

PAPER – 3 : BUSINESS AND CORPORATE LAWS

Question Nos. 1 and 7 are compulsory

Candidates are required to attempt **four** questions out of question Nos. 2, 3, 4, 5 and 6 two questions out of question Nos. 8, 9 and 10.

Question 1

Answer any **four** of the following:

- (a) State with reasons whether there can be an agency by ratification in the following cases:
 - (i) M, without authority, buys goods for N, afterwards N sells them to X on his own account.
 - (ii) X buys 20 bags of rice for himself and 20 bags for his friend Y. X informs Y of his act. The trader delivers the bags at Y's house. Y consumes the rice.
 - (iii) X, without Y's authority, lends Y's money to Z. Afterwards; Y accepts interest on the money from Z.
 - (iv) A newly formed company adopts an act done in its name before its incorporation.
 - (v) X holds a lease from Y, terminable on three months' notice. Z, an unauthorized person, gives a notice of termination to X. Subsequently, Y ratifies the notice given by Z.
- (b) There was a contract between X and Y for the sale of haystack on X's (seller's) land, on a certain day, the price to be paid by the same day of the next month. The hay was destroyed by fire. Decide in the light of the provisions of the Sale of Goods Act, 1930, as to who is liable for the loss.
- (c) X, Y, and Z are partners in a business. Z is a sleeping partner. P lends Rs.20, 000 to the firm, after Z's retirement from the firm without a public notice. X and Y become insolvent and pay only Rs.10, 000. Can P hold Z liable for the balance under the provisions of the Indian Partnership Act, 1932?
- (d) M, the holder of a bill, endorses it "without recourse" to N. N endorses it to P, P to Q, Q to R and R endorses it again to M. Can M recover the amount of the bill from N, P, Q and R, or any of them? Discuss with reference to the provisions of the Negotiable Instruments Act, 1881.
- (e) Ajit, who is casual employee of My Sugar Company, actually worked for 26 days in the year. However, he was absent due to temporary disablement caused by an accident arising out of and in the course of his employment, for 8 days and had been laid off for 3 days as per the service agreement. Is he eligible for bonus under the Payment of Bonus Act, 1965?

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- (f) *Can a person apply for review of any order passed by the appropriate authority or any official under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952? If so, state the provisions.*

Answer

(a) Problem on the India Contract Act, 1872: Agency by Ratification

- (i) N's conduct of selling the goods to X implies a ratification of the purchase made for him by M. N is, therefore, liable for the act of M.
- (ii) The fact that Y consumes the rice amounts to implied ratification.
- (iii) The acceptance of interest by Y amounts to implied ratification by Y of X's act of lending money to Z.
- (iv) The act cannot be ratified in this case because the principal i.e. the company was not in existence at the time of the act.
- (v) The notice cannot be ratified by Y, so as to be binding on X, because ratification, which has the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot be made [Section 200, Indian Contract Act, 1872].

(b) Problem on the Sale of Goods Act, 1930 (Section 20): Sale of specific goods in a deliverable state

According to Section 20 of the Sale of Goods Act, 1930, where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial

- (i) whether the time of payment of the price; or
- (ii) whether the time of delivery of goods; or
- (iii) both

is/are postponed. Applying these provisions, the property in the goods passes to the buyer Y as soon as the contract is made, and therefore, the buyer Y is liable for the loss (Tarling vs. Baxter).

(c) Problem on the Indian Partnership Act, 1932: Retirement of a partner - public notice not given Section 32(3)

As per Section 32(3) of the Indian Partnership Act, 1932, public notice of the retirement of partner must be given; otherwise, he and the continuing partners shall continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm, if done before retirement.

However, the proviso to Section 32(3) and (4) lays down that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

In the present case, P does not know, at the time of lending money to the firm that Z is a partner and hence Z cannot be made liable for the debts incurred after his retirement.

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(d) Problem on the Negotiable Instruments Act, 1881 relating to endorser's liability: (Section 52)

As per Section 52 of the Negotiable Instruments Act, 1881 the endorser of a negotiable instrument may, by express words in the endorsement, exclude his own liability thereon, as M does in the present case, by using the words "without Recourse". Where an endorser excludes or limits his liability in this manner and afterwards becomes the holder of the same instrument, all intermediate endorsers continue to be liable to him. M can therefore enforce payment against all intermediate parties, i.e., N, P, Q and R because he was not liable to them as a prior party.

(e) Problem on the Payment of Bonus Act, 1965: Eligibility for bonus

As per Section 8 of the Payment of Bonus Act, 1965, an employee is eligible for bonus if he has worked for not less than 30 working days in the year in the company. Further, as provided in Section 14 of the said Act, an employee shall be deemed to have worked on the days on which he has been laid off under agreement or as permitted by the Standing Order of the Company, or under the Industrial Disputes Act, 1947, or has been absent due to temporary disablement caused by accident arising out of and in the course of his employment.

In the given problem, Ajit has worked for 26 days and had been temporarily absent for 8 days due to accident arising out of and in the course of employment, and had been laid off for 3 days. Therefore, the total number of days he is deemed to have worked is $26+8+3=37$ days. Thus, Ajit is eligible for bonus under the provisions of the Act.

(f) Review of any order passed by the appropriate authority or any official under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952

The order made by the appropriate authority under Section 7A (1) may be reviewed under the provision of Section 7B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, if so sought by an aggrieved party.

As per Section 7B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, any person aggrieved by the order of an appropriate authority or official, but from which no appeal has been preferred, may apply for a review of that order to the official who passed the order if:

- (i) any new and important matter or evidence which, even after due diligence was not in his knowledge earlier but has been later discovered and which could not be produced by him when the order was made, or
- (ii) on account of some mistake or error apparent on the face of the record, or for any other sufficient reason desires to claim a review of that order, the appropriate officer may on his own, review this order, if he is satisfied that it is necessary so to do on any such ground.

When application for review is made by the aggrieved party, the appropriate officer, on receiving the application, shall reject the application, if it appears that there is no sufficient ground for a review.

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Question 2

- (a) *X and Y were two organizations trading in wheat of 'Popular brand' in Uttar Pradesh. X realizes that the wheat business is high yielding. To expand his business X offered Y a sum of Rupees ten lac on the condition that Y shall not sell 'popular brand' wheat in Uttar Pradesh. Accordingly Y stopped selling 'popular brand' wheat in Uttar Pradesh. X failed in making the promised payment to Y. Y filed a suit against X for the non-fulfillment of promise. Is the suit maintainable? Decide with reference to the provisions of the Indian Contract Act, 1872. (5 Marks)*
- (b) *A limited cooperative society earned a net profit of Rs.2, 00,000 in a year. The members want the profit to be divided among themselves equally. The society has also divisible profit for the past year amounting to Rs.20, 000. State, how the profit will be divided among the members. Decide with reference to the provisions of the Co-operative Societies Act, 1912. (5 Marks)*

Answer

- (a) Problem based on Section 27 of the Indian Contract Act, 1872 relating to an agreement in restraint of trade

According to Section 27 of the Indian Contract Act, 1872, an agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind is void. In the given case X agrees to pay Y, his rival in the business, a sum of Rupees 10 lac as compensation if Y stopped selling wheat, which is a void agreement. The suit is therefore not maintainable and will be dismissed.

- (b) Problem based Section 33 of the Co-operative Societies Act, 1912: Funds not to be divided by way of profit

According to Section 33 of the Co-operative Societies Act, 1912, no part of the profit of a limited society shall be divided among the members unless one-fourth of the net profit is transferred to a reserve fund. The divisible profit of the past year may also be divided among the members. Considering these provisions, out of net profit of Rs.2,00,000, Rs.50,000, being one-fourth of the amount is to be transferred to a reserve fund and the balance of Rs.1,50,000 and the past profit of Rs.20,000 (total Rs.1,70,000) may be divided among the members, subject however to the bye-laws of the society. In the case of societies with unlimited liability, no distribution of profits shall be made, without the permission of the State Government.

Question 3

- (a) *M delivers to N, a carrier, some explosives in a case without disclosing this fact to N. N does not take any extraordinary care required for such type of goods. The case explodes and as a result, a porter is injured and some other goods are damaged. Discuss the liability of M in the light of the provisions of the Indian Contract Act, 1872. (5 Marks)*

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- (b) *A Cheque is drawn “payable to N or order”. It is stolen and N’s endorsement is forged. The banker pays the cheque in due course. Is the banker discharged from liability? Would it make any difference if the drawers’ signature were forged? Discuss with reference to the provisions of the Negotiable Instruments Act, 1881. (5 Marks)*

Answer

(a) Problem based on Section 150 of the Indian Contract Act, 1872

The given problem is based on the provisions of Section 150 of the Indian Contract Act, 1872 relating to the duties of the bailor. As per the Section, the bailor is bound to disclose to the bailee material facts about the goods bailed which may expose the bailee to extraordinary risks. If the bailor does not make such disclosure, he would be responsible for damages suffered by the bailee directly from such faults. Accordingly, M is liable for all damages sustained by N.

(b) Problem based on Section 85(1) of the Negotiable Instruments Act, 1881 relating to the protection to a collecting banker

Section 85(1) of the Negotiable Instruments Act, 1881 provides that where a cheque payable to order, purports to be endorsed by or on behalf of the payee, the drawee, who always is a banker, is discharged by payment in due course. A cheque is said to have been paid in due course, when it has been paid in good faith, after proper care had been taken to ascertain the genuineness of the endorsement. Even if the payment is made to a wrong person or even if the endorsement of the payee is forged, the banker is discharged from the payment in good faith and without negligence. But if the drawer’s signature is forged, the banker can, under no circumstances, claim discharge on payment, for, the banker is presumed to know the signature of his customer i.e., the drawer.

Question 4

- (a) *Goods are delivered by M to N on “sale or return”. They are further delivered by N to P and then by P to Q on similar terms, but are stolen while in the custody of Q. Is N liable to M for the loss? If not, who shall suffer the loss? Decide referring to the provisions of the Sale of Goods Act, 1930. (5 Marks)*
- (b) *Karthik, a member of a Multi-state Cooperative Society, applied to the society for a loan on the security of his shares in the society. Explain with reference to the provisions of the Multi-state Cooperative Societies Act, 2002:*
- (i) *whether the Multi-State Cooperative Society can give him the loan;*
 - (ii) *instead of security of his own shares, if one of his relatives offers mortgage of his property;*
 - (iii) *if Karthik had been a depositor, would the Multi-state Cooperative Society provide him the loan on mortgage of such deposit? (5 Marks)*

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Answer

- (a) Problem based on Section 24 of the Sale of Goods Act, 1930 relating to goods sent on “Sale or Return” basis

When goods are delivered to the buyer on approval or on “sale or return” or on similar terms, the property therein passes to the buyer:

- (i) when he signifies his approval or acceptance to the seller, or
- (ii) does any other act adopting the transaction (Section 24).

This means acceptance by the buyer may be express or implied.

In the instant case, the delivery of the goods by N to P amounts to implied acceptance by N and hence the transaction between M and N is a sale. As between M and N, the loss would, therefore fall on N.

But as between N and P, there is again a sale, as the act of P in delivering the goods to Q amounts to acceptance of the goods. Hence, N can recover the loss from P.

But P cannot recover this loss from Q, as between P and Q, there is no sale, but only an agreement to sell (*Elphic vs. Barnes*).

- (b) Problem based on Section 66 of the Multi State Co-operative Societies Act, 2002 relating to loans to members

As per Section 66 of the Multi-State Co-operative Societies Act, 2002, a Multi-state Co-operative Society, other than a co-operative bank, shall not make a loan to a member on the security of his shares or on the security of a non-member. A Multi-state Co-operative Society may, however, make a loan to a depositor on the security of his deposit.

In terms of the aforesaid provision,

- (i) The Multi-State Co-operative Society cannot give loan to Karthik on the security of his shares in the society.
- (ii) Even if his relative provides any security, the society cannot give the loan as his relative is a non-member.
- (iii) If Karthik would have been a depositor, the society may have to give him the loan on the security of his deposit in the society.

Question 5

- (a) *Ram, an employee of Steel Castings Ltd., destroyed some machines in the company premises while under the influence of liquor, due to which the company incurred substantial loss. He was found guilty and punished under the Industrial Disputes Act, 1947. When the company paid bonus in that year to the employees, it deducted the amount from the balance payable to Ram, and he did not get any bonus in that year. Did the company violate any provisions of the Payment of Bonus Act, 1965, in not paying bonus to Ram?*

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- (b) *M/s Hitech Ltd. has been regularly depositing the provident fund contributions to the government. Owing to adverse market conditions, the company suffered loss for the past two years. The management is considering the reduction of salary of the employees to reduce the company's contribution to Provident Fund, and instead, to pay compensatory allowance, so that the employees' pay packet remains the same. Explain in terms of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, whether the company can effect such reduction.*

Answer

- (a) **Problem based on Section 18 of the Payment of Bonus Act, 1965 relating to deduction of amount from the bonus payable**

Section 18 of the Payment of Bonus Act, 1965 provides that, if, in any accounting year an employee is found guilty of misconduct, causing financial loss to the employer, the employer may deduct the amount of loss from the bonus payable to that employee in that year. In terms of this provision, the company can deduct the amount of loss from the bonus payable to Ram and it did not violate the provisions of the Act.

- (b) **Problem based on Section 12 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 relating to reduction of wages**

Section 12 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 provides that no employer shall, by reason only of reducing liability under the Act, reduce directly or indirectly, the salary or wages of any employee, to whom the scheme is applicable, such that the benefits conferred on the employees under the Act are not affected. In terms of the aforesaid provisions, M/S Hitech Ltd. cannot reduce the salary of its employees so that lower contribution will be made by the company to the fund which will reduce the benefit to the employees under the scheme.

Question 6

- (a) *X and Y are partners of a financial firm Trust Investments. Z pledged gold ornaments worth Rupees fifty thousand for securing a loan of Rupees thirty thousand to the firm. Y a partner of the firm disposed of the ornaments for construction of his house. Z demanded return of the jewellery on repayment of the loan. Is the firm liable to Z? Decide with reference to the provisions of the Indian Partnership Act, 1932. (5 Marks)*
- (b) *Examine the entitlement of the following persons to receive bonus under the Payment of Bonus Act, 1965: (5 Marks)*
- (i) *Alok, employed in a drug company, is dismissed from service but subsequently re-instated with back wages.*
 - (ii) *Vikram, who is dismissed from service for violent behaviour on the premises of the establishment, causing loss to his employer.*
 - (iii) *Shekhar, who is a part-time employee of Suraj Mills Ltd.*

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- (iv) *Krishna, who is an employee of the Reserve Bank of India.*
- (v) *Kishan, who is an employee of the Life Insurance Corporation of India.*

Answer

(a) Problem based on Section 27 of the Indian Partnership Act, 1932 relating to misappropriation by a partner.

Section 27 of the Indian Partnership Act, 1932 provides that where a firm, in the course of business receives money or property from a third person and the same is applied by a partner, while it is in the custody of the firm, the firm is liable to make good the loss. In the given case 'Y' a partner of the firm misapplied the money received from the sale of pledged gold ornaments, therefore the firm is liable to make good the loss.

(b) Whether bonus is payable to the following persons under the Payment of Bonus Act, 1965.

- (i) *Alok, employed in a drug company is dismissed and then re-instated with back wages.*
 - (ii) *Vikram who is dismissed for causing loss to his employers.*
 - (iii) *Shekar, who is a part-time employee of Suraj Mills Ltd.*
 - (iv) *Krishna, who is an employee of the Reserve Bank of India.*
 - (v) *Kishan, who is an employee of the Life Insurance Corporation of India.*
- (i) Alok is entitled to Bonus as per Section 8 of the Payment of Bonus Act, 1965 which provides that a dismissed employee re-instated with back wages is entitled to bonus.
 - (ii) Vikram is not entitled to bonus as Section 9 of the Act provides that an employee shall be disqualified from receiving bonus if he is dismissed from service, for riotous or violent behaviour while on the premises of the establishment.
 - (iii) Shekar is eligible to receive bonus as per Section 8 of the Act. (*Arun Mills Ltd. Vs. Dr Chander Prasad Trivedi.*)
 - (iv) No, Krishna is not entitled to receive bonus because as per Section 32, the Payment of Bonus Act is not applicable to the Reserve Bank of India.
 - (v) No, Kishan is not entitled to receive bonus since under Section 32 of the Payment of Bonus Act, the Act is not applicable to the employees of the Life Insurance Corporation of India.

Question 7

Answer any four of the following:

- (a) *An association of thirteen members starts a banking business without being registered. Five members retire and thereafter a suit is instituted by one of the continuing members*

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for the partition of assets of the business. Is the suit valid? Decide with reference to the provisions of the Companies Act, 1956. (5 Marks)

- (b) The objects clause of the memorandum of a company empowers it to carry on distillery business and any other business that is allied to it. The company wants to alter memorandum so as to include the cinema business in its objects clause. Advise the company. (5 Marks)*
- (c) A limited company issued certain number of fully paid shares to a subscriber to the memorandum on the basis of a promissory note executed by him as consideration towards the shares. Since no money was paid towards the allotment, the company now (after 5 years from the date of allotment) wants to forfeit those shares and re-issue such forfeited shares. Can the company do so? Decide with reference to the provisions of the Companies Act, 1956. (5 Marks)*
- (d) In a private limited company it is discovered that there are, in fact, 55 members. On an enquiry, it is ascertained that 7 of such members had been employees of the company in the recent past and that they acquired their shares while they were still employees of the company. Is it necessary to convert the company into a public limited company?(5 Marks)*
- (e) A company held its annual general meeting on 26th April, 2007. The next annual general meeting was held on 29th September, 2008. The registrar of companies raised objection to it as it violates the provisions of the Companies Act, 1956. The company contended that it held the annual general meeting within 6 months from the date of closing of the financial year in respect of which the annual accounts were adopted. Advise the company. (5 Marks)*

Answer

(a) Problem based on Section 11 of the Companies Act, 1956

According to Section 11 of the Companies Act, 1956, no company, association or partnership consisting of more than ten persons for the purpose of carrying on banking business, can be formed, that has for its object the acquisition of gains, unless it is registered as a company under the Companies Act, or is formed in pursuance of some other Indian law, or is a Joint Hindu Family carrying on business as such.

An association which has membership in excess of the statutory limit will be an illegal association and has no legal existence. It cannot be wound up under the Act. Neither a member of it would be able to sue it, nor would it be able to sue the member. Every member of an illegal association is personally liable for all liabilities incurred in the business.

In view of these provisions, the suit is not maintainable as the association is illegal.

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- (b) The object clause of the Memorandum of Association provides for carrying on distillery business. Can cinema business be included in the objects clause? (Section 17)

The facts of the given problem are based on the case of Punjab Distilling Industries Ltd. Vs Registrar of Companies.

Section 17(1) of the Companies Act, 1956 permits a Company to alter its objects to carry on some business which, under the existing circumstances, may conveniently or advantageously be combined with the existing business. Thus, Section 17(1) does not prohibit a company to diversify in areas other than those specified in the Memorandum. But the business sought to added must be one, which can conveniently or advantageously be combined with the existing business of the Company.

In the given case, the cinema business cannot be either conveniently or advantageously combined with the distillery business and therefore, the alteration of the Memorandum shall not be allowed.

- (c) A Limited Company issued certain number of fully paid shares in consideration of a promissory note. Can the company forfeit and re-issue the same?

Normally, in the case of allotment of shares, a company may call for the entire face value of the shares on allotment or it may call for a portion of the face value. In case where a Company has allotted shares for part of the face value, it issues call notice for the balance money in one or more instalments.

Therefore, in the normal course, no share is allotted unless otherwise allotment money is received and the question of forfeiture would arise only when, on the basis of call made for the balance amount, the same is not paid by the shareholder.

In the instant case, the consideration for the shares has been received by the company in a form other than cash i.e. promissory note.

If the shareholder concerned has not paid any money as per the promissory note, the course of action for the Company would be to initiate legal proceedings for realising the money. It cannot forfeit those shares 5 years after the date of allotment. (The problem is based on *K. Md. Farooq Ahmed Vs. F.C. Electronics (P) Ltd.*)

- (d) In the case of a Private Limited Company, can the membership go beyond fifty?
(Section 3 (1) (iii))

As per Section 3(1) (iii) a company, to be registered as a private company, must restrict its membership to 50 only. However, in counting this number of 50 members, employee members and ex-employee members, are to be excluded.

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Thus in the given case, the company shall continue to be a private Company. There is no need for conversion.

- (e) A Company held its Annual General Meeting on 26th April, 2007. The next Annual General Meeting was held on 29th September, 2008. Is it proper? (Section 166)

As per Section 166 of the Companies Act, 1956 not more than 15 months shall lapse between two Annual General Meetings. In the present case, the time span between the two meetings is more than 15 months. The company's contention of adopting the accounts within 6 months from the date of closing of the financial year as provided under Section 210(3) of the Act is not applicable to holding the Annual General Meeting of the Company. These two concepts are different. The Company has to hold the Annual General Meeting within the stipulated time and adopt thereat the annual accounts or even adjourn the meeting if the accounts are not prepared.

Question 8

- (a) A, B and C are joint shareholders of 1,000 equity shares of Key Information Ltd. A and B died. C the surviving member received the notice for the annual general meeting of the company in the name of A on 4.7.2008 for the AGM to be held on 25.7.2008. He contends that the proceedings of AGM are invalid. Explain with reference to the provisions of the Companies Act, 1956, the defences available to the Company.

(5 Marks)

- (b) Alpha Co. Ltd. holds shares in Beta Co. Ltd. Alpha Co. Ltd. passed a resolution authorizing Mr. M and Mr. Q to jointly act as representatives of the Company at the annual general meeting of Beta Co. Ltd., and to exercise all rights and powers including the right to vote on behalf of the Company as a member. Can a Company appoint two representatives to attend an annual general meeting under the Companies Act, 1956? Decide.

(5 Marks)

Answer

- (a) **Problem based on the Companies Act, 1956 relating to the conduct of Annual General Meeting**

As per the various provisions of the Companies Act, 1956, the following defences are available to the Company:

- (i) Shareholders A and B are dead.
- (ii) There was no evidence of filing formal legal application by shareholder C for transmission of shares.
- (iii) The requirement of 21 days' clear notice in writing excluding the day of service of notice and the day of the meeting is completely in order (Section 171)

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- (iv) There was no evidence of nomination of C as a legal heir.
- (v) The notice was sent to the available address.

(b) Problem based on Section 187 of the Companies Act, 1956 as to whether a Company can appoint two representatives the attend AGM?

Section 187(1) (a) of the Companies Act, 1956 provides that a Company, if it is a member of a Company within the meaning of this Act, by resolution of Board of Directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company or at any meeting of any class of members of the Company. This provision indicates that a Company can appoint only one representative to attend a meeting and no two or more representatives can be appointed. Therefore it can be concluded that a Company which is a member of another Company cannot appoint two persons to act jointly as its representatives at the AGM of the Company in which it holds shares.

Question 9

- (a) *The Board of Directors of a Company recommended dividend @ 25% on the equity shares of the Company, but the shareholders, at the annual general meeting, considering the high profit margin, passed a resolution for payment of dividend @ 35% on the equity shares of the Company. Give your comments.* (5 Marks)
- (b) *A letter is received from a nominee of a sole shareholder for registering his name in the register of members. Explain the provisions of the Companies Act, 1956 regarding the steps to be taken by the nominee for getting himself registered as a shareholder.*

(5 Marks)

Answer

- (a) The Board of Directors of a Company recommended dividend @ 25% but the shareholders considering the high profit margin, passed a resolution for payment of dividend @ 35% of the equity shares of the Company. Is the resolution valid?

As per Regulation 85 of Table A of the Companies Act, the power to declare a dividend vests with the shareholders at the annual general meeting, but the dividend shall not exceed the amount recommended by the Board of Directors. Since it is a model article adopted by Companies having share capital, the general meeting cannot declare a dividend exceeding the amount recommended by the Board of Directors.

- (b) A letter is received from a nominee of a sole shareholder for registering his name in the register of members. What are the applicable rules?

According to Section 190 B of the Companies Act, 1956, any person who becomes a nominee by virtue of the provisions of Section 109A, shall produce such evidence as may be required by the Board and may elect to be registered as the holder of the shares. He shall deliver or send to the company a notice in writing signed by him stating that he so

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elects and such notice shall be accompanied by the death certificate of the deceased shareholder.

All the limitations, restrictions and provisions of this Act relating to the registration of shares shall be applicable to any such notice, as if the death of the member had not occurred and the notice were a transfer signed by that shareholder.

Question 10

- (a) *State whether it is possible for a single member to constitute a meeting of the Company.*

(5 Marks)

- (b) *Gamma Co. Ltd. was registered on 15.6.2008 and entered into a contract on 20.6.2008 with Fancy Furnitures for the supply of furniture worth Rupees three lac on credit. Accordingly, Fancy Furnitures supplied the goods on 22.6.2008. The Company went into liquidation on 25.6.2008. The certificate of commencement of business was issued on 30.6.2008. Whether the furniture supplier can recover the amount due? Decide with reference to the provisions of the Companies Act, 1956.*

(5 Marks)

Answer

- (a) State whether it is possible for a single number to constitute a meeting of a Company.

Yes. Normally, one person cannot validly constitute a meeting even if he holds proxies for all members. However, in the following circumstances, one person shall form the quorum for a meeting:

- (i) In case of a class meeting i.e. (a meeting of a class of shareholders) if all the shares of a particular class are held by one person.
 - (ii) If there is only one creditor or debenture holder, he shall constitute quorum for the creditors' / debenture holders' meeting.
 - (iii) Company Law Board (now Central Government/ Tribunal) may issue directions under Section 167 of the Companies Act, 1956, for convening an Annual General Meeting, or, under Section 186 for the convening of an Extraordinary General Meeting that one member present in person or by proxy, shall constitute quorum.
- (b) Problem based on Section 149(4) of the Companies Act, 1956 relating to provisional contracts.

As per Section 149(4) of the Companies Act, 1956, any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

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Accordingly, in the given case Gamma Company Ltd entered into a contract with Fancy Furnitures after its incorporation and before it is entitled to commence business. Therefore it is a case of provisional contract. Section 149(4) of the Companies Act provides that such contracts are not binding on the Company until the Company becomes entitled to commence business. In the given case the Company went into liquidation, without commencing business and such contracts cannot be enforced at all.