime Ltd. has Paid up Capital exceeding Rs. 5 Crores.
iii) No, as Crafty Ltd. has turnover below Rs. 500 Crores.
iv) No, as Banking, Power, Insurance and NBFC are exempted from filing financial statements in XBRL.

(b) How does the Companies Act, 2013 regulate and restrict the following :

(i) Non-cash transactions involving directors in a company where the company acquires land and building from these directors.
(ii) Managing Director of Strong Ltd. enters into forward dealing in securities of the company in which he is the Managing Director.

Ans. i) Section 192 provides that transactions between Directors and Company for providing any asset to one by other (Company to Director or Director to Company including Director of Holding Company or person connected to him i.e. relative) for remuneration other than cash will be done after passing a Ordinary Resolution in General Meeting. Thus here Company will have to take permission from Members in General Meeting prior to any such transaction. If entered without such resolution or in violation of the provision, transaction shall be voidable at instance of the company.

ii) Section 194 of the Companies Act, 2013 provides for prohibition on Forward dealings in securities of Company by Director / KMP. The section provides that Director / KMP shall not enter into forward dealing (Right to call for or make delivery) of Shares/debentures of Company or its holding or subsidiary in which he is Director / KMP. Thus due to attraction of these provisions, Managing Director of Strong Limited will be liable for penalty i.e. imprisonment which may extend to two years or fine not less than one lakh but which may extend to five lakhs or with both. Above this the depository concerned will not give effect to transaction and not register the securities in name of such Director/KMP and they shall remain in name of transferor.

(c) Certain acts of mismanagement on the part of directors led the company to go for winding-up. Though these directors were appointed for a term of three years, they have served the company only for one year. Examining the provisions of the Companies Act, 2013, state :

(i) Whether these directors can be paid compensation for loss of their office as directors ?
(ii) What is the quantum of compensation that can be paid to such directors ?
(iii)Can these directors be paid remuneration for the technical services rendered by them to the company ?

Ans. Section 202 of the Act provides that Remuneration can be paid for loss of office to Managing Director, Whole time Director or Manager, but there are certain exceptions provided where payment is not to be provided. Our case in one of those exceptions. i) No Directors in our case cannot be provided any Remuneration as Winding up is due to their gross neglect.

ii) In our case Directors are not to be provided any Remuneration, but if in case they were not guilty for any act against the company and where section allows payment it would be maximum upto and lower of ; either remuneration for remainder term or average for three years, average remuneration actually earned where they have served for three years or where served for period less than three years for such period as they have served.

iii) Yes, section specifically provides that any payment for services other than in capacity of Director could be paid to them.

(d) Explaining the provisions of the Companies Act, 2013 relating to appointment of a debenture trustee, examine the validity of appointment of the following persons as debenture trustee by a company going for issue of debentures:

(i) Sachin has pecuniary relationship with the company amounting to 1% of the total income during the two immediately preceding financial years.

(ii) Akash is indebted to an associate company of the company going to appoint such a trustee.

Ans. The SEBI (Debenture Trustees) Regulations, 1993 govern the Debenture Trustees and provide for eligibility criteria for registration of Debenture Trustees, monitoring and review, registration, Code of Conduct, procedure of action in case of defaults, avoidance of conflict of interest and inspection of Debenture Trustees by SEBI, amongst other things. To act as debenture trustee, the entity should either be a scheduled bank carrying on commercial activity, a public financial institution, an insurance company, or a body corporate. Registration under these regulations is mandatory.

Thus i) & ii)As Sachin and Akash are Individuals, they are not eligible to act as Debenture trustee. Reason is an Individual can't be take responsibility or liability of huge amounts of Investments made, in case of default a strong entity is required to pay the debts and thus a trustee must be a Body Corporate.

Question 5

(a) Referring to the provisions of the Companies Act, 2013, examine the validity of each of the following contributions :

(i) The Board of directors of Laxmi Ltd. decides to contribute to charitable funds, a sum of 10% of the company's average profits earned for the 5 years immediately preceding the financial year 2015-16.

(ii) The Board of directors of MNR Ltd. incorporated on 2nd April, 2015 decides to pay 10% of the profit of the company earned during the period of 6 months in the financial year 2015-16, towards political contribution to some political parties.

