

PRACTICAL QUESTIONS IN CORPORATE & OTHER LAWS

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Practical Questions in Corporate & Other Laws

Q.No.1. Both the shareholders of the Private Company died in a car accident. Decide whether Company's existence also comes to an end.

Sol.: The Company's existence is not affected by the death of its shareholders, since the Company has separate legal entity. This is clearly established in Salomon Vs. Salomon & Co. Ltd, Lee vs. Lee Air farming Ltd & Kandoli tea Co. Ltd. cases. Further the Company has having perpetual succession.

Q.No.2. In a private Company, after the death of Mr.X entire capital of the company is held by his son Y. Decide, whether Y can continue business of the co. with single shareholder.

Sol.: In such a situation, Y can continue to carry on the business of the Company but, in accordance with the provisions of Sec.45 of the Act, if the same position continues for more than six months, then y will become personally liable for all the liabilities of the Company contracted after six months from the date he becomes only shareholder.

Q.No.3. The number of members in a public Company became reduced to six on the 10th September, 1988, the Company incurs trade debts on 11th September, 1988, 2nd February, 1989 and 17th March, 1989. How far are the remaining six members liable for the debts?

Sol.: The remaining six members are liable for the debts incurred after 6 months of the reduction in the number of members below the statutory minimum specified in Sec. 45 of the Companies Act, 1956 i.e., for debt contracted on 17th March, 1989.

Q.No.4. A public limited Company has only seven shareholders, all the shares being paid in full. All the shares of one such shareholder are sold by the court in an auction and purchased by another shareholder. The Company continues to carry on its business thereafter. Discuss the liabilities of the shareholders of the Company.

Sol.: The problem in question relates to reduction of membership below the statutory minimum. Section 12 of the Companies Act requires a public Company to have a minimum of seven members. If at any time the membership of a public Company falls below seven and it continues for more than six months, then according to Section 45 of the Companies Act, 1956, every such member who was aware of this fact, would be individually (personally) liable for the debts contracted after six months. Thus, in the above problem the remaining members shall incur personal liability for the debts contracted by the Company:

- a. If they continued to carry on the business of the Company with that reduced membership (i.e., 6) beyond six months period.
- b. Only those members who knew this fact of reduced membership shall be liable, for instance, one of the members who was abroad and thus not aware of these developments, shall not be liable.
- c. The liability shall extend only to the debts contracted after six months from the date of auction of that member's shares.

Q.No.5. In a private limited Company it is discovered that there are, in fact, 54 members. On an enquiry, it is ascertained that 6 of such members have 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?

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Sol.: As per Section 3(1)(iii), a Company to be registered as a private Company must restrict its membership to 50 only. But, however, in counting this number of 50 members, employee members and ex-employee members (i.e., those who become members while in the employment of the Company but now having retired still continue to retain membership) are to be excluded. Thus, in the given case, the Company shall continue to be a private Company. There is no need for conversion.

Q.No.6. BS & Co. Ltd. is registered as a Public Limited Company. The shareholding pattern of the Company is under.

Category	
Directors & their relatives	36
Employees	18
Ex-employees (shares were allotted when they were employees)	09
Six couples holding shares jointly in the names of husband and wife (6 x 2)	12
Others	06
Total:	81

The Board of directors of the Company proposes to convert it into a private Company. Advise the Board of directors about the steps to be taken for its conversion into a private Company including reduction in the numbers of members, if necessary.

Sol.: A public limited Company may be converted into private limited Company only if the number of members is limited to 50 excluding Sec.3(1)(iii):

- Persons who are in the employment of the Company
- Persons who became members during the course of their employment & continue to be members even after their employment ceases.
- Further if two or more members hold shares in a Company jointly they shall be treated as a single member.

The number of members is only 48 for this purpose as noted below:

Directors and their relatives	36
Joint holding treated as single	6
Others	6
	48

Hence the Company can be converted into private limited Company.

Q.No.7. The paid up share capital of Advanced Castings Pvt. Ltd is `1,00,00,000 consisting of 8,00,000 Equity shares of `10 each fully paid up and 2,00,000 cumulative Preference shares of `10 each fully paid up. Quality Forgings Pvt. Ltd. and Supreme Engineering Pvt. Ltd. are holding 3, 00,000 Equity shares and 1,50,000 Equity shares respectively in Advanced Castings Pvt. Ltd. Quality Forgings Pvt. Ltd. and Supreme Engineering Pvt. Ltd are the subsidiaries of Unique Machineries Pvt. Ltd. Examine whether Advanced Castings Pvt. Ltd. is a subsidiary of Unique Machineries Pvt. Ltd. Will your answer be different, if Unique Machineries Pvt. Ltd. controls composition of Board of Directors of Advanced Casting Pvt. Ltd.?

Sol.: Holding & Subsidiary Co.'s. According to section 4 of the Companies Act, a Company (Assume S Ltd.) shall be deemed to be a subsidiary of another Company (Assume H Ltd.), if & only if:

- Control on BOD.** That the H Ltd. controls the composition of Board of directors of S Ltd.
Or

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2. Control by ownership.

- a. Where S Ltd. is an existing Company in which the preference shareholders are having voting rights, H Ltd. controls more than half of the total voting power of S Ltd. (E + P)
- b. Where S Ltd. is a newly formed Company, H Ltd. holds more than half in the nominal value of S Ltd. equity share capital (Only E) Or

3. Chain relation. If S Ltd. is a subsidiary of A Ltd. which is subsidiary of H Ltd., then the Company S Ltd. is subsidiary of H Ltd.

Further shares held by any person as a nominee for the Co. shall be treated as being held by the said Co. Thus, the shares held by a subsidiary shall be treated as held by the Holding Co. In this case, the equity share capital of Advance Castings Private Ltd. is `80, 00,000 consisting of 8, 00,000 Equity shares of `10 each fully paid up. Quality Forgings Pvt. Ltd. and Supreme Engineering Pvt. Ltd. are holding 4, 50,000 (3, 00,000+1, 50,000) Equity shares in Advance Castings Pvt. Ltd. As these two Companies are the subsidiaries of Unique Machineries Pvt. Ltd., it will be treated as holding more than half in nominal value of the Equity share capital of Advance Castings Pvt. Ltd. and hence Advance Castings Pvt. Ltd. is a subsidiary of Unique Machineries Pvt. Ltd.

If Unique Machineries Pvt. Ltd. controls the composition of the Board of Directors of Advance Castings Pvt. Ltd., it will also be treated as holding Company by virtue of Sec.4. Hence the answer will not be different.

Q.No.8. The paid-up share capital of XYZ (Private) Co. Limited is `20 lakhs consisting of 2, 00,000 Equity Shares of `10 each fully paid up. ABC (Private) Limited and its subsidiary DEF (Private) Limited are holding 60,000 and 50,000 shares respectively in XYZ (Private) Co. Limited. Examine with reference to the provisions of the Companies Act, 1956, whether XYZ (Private) Limited is subsidiary of ABC (Private) Limited. Would your answer be difference if DEF (Private) Limited is holding 1, 10,000 shares in XYZ (Private) Co. Limited and no shares are held by ABC (Private) Limited in XYZ (Private) Co. Limited?

Sol.: Write about Holding & Subsidiary Companies in the above Question.

Further shares held by any person as a nominee for the Company shall be treated as being held by the said Company. Thus, the shares held by a subsidiary shall be treated as held by the holding Company.

Here ABC Private Limited is holding 60,000 shares in XYZ Private Limited and 50,000 shares held by DEF private limited. Therefore, ABC Limited will be deemed to be holding 1, 10,000 Equity shares in XYZ Limited i.e. more than half in nominal value of the Equity Share Capital of XYZ Private Ltd. Hence XYZ Private Limited is subsidiary of ABC Private Limited.

The answer will remain the same in the second case but holding-subsidiary relationship is established by virtue of Chain relationship i.e. a subsidiary of one Company's subsidiary will also be considered as the subsidiary of the second mentioned Company.

Q.No.9. Due to oversight some of the share transfers were registered in the Company due to which the number of members in a private Company increased from 28 to 52. What is the effect of such transfers and what is the remedy available to the Company.

Sol.: In that case, since the number of shareholder's has crossed 50, the Company will be named as public Company. However the NCLT, on being satisfied that the failure to comply with the conditions laid down by Sec.3 was accidental or un intentional and it is just and equitable to grant relief, may, on the application of the Company or any other person interested and on such conditions as seem to the NCLT reasonable, order that the Company be relieved from such consequences as aforesaid.

Q.No.10. On acceptance of deposits a private Company becomes a Public Company.

Sol.: False. A private Company becomes a public Co. on acceptance of deposits from public through issue of advertisement. However the private Co. can accept the deposit from its shareholders, directors, from their relatives and even then the private Co. does not become a public Co. (Sec.3)

Q.No.11. By obtaining the license from the Central Government under section 25 of the Act a Company shall dispense with the word "limited" or "private limited" from its name.

Sol.: False. Under section 25, it is not compulsory to dispense with the word Limited or a Private Limited, but it is only an optional at the wish of the Company. Because, the object of registration of a Company u/s 25 is not only to dispense the use of words Limited or Private Limited as a part of its name but to avail the exemption which may be granted to such Companies from the provisions of this Act by the Central Government.

Q.No.12. A firm can also become member of a Company which has been granted license under Section 25 of the Act.

Sol.: Yes, Sec.25 of the Companies Act permits a firm to be a member of any association or Company licensed under this section. Infact this is the only one case which permits the partnership firm to become a member of a Company.

Q.No.13. On revocation of License granted by the Central Government under section 25 the Company may continue to carry on the same Activities which were being carried on by it prior to such revocation.

Sol.: True. On revocation of license granted by the Central Government under Sec.25, the association or the Company may continue to carry on the same activities which were being carried on by it prior to such revocation. The impact of the revocation of license is:

- a. The Company will have to add a word 'Limited' or 'Private Limited' at the end of its name.
- b. It will cease to enjoy the exemptions granted by the Central Government to such Companies.

Q.No.14. Two joint Hindu families carry on a business as joint-owners. The first family consists of 3 brothers and their respective sons being 12 in number. The second family consists of the father, 4 major sons and 2 minor sons. Is the association illegal?

Sol.: Sec.11 of the Companies Act, 1956, provides that no firm, association or Company consisting of more than 20 persons for doing any business (10 in case of banking business) shall be formed unless it is registered as a Company under the Companies Act. An association formed in violation of the above provision of the Companies Act is termed as an illegal association and does not have any legal existence and recognition. However, in computing the aforesaid number of members, viz., 10 in case of a banking business and 20 in case of any other business, minor members of the families constituting the association are not taken into account. Accordingly, in the given problem, the first family consists of 15 members (3 brothers + 12 sons) and the second family that of 5 members (1 father + 4 sons and ignoring 2 minor sons). The total number of the members of the two families constituting the association thus comes to 20. The association is not an illegal Association.

Q.No.15. The Registrar of Companies issued a Certificate of Incorporation Actually on 8th January, 1999. However, by mistake, the certificate was dated "5th January, 1999". An allotment of shares was made before the Company was incorporated?

Sol.: The allotment of shares is valid. Sec.35 of the Companies Act, 1956 provides that a certificate of incorporation issued by the Registrar in respect of any association shall be conclusive evidence of the fact that all the requirements of the Act have been complied within respect of registration, and that the association is a Company authorized to be registered and duly registered under the Act.

Jubilee cotton mills ltd...

- a. The registrar issued a certificate of incorporation on Jan 8th but dated it Jan 6th which was the date he received the documents.
- b. On Jan 6th, the Company made an allotment of shares to Lewis.

Held, that the certificate was conclusive evidence of incorporation on Jan 6th and that the allotment was not void on the ground that it was made before the Company was incorporated.

Q.No.16. A Limited Company is formed with its articles stating that one Mr. Srivastava shall be the solicitor for the Company, and that he shall not be removed except on the ground of misconduct. Can the Company remove Mr. Srivastava from the position even though he is not guilty of misconduct?

Sol.: As between outsiders and the Company, Articles do not give any right to outsiders against the Company, even though their names might have been mentioned in the Articles. An outsider cannot take advantage of the Articles to form a claim thereon against the Company. Thus, in the given case, Company shall succeed in removing Mr.Srivastava as the solicitor of the Company without incurring any obligations.

Q.No.17. A Company, in which the directors hold majority of the shares, altered its articles so as to give power to directors to acquire shares of any shareholder, who competed with the Company's business, to transfer his shares, at their full value, to any nominee of the directors. S had some shares in the Company, and he was in competition with the Company. Is S bound by the alteration?

Sol.: The power of the members to effect alteration in the Articles by passing special resolution is limited in as much as the alteration must be bonafide and in the interest of the Company. In the given case, alteration requires taking over the shares of only those who competed with the Company's business. Therefore, empowering the directors to take over shares of such members seems to be in the general interest of the Company as a whole and hence shall be valid. S shall be held bound by the alteration.

Q.No.18. Advise Asiatic Government Security Life insurance Co. Ltd. Whether it can seek an injunction against 'The New Asiatic Insurance Co. Ltd.' Which was subsequently formed restraining it from having in its name the word 'Asiatic' on the ground that it has caused confusion and can deceive the public.

Sol.: The Companies Act, 1956 permits the promoters of a Company to choose any suitable name for the Company provided the name chosen is not undesirable.

A name may be considered undesirable where it is too similar to the name of an already existing Company. In the present problem since the two Companies are in insurance business, it may lead to a natural inference on the part of the public that the two are

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interrelated because of the word 'Asiatic' which is quite an imaginary word and does not mean anything. Mere addition of the word 'New' is not likely to give an otherwise impression. Therefore, on a suit by Asiatic Government Security Life Insurance Co. Ltd., Court is likely to advise the New Asiatic Insurance Co. Ltd. to change its name.

Q.No.19. The Articles of a Company provided that the shares of a member who became bankrupt would be offered for sale to other shareholders at a certain price. Is the provision binding on the shareholders?

Sol.: The facts of the given problem are based on the decided case of Bore land Trustee vs. Steel Bros. & Co. Ltd., in which case, the provisions in the Articles were held to binding on the members. It was held that 'Shares having been purchased on these terms and conditions, it is impossible to say that those terms and conditions are not to be observed'. Thus, since Articles constitute a binding contract between the Company and its members, the shareholders shall be held bound by the stated provision in the Articles.

Q.No.20. The plaintiffs contracted with a director of the defendant Company and gave him a cheque under the contract. The Director could have been authorized under the Company's articles, but was not in fact so authorized. The plaintiff had not seen the Articles. The Director misappropriated the cheque and the plaintiffs sued the Co. Is the Company liable?

Sol.: The problem relates to the protection that the outsider may claim against lack of authority on the part of the officers of the Company. The rule commonly known as the Doctrine of Indoor Management was first laid down in the case of The Royal British Bank vs. Turquand. However, it has been held that the rule of indoor management cannot be invoked in favour of a person who had no knowledge of the Articles of the Company. It is because; in such a case the person cannot assume that the power (of which he has no knowledge) has been exercised.

Thus, in the present case, Company shall not be held liable by the Act of the director who has transacted beyond the scope of his authority. A principal can be held liable for the frauds of his agent only to extent they are committed within the scope of the authority conferred upon him.

Q.No.21. A Company issued a bond under its common seal signed by two Directors. The Articles provided that the directors might borrow on bond such sums as they should be authorized by an ordinary resolution of the Company. No such resolution was passed. Is the Co. liable on the bond?

Sol.: Yes. The Company is liable on the bond. The outsiders dealing with the Company are entitled to assume that as far as the internal proceedings of the Company are concerned, everything has been regularly done. They are bound to read the registered document and to see that the proposed dealing is not inconsistent therewith, but they are not bound to do more; they need not inquire into the regularity of the internal proceedings as required by the Memorandum or Articles. (Royal British Bank vs. Turquand). The gist of the rule is that persons dealing with limited liability Companies are not bound to inquire into their indoor management and will not be affected by irregularities of which they had no notice. The rule is based on public convenience and justice.

Q.No.22. The Memorandum of Association of a Company was signed by two adult members and by a guardian of the other five minor members, the guardian signing separately for

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each minor member. The Registrar registered the Company and issued under his hand a certificate of incorporation. The plaintiff contended that

- a. Conditions of registration were not duly complied with, and
- b. That there were no seven subscribers to the Memorandum. Will the Court uphold his contention?

Sol.: The Certificate of incorporation is conclusive for all purposes. According to Section 35 of the Companies Act, 1956, a certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act have been complied with in respect of registration and matters incidental thereto, and therefore the association will be considered as a company duly registered under this Act.

Q.No.23. The authorized signatory of a Co. issued a share certificate in favour of X, which apparently complied with the Company's articles as it was purported to be signed by two directors and the secretary and it had the Company's common seal affixed to it. Infact, the secretary had forged the signatures of the Directors and affixed the seal without any authority. Will the certificate be binding upon the Company?

Sol.: According to the doctrine of Indoor management, persons dealing with the Company are presumed to have read the registered documents and to see that the proposed dealing is not inconsistent therewith, but they are not bound to do more i.e. they need not enquire into the regularity of internal proceedings as required by M&A.

But, this rule cannot be applied to forgery. In the case of forgeries, the Acts done in the name of the Company are void abinitio. A Co. can never be held bound by forgeries committed by its officers.

Ruban Vs. Great Fingual Ltd.:

Y The plaintiff was the transferee of a share certificate issued by the defendant co. under its seal.

Y The certificate was issued by the Company's secretary, who affixed the seal and forged the signature of two directors.

Y The certificate was held to be void.

Hence, it can be concluded that in the instant case, the certificate issued by the secretary by having forged the signatures of the directors and affixed the seal without any authority will not be binding upon the Company.

Q.No.24. ABC (Pvt.) Ltd. was incorporated in 10th June, 1996. A similar Company with identical name and same objects was also incorporated on 10th June 1997. ABC (PVT.) Ltd. came to know about this and filed a petition on 10th January, 1998. Explain remedies available to the first Co.

Sol.: If a Company is inadvertently registered with a name which in the opinion of the Central Government, is identical with or too nearly resembles, the name by which a Company in existence has been previously registered, the Company registered later (Sec.22):

May change its name, by ordinary resolution and with the previous approval of the Central Government Or

- a. The change Shall also be carried out if a direction is received from the Regional director. When so directed by the Regional director the Company shall, by ordinary resolution and with the previous approval of the Central Government, change its name within a period of 3 months or the extended period.

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In the given case ABC (Pvt.) Ltd. can complain to the Regional director to issue suitable directions to the Company incorporated on 10th June, 1997 for change of its name. In this case, the Company filed a petition on 10.1.1998 within 12 months of date of registration of second Company and so the complaint shall be accepted.

Q.No.25. Eight signatories to the memorandum out of total ten were subsequently found to be forged. The memorandum was presented for registration and of registration was issued. The existence of the Company was disputed that the registration of the Company is void. Decide?

Sol.: The Company's registration cannot be void because, under Section 35 of the Act, a certificate of incorporation is a conclusive evidence of the fact that all the statutory requirements of the Act in relation to registration of the Company have been complied with.

Q.No.26. The registered office clause of the memorandum of association of A ltd. does not contained name of the city. Because of this registrar of Companies refused to registered the memorandum of association. Is it Correct?

Sol.: No., Sec.13 states that the registered office clause shall contain the name of the State in which the registered office of the Company is situated. Further, it may be noted that the address of the registered office is not stated in the memorandum of association. If this was done, every change there in would require the amendment of the memorandum, which is a difficult procedure. Therefore the address is stated in AOA.

Q.No.27. A Company filed a petition before the NCLT for shifting its registered office to another state. The S.G. objected against such shifting on the ground that it would adversely effect the government revenues and employment. Decide whether objection of the State Government is tenable.

Sol.: The objection of the State Government is not tenable. In Minerva Mills Ltd. Vs. Government of Maharashtra the court refused to accept the contention of the State on the ground of loss of revenue.

Q.No.28. It is not necessary to present a copy of Articles of Association to the Registrar of the Companies at the time of incorporation of the Public Company limited by shares.

Sol.: Sec.26 provides that the Companies limited by guarantee, private limited Companies, and unlimited Companies must have their own articles of association, while a public Company limited by shares may or may not have its own articles. Since in this case it is a public company limited by shares it is not necessary to present a copy of articles of association to ROC and in such a case Table A of Schedule I (Model articles) shall be deemed to be the Company's articles.

Q.No.29. The promoters of your Company, incorporated on 9th April, 1996, had entered into a contract with M on 8th March, 1996 for supply of goods. After incorporation, your Company does not want to proceed with the contract. As a Company secretary, advise the management.

Sol.: Pre-incorporation contracts in general are void and hence not binding on the Company. However, as per the Specific Relief Act, 1963 the party to the contract can enforce the contract against the Company if: (i) the Company had adopted the same after incorporation; and (ii) the contract is warranted by the terms of incorporation. Thus, unless the Company adopts the contract, the other party cannot enforce the same against the Co.

But, promoters can be held liable.

Q.No.30. Promoters made an application for registration of a Company in the name of MCN Association. At the time of application, another Company was already registered with the similar name but it was defunct for more than 10 year. Decide whether new Company can be registered in a name which is similar to any other existing Company's name.

Sol.: A new Company cannot be registered with a name which is quite similar to any other existing Company's name. But in the opinion of department of Company affairs it is possible if the exiting Company is a defunct Company (Non operational) for a long time.

Q.No.31. XYZ Co. Ltd. was in the process of incorporation. Promoters of the Company signed an agreement for the purchase of certain furniture for the Company and payment was to be made to the suppliers of furniture by the Company after incorporation. The Company was incorporated and the furniture was used by it. Shortly after incorporation, the Company went into liquidation and the debt could not be paid by the Company for the purchase of above furniture. As a result suppliers sued the promoters of the Company for the recovery of money. Examine whether promoters can be held liable for payment in the following cases:

- a. When the Company has already adopted the contract after incorporation?
- b. When the Company makes a fresh contract with the suppliers in terms of pre-incorporation contract?

Sol.: The promoters remain personally liable on a contract made on behalf of a Company which is not yet in existence. Such a contract is deemed to have been entered into personally by the promoters and they are liable to pay damages for failure to perform the promises made in the Company's name, even though the contract expressly provided that only the Company shall be answerable for performance.

Further, a Company cannot ratify a contract entered into by the promoters on its behalf before its incorporation. The Company can, if it desires, enter into a new contract, after its incorporation with the other party. The contract may be on the same basis and terms as given in the pre-incorporation contract made by the promoters.

It is, therefore, safer for the promoters Acting on behalf of the Company about to be formed to provide in the contract that: (a) if the Company makes a fresh contract in terms of the pre-incorporation contract, the liability of the promoters shall come to an end; and (b) if the Company does not make a fresh contract within a limited time, either of the parties may rescind the contract.

Thus applying the above principles, the answers to the questions can be:

- a. The promoters in the first case will be liable to the suppliers of furniture. There was no fresh contract entered into with the suppliers by the Company. Therefore, promoters continue to be held liable in this case for the reasons given above.
- b. In the second case obviously the liability of promoters comes to an end provided the fresh contract was entered into on the same terms at that of pre-incorporation contract.

Q.No.32. X Co. Ltd, intended to buy a rubber in Peru. Its prospectus contained extracts from an experts' report giving the number of rubber trees in the estate. The report was inaccurate. Will any shareholder buying the shares of the Co. on the basis of the above representation have any remedy against the Co.? Can the persons authorising the issue of prospectus escape from their liability?

Sol.: In the event of any mis-statement in a prospectus, the allottees have certain remedies against the Company as well as those responsible for the issue of the prospectus. Thus, in the present case, the allottee shall have the right to claim compensation from the Company for any loss that he might have sustained in terms of the value of shares. But, his claim against those responsible for issue of prospectus shall not succeed since they made the statement on the basis of the report of an expert whom they believed to be competent. However, expert can be proceeded against.

Q.No.33. X a furniture dealer, entered into a contract with the Company for furnishing the Company's office before it could obtain certificate of commencement of business. Can X recover the price of the furniture?

Sol.: A contract made by a public Company after incorporation but before it is entitled to commence business is provisional only, and is not binding on the Company. But as soon as the certificate to commence business is obtained the contract becomes binding on the Company automatically. In this case, X can enforce the contract and recover the price of the furniture from the Company after it obtains the certificate of commencement of business.

Q.No.34. A applied for 200 shares on the basis of a prospectus which contains some mis-statement. The shares are allotted to him. A afterwards transfers the shares to B. Can B bring an Action for a rescission on the ground of mis-statement?

Sol.: If there is a mis-statement of material information in a prospectus and if it has induced any shareholder to purchase shares, he can rescind the contract and claim damages from the Company. However, to claim relief, privity of contract is necessary. Thus, whereas 'A' could have obtained the aforesaid relief, 'B' who has purchased shares from 'A' and not from the Company cannot proceed against the Company (Peek Vs. Gurney).

Q.No.35. Amar subscribed shares issued by F Ltd. The prospectus of F Ltd. included a statement which was misleading in the forms and contents. On the faith of the prospectus believing it to be a true, Amar subscribed for shares and sustained loss. Can Amar sue for compensation of loss? If so, who will be sued for such loss?

Sol.: Yes, Amar can sue for compensation of loss. Sec.62 of the Companies Act provides that an allottee is entitled to claim compensation from directors, promoters and any other persons who authorised the issue of the false prospectus, for damages sustained by reason of any untrue statement in it. However, he will have to prove that misrepresentation was of material fact; he Acted on misrepresentation and has suffered damages in consequence.

The following persons are liable to pay compensation for loss or damage sustained by reason of untrue statement included in a prospectus:

- a. Every person who is a director of the Company at the time of issue of prospectus.
- b. Every person who has authorised himself to be named and is named in the prospectus either as a director, or as having agreed to become a director, either immediately or after an interval of time;
- c. Every person who is a promoter of the Company; and
- d. Every person who has authorised the issue of the prospectus.

Mr. Amar having sustained loss because of having believed the facts given in the prospectus issued by F Ltd. to be true, can sue the four categories of persons mentioned

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above for compensation of his loss. Apart, from above, the allottee may sue the Company for damages for deceit.

Q.No.36. All statements in a prospectus issued by X & Co. Ltd. were literally true, but it failed to disclose that the dividends stated in it as paid were not paid out of revenue profits, but out of realised capital profits. The statement that the Company had paid dividends for a number of years was true. But the Company had incurred losses for all those years, however, no disclosure of this was made in the prospectus. An allottee of shares wanted to avoid the allotment on the ground that the prospectus did not disclose this fact which, in his opinion, was very material. Would he succeed?

Sol.: In the given case the Allottee of shares would succeed and he can avoid the contract on the grounds of untrue statement included in the prospectus. As per Sec.65 a prospectus shall be deemed to include an untrue statement:

- a. If it contains a statement which is misleading in the form or content.
- b. There is an Omission of any matter.

Nothing should be stated as fact which is not so, and no fact should be omitted. Thus it is not necessary that there should be false representation in prospectus, even every word included in it is true, the suppression of material facts may render it fraudulent.

Q.No.37. An allottee of shares in the Company has brought an action against director Q in the Company in respect of false statements in the prospectus. The director has contended that the statements were prepared by promoters and he had relied on them. Is the director liable?

Sol.: Sec.62 lays down civil liabilities for misstatements in prospectus. It renders every Directors liable for any misstatement in prospectus. Sec.62(2), however, lays down the circumstances under which the director concerned shall not be held liable. One of the plea that the director can take is that he had reasonable ground to believe and did upto the time of allotment of shares or debentures believe that the statement was true. In the instant case the director can absolve himself of the liability if he proves that he had reasonable grounds to believe and did believe that the statement prepared by the promoters was true. The onus of proof is on the director.

Q.No.38. No additional information in addition to the statutory requirements can be given in the prospectus.

Sol.: False., Sec.56 of the Act provides that the prospectus must contain matters specified in Part II of that Schedule. The section does not contain any negative provision regarding inclusion of additional information in the prospectus. Any additional information which may useful to the investors i.e. the contents given in Sec.56 are only minimum.

Q.No.39. In a scheme of amalgamation shareholders of Company 'A' was offered shares of Company 'B' in lieu of shares held by them in Company 'A'. The offer letter issued by Company B to the shareholders of Company A can be regarded as prospectus?

Sol.: No, the offer Letter issued by Co. B to the shareholders of Co. A cannot be regarded as a prospectus because the offer has been made to specified persons only and no person other than those can avail the offer. The test for determination of the nature of offer is not who receives the offer but who can avail the offer. If offer can be availed only by the person to whom offer has been made, it is not a prospectus.

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Q.No.40. The Directors of Vijay Electronics Ltd. allotted to themselves certain rights shares for which no application was made by certain shareholders as required by Section 81 of the Companies Act. Discuss the validity of their action specially in view of the fact that market price of shares of the Company is 50% above par.

Sol.: If no application is made by the shareholders to whom the offer is made under Section 81 of the Companies Act, 1956, the Board of Directors may dispose of the shares in such a manner as they think most beneficial to the Company. Therefore, unless shares were allotted to directors on terms unfavourable to the Company, the allotment would be valid.

Q.No.41. The Board of Directors of a Company reissued shares which were forfeited for non-payment of calls. As a Company secretary, tell whether Return of Allotment is required to be filed?

Sol.: Return of allotment is required to be filed only in case of allotment of shares. Allotment means an act of appropriation by the Board of directors of the Company out of previously unappropriated capital of the company to persons who have made application for shares. Since reissue of forfeited shares is not an allotment of shares no return of allotment need to be filed.

Q.No.42. What is the remedy available to a Company if stock exchanges refuse to accept its application for listing of shares or debentures?

Sol.: Every Company going for public issue shall make an application to stock exchange(s) for obtaining the permission for listing of such shares or debentures. The prospectus shall state that application has been made for obtaining listing permission and names of such stock exchange(s). If the permission has not been applied for or having applied for has not been granted by the stock exchange(s) before the expiry of 10 weeks from the date of the closing of the subscription list the allotment made shall become void. [Sec.73(1)]. An appeal may be preferred against the refusal with Securities Appellate Tribunal & in the allotment shall not be void until the dismissal of appeal.

Q.No.43. A Co. forfeited 1000 shares of ₹10 each on which ₹8 had been paid up & subsequently disposed of same for ₹1.50 each. Examine the validity of reissue of shares.

Sol.: Reissue can be at any price provided that the total sum paid by the original owner of shares together with the reissue price is not less than the par value. In other words, the discount on re-issue should not exceed the amount forfeited on those shares. The allotment is invalid since the shares have been reissued at a price less than the amount remaining unpaid.

Q.No.44. The prospectus of a Company stated that application has been made to Delhi and Bombay Stock Exchanges for permitting its shares to be dealt there at. The Company applied to the said stock exchange. The Company got permission from Bombay stock Exchange only. The Company allotted shares to its applicants thereafter. Is this allotment of shares valid?

Sol.: Every company going for public issue shall make an application to stock exchange(s) for obtaining the permission for listing of such shares. The prospectus shall state that application has been made for obtaining listing permission and names of such stock exchange(s). If the permission has not been applied for or having applied for has not been granted by the all the stock exchanges before the expiry of 10 weeks from the date of the

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closing of the subscription list the allotment made shall become void. Therefore allotment is void in this case.

Q.No.45. Dowell Co. Ltd issued 10,000 shares of ` 10 each. The entire issue was under written by ICICI; but before the prospectus was issued the entire capital was subscribed by the friends of directors of the Company. Would ICICI be entitled to receive any underwriting commission?

Sol.: 'Underwriting' means 'Guaranteeing'. It is a contract entered between the Company and underwriters for the purpose - in case the whole or an agreed portion of the shares or debentures are not applied for, then the underwriters will themselves apply for unsubscribed shares or debentures. As a return for the services rendered by them, the underwriters get U/C. It is payable even if the underwriters are not called upon to take any shares.

Q.No.46. As per the audited balance sheet of Dowell Ltd. as at 31st March, 1999, the details of share capital and reserves and surplus are as under.

Equity Share Capital	300.00
Reserves and surplus:	
Profit and loss account	62.75
General reserves	12.00
Share premium	25.00

Break up of unsecured loans as at 31st March, 1999 in given below:

Deposits from public	13.00
Deposits from shareholders	3.62

Compute the limits up to which Dowell Ltd. can accept further deposits from public & shareholders.

Sol.: As per Balance Sheet of Dowell Ltd. as at 31.3.99.

Paid up capital:		
Equity Share Capital	300.00	
Share Premium	25.00	325.00
Free Reserves:		
Profit and Loss a/c	62.75	
General Reserves	12.00	84.75
		409.75

[` in lakhs]

Particulars	From shareholders	From public
Limit up to which Dowell can accept deposits		--
10% of ` 409.50 lakhs	49.95	102.375
25% of ` 409.50 lakhs		
Deposits as at 31 st March, 1999	3.62	13.00
Maximum further deposits that can be accepted.	46.33	89.375

Q.No.47. M Company Limited issued 2,00,000 Equity shares of ` 10 each. You are allotted 100 shares. Explain any ten rights you have as a member of the Company.

Sol.: Refer to question rights of members in membership lesson (10th lesson).

Q.No.48. Is a person, holding Pref. shares in a Co., deemed to be a member of that Co.?

Sol.: Yes, a person holding preference shares in a Company is a member of that Company. Membership in a Company can be obtained, by acquiring shares in it and such shares may be equity or preference. As such, a person holding preference shares shall be deemed to be its member.

Q.No.49. Can a subsidiary Company hold shares in its holding Company? S Ltd. held shares of H Ltd. before becoming its subsidiary. Will it be necessary for S Ltd. to surrender those shares on its becoming a subsidiary of H Ltd.?

Sol.: As per Section 42, a body corporate cannot be a member of a Company which is its holding Company and any allotment or transfer of shares in a Company to its subsidiary shall be void; except:

- a. Where the subsidiary holds shares in the holding Company in the capacity of a legal representative of a deceased shareholder, or
- b. Where the subsidiary holds shares as trustee, or
- c. Where the subsidiary was a member before the commencement of this Act or it held shares in the holding Company before it became its subsidiary. In these cases the subsidiary can continue to hold the shares but, without to vote at meetings of the holding Company.

Since S Limited held shares of H Limited before it became its subsidiary, as per the provisions of Section 42, it is not necessary for S Limited to surrender those shares on its becoming a subsidiary of H Limited. S Limited in this case can continue to hold the shares of H Limited, but S Limited will not have the right to vote at meeting of H Limited in respect of the shares held by it.

Q.No.50. Shyam's name appears in the register of members of a Company. He contends that he is not a member. The Company maintains that Shyam had orally agreed to become the member. Is the contention of Shyam correct?

Sol.: Yes; the contention of Shyam is correct. According to Section 41 (2) of the Companies Act, 1956, every person who agrees in writing to become a member of the Company and whose name is entered in its register, shall be a member of the Company. Agreement in writing can be either by way of application for allotment of shares or by transfer/transmission of shares. The subscribers to the memorandum of a Company are deemed to have agreed to become members of the Company and their names shall be entered in register of members on registration of the Company. There is no provision for becoming a member of the Company by oral agreement.

Q.No.51. DJA Co. Ltd. is holding 40% of total equity shares in MR Co. Ltd. The Board of Directors of MR Co. Ltd. (incorporated on 1.1.1998) decided to raise the paid-up Equity Share Capital by issuing further shares and also decided not to offer any shares to DJA Co. Ltd. on the ground that it was already holding a high percentage of shares in MR Co. Ltd. Articles of Association of MR Co. Ltd. provides that the new shares be offered to the existing shareholders of the Co. On 1.3.2001 new shares were offered to all the shareholders

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excepting DJA Co. Ltd. Referring to the provisions of the Companies Act, 1956 examine the validity of decision of Board of Directors of MR Co. Ltd. of not offering any further shares to DJA Co. Ltd.

Sol.: The question is based on Sec.81 of the Companies Act. As per Sec.81 if, at any time after the expiry of 2 years from the formation of the Company or after the expiry of 1 year from the first allotment of shares, which is earlier it is proposed to raise capital by allotment of further shares, it should be offered to the existing equity shareholders of the Company. In the given case applying the provisions and the ruling in the above case, MR Company's decision not to offer any further shares to DJA Co. Ltd. on the ground that DJA Co. Ltd. already holds a high percentage of shareholding in MR Co. Ltd. is not valid for the reasons that it is against to Sec.81. Therefore Board of MR Company Limited cannot take a decision not to allot shares to DJA Company Limited unless the same is approved by the general meeting by means of special resolution required as under Sec. 81.

Q.No.52. A Public Company proposes to purchase its own shares. State the source of funds that can be utilised by the Company for purchasing its own shares and the requirements to be complied with by the Company under the Companies Act before and after the shares are so purchased.

Sol.: Refer to Buy Back provisions (Sec.77A).

Q.No.53. ABC Company Limited at a general meeting of members of the Company pass an ordinary resolution to buy-back 30% of its Equity Share capital. The articles of the Company empower the Company for buy-back of shares. The Company further decide the payment for buy-back to be made out of the proceeds of the Company's earlier issue of equity shares. Explaining the provisions of the Companies Act, 1956, and stating the sources through which the buy-back of Companies own shares be executed. Examine.

- Whether Company's proposal is in order?
- Would your answer be still the same in case the Company instead of 30% decide to buy-back only 20% of its Equity Share Capital's

Sol.: Sources of funds: As per Sec.77A, a Company may purchase its own shares/other specified securities (herein after referred to as buy-back) out of:

- Its free reserves Or
- The securities premium account Or
- The proceeds of any shares/other specified securities.

However, buyback of any kind of shares or other specified securities CAN NOT be made out of the proceeds of an earlier issue of the SAME KIND of shares/other specified securities.

Conditions: No Company shall purchase its own shares or other specified securities unless:

- A S.R.** (special resolution) has been passed in general meeting authorising the buy-back.
- BOD.** However, a resolution by the B.O.D. (board of directors) is sufficient, instead of a above, if the buy back of shares is LESS THAN OR EQUAL TO 10% of the total paid up capital (equity shares and preference shares) and free reserves.

Taking into account these two provisions, the questions as asked in the problems can be answered as under:

- The Company's proposal for buy-back is not in order as it has passed only an ordinary

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resolution and the percentage of 30% buy-back is in violation of the provisions.

- b. The answer to the second question shall also be the same since there also the resolution passed by the Company is an ordinary resolution and not special resolution, through the percentage of buy-back, i.e., 20% is not violative.

Q.No.54. Preference shareholders have same voting rights as the equity shareholders.

Sol.: False., In general they have voting right only on matters directly relating to rights attached to preference share capital (**E.g.:** Resolution for winding up of Company, change in dividend rate). (Sec.87)

Exception: But they are entitled to vote on every resolution placed before Company at any meeting, if dividend on such capital in full or in part is remaining unpaid in the case of:

- Y **Cumulative preference shares** - If dividends are in arrears for two years preceding the date of commencement of the meeting.
- Y **Non-cumulative preference shares** - If dividends are has not been paid for 2 financial years immediately preceding the meeting or for any 3 years during the period of 6 years ending with the financial year preceding the meeting.

Q.No.55. Reserve capital can be created out of net profits of the Company?

Sol.: False., Reserve capital is created out of capital of the Company. This is that part of the uncalled capital of the Company which can be called up only in the event of its winding up. A limited Company may, by a special resolution, determine that a portion of its uncalled capital shall be called up in the event of winding up for the purposes of winding up (Sec. 99).

Q.No.56. Companies are not permitted to issue shares by way of donation.

Sol.: True. The Act permits for issue and allotment of shares for cash or some consideration other than cash either at part or at discount or at premium but there is no provision for issue and allotment of shares for no consideration. Issue of shares by way of donation would amount to issue of shares for no consideration and is, thus, invalid in law. (Sec.75)

Q.No.57. Interest can be paid on share capital. Comment.

Sol.: Sec.208 provides for payment of interest to shareholders, if following conditions are satisfied:

- a. The **AOA** shall authorise such payment **Or** a S.R. shall be passed authorising such payment.
- b. The **permission** from the C.G. shall be obtained.
- c. The **rate of interest** will be determined by C.G. and it shall not exceed 12%.
- d. Before permitting the payment, the C.G. may appoint a person for enquiry.
- e. **Time limit:** The payment of interest shall be made only for such period as may be determined by the central government.

Q