Ans. i) Section 181 of the Act provides that Board may contribute to bonafide charitable funds subject to the amount does not go beyond five percent of average net profits for three preceding Financial Years. Thus Board need to review its decision according to the provision or if amount exceeds get permission from members.

ii) Section 182 of the Act provides for Donation to political parties. The section specifically provides that a Company in existence for less than three financial years cannot make any political contributions. Thus decision by Board is improper and needs to be revised.

b) A general meeting of the members of RST Ltd. was called to transact certain special business. Before the scheduled day and time of the meeting, the Chairman of the meeting *suo motu* due to certain personal reasons adjourned the meeting. Certain members of the company challenge the decision of the Chairman on the ground that the Chairman's action to adjourn the meeting is violative of the provisions of the Companies Act, 2013. Decide with reasons in brief :

(i) Whether the contention of the members be tenable ?
(ii)Whether the company is required to send a fresh notice for the adjourned meeting as the articles of association are silent on the issue ?
(iii)In case the meeting is a requisitioned meeting and on the scheduled day and time, the required quorum is not present, state whether the members on their own can hold the meeting and pass necessary resolutions.

Ans. The Companies Act, 2013 does not specifically provide for solution to any such situation, but Section 118 provides power to ICSI to formulate Secretarial Standards with respect to Meetings, so that such matters are take care of. SS-2 formulated by ICSI for convening General Meetings plays an important role here. The SS-2 provides :

If, for reasons beyond the control of the Board, a Meeting cannot be held on the date originally fixed, the Board may reconvene the Meeting, to transact the same business as specified in the original Notice, after giving not less than three days intimation to the Members. The intimation shall be either sent individually in the manner stated in this Standard or published in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district.

i) Thus if intention of Chairman was malafide, i.e. Meeting was adjourned due to reasons where the Chairman felt he would not succeed in getting the Motion passed or any such reason, then the members were correct, but in case of genuine reasons for adjourning the meeting, contention of members does not hold to be true.

ii) The Board may reconvene the Meeting, to transact the same business as specified in the original Notice, after giving not less than three days intimation to the Members. The intimation shall be either sent individually in the manner stated in this Standard or published in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district.

iii) A General Meeting being adjourned for want of quorum, except the one requisitioned by members, to be held on same day in next week, on same time, unless that day is a national holiday.

c) Every listed company and certain class or classes of public companies as prescribed under Rules are required to have independent directors on its Board. Sahyajog Ltd., a listed company, has appointed Raghu as one of the independent directors on its Board. Being the Company Secretary of the company, you have been asked by the management to suggest a format of the declaration to be given by the independent director under section 149(6). Advise the company.

Ans. The Format has been provided at "Annexure – A"

d) The Board of directors of PQR Ltd. wishes to accept deposits. As a Company Secretary of PQR Ltd., prepare the check list for secretarial compliance for acceptance of deposits as per the Companies Act, 2013.

Ans. Power of Company to Borrow, attracting limits under 180(1)(c) and any further limits approved by the Board/Members.

- The Company has not accepted any deposits which are repayable on demand or upon receiving a notice within a period of less than six months or more than 36 months from the date of acceptance or renewal of deposit. If accepted otherwise provided then compliance with Rule 3 of Companies (Acceptance of Deposit) Rules, 2014 has been done.
- Circular in for DPT-1 has been issued to all the Members by Regd. Post or electronic mode, in case of deposits proposed to be accepted from members, and in case of eligible company as provided in Section 76, then issued circular as provided in rules.
- Deposit Trust Deed in DPT-2 has been entered atleast before seven days from issue of circular
- A declaration from Depositor that the money being deposited are not from the funds borrowed by him from any other person.
- DPT-3 – Return of Deposits has been filed
- Deposit Insurance has been taken pursuant to Rule 5
- Security has been provided for secured deposits
- Minutes of Meetings of Board and Members
- DPT-4, Statement for Deposits

Question 6

a) You being the Secretary of Aryan Ltd., have been asked by the Board of directors to make a report on Corporate Governance as required under clause 49 of the listing agreement. State the procedure you would follow and the information you would include in the report relating to :
(i) General meeting of the company; and (ii) Nomination and Remuneration Committee.

Ans. The Securities and Exchange Board of India (SEBI) has replaced erstwhile Listing Agreements entered into by companies with Stock Exchanges which ensured thorough compliance by Listed Companies, with Listing Obligations and Disclosure Requirements (LODR) which are not in form of Agreements but they are Regulations prescribed by SEBI.

Thus now Clause 49 has no existence.

Under LODR the Securities and Exchange Board has prescribed three formats vide CIR/CFD/CMD/ 5 /2015 dated September 24, 2015 for reporting Corporate Governance Practices by the Company. First format is for Quarterly CG Report by Companies to Stock Exchanges, Second is Annual CG (at end of Financial Year) Report and third after completion of six months from relevant FY end i.e. to be submitted after September 30 of each year. The report format contains different columns which are to be filled and information is to be provided and there are no separate sections for General Meeting or Nomination Remuneration Committee etc.

Further, BSE has mandated filing reports in XBRL format only.

b) Board of directors of Princeton Ltd. in the absence of adequate profits in the financial year 2014-15, wants to recommend dividend out of company's reserves. Advise the Board about the conditions to be complied with and the procedure to be followed in accordance with the provisions of the Companies Act, 2013.

Ans. Primarily, as the question is clear that the Dividend to be distributed is Final and not interim, thus the section applicable would be Section 123 (1) read with The Companies (Declaration and payment of Dividend) Rules, 2014.

The Section and rules does not place a bar on declaring dividend in situations where there are no adequate profits and the Board decided to distribute amount from its free reserves (profits of past years)

The Rule (3) places following conditions for the situation mentioned above:

1. The rate of dividend would not exceed the average of the rates at which dividend as distributed in past three years, provided that, this sub rule shall not apply in case where company has not declared any dividend in each of the three preceding financial year.

   The provisio provides when Company has not declared dividend in any FY for past three FY then this rule shall not apply and company is at liberty to fix any rate.

2. The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement. (Maximum amount to be drawn from Free reserves - 1/10 of PUC + FR)
3. The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared. (NB.: Losses of that particular year only and not of past years)
4. The balance of reserves after such withdrawal shall not fall below fifteen per cent of its paid up share capital as appearing in the latest audited financial statement.

CS Richi M. Shah
e-mail: csrichimshah@gmail.com
Mobile: 9722967872

c) ABC Ltd. declared dividend, but failed to make the payments to shareholders. Advise the company about the consequence for such default and also list out the circumstances under which no prosecution lies in spite of the fact that the company fails to pay dividend even after declaration.

Ans. Non payment of Dividend after declaration is an offence under the Act as prescribed under section 127. The provision provides that amount / warrant should be posted within thirty days from declaration of the Dividend, in case of default every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues. It is pertinent to note that this offence is non-compoundable in terms of section 441 of the Companies Act, 2013 proving that such offence is a serious one.

Situations / circumstances that would save the Company / officer from mischief of section 127;

1. where the dividend could not be paid by reason of the operation of any law;
2. where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;
3. where there is a dispute regarding the right to receive the dividend
4. where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder ; or
5. where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

d) As a Company Secretary in Practice, state the role played by you in relation to 'certification' under clause 47(c) of the listing agreement of your client company.

Ans. As erstwhile stated, currently Listing Agreement have been rescinded and LODR have replaced them. As per Regulation 40 of LODR, half yearly certificate from PCS is to be submitted by the Company, wherein PCS certifies all the requests for transfers (physical shares) have been transferred in time (30 days) except rejection on technical grounds.

Thus, role of PCS here is to reconcile the data and requests for transfer of physical shares and check whether they were transferred in time and grievance if any was redressed properly.

PCS also certifies records maintained by the RTA (whether inhouse or outsourced), and provides a relief for Regulator that none physical share transfer requests were pending or were unlawfully dealt.

Encl. : Annexure – A as stated in Q 5 (c)

Thanking you to read this & All the Best !

CS Richi M. Shah
e-mail: csrichimshah@gmail.com
Mobile: 9722967872

To,

The Board of Directors,

Sub: Declaration under sub-section (*6*) of section 149;

I,__________, hereby certify that I am a Non-executive Director of Jay Ushin Limited and comply with all the criteria of independent director envisaged in Listing Regulations and applicable provisions of Companies Act, 2013 as & when it may be notified. I hereby certify that:

- I am not a promoter of the company or its holding, subsidiary or associate company;
- I am not related to promoters or directors in the company, its holding, subsidiary or associate company
- I have/had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- none of my relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to 2% or more of its gross turnover **or** total income **or** Rs. 50 Lacs **or** such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- Neither Me nor any of my relatives—
  - (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year
  - (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year of—

    (*A*)a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; **or**

    (*B*) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to 10% or more of the gross turnover of such firm;
  - (iii) holds together with his relatives 2% or more of the total voting power of the company; **or**
  - (iv) is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives 25% or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company; or

Thanking you,

Yours faithfully,

Director
DIN:

Date :
Palce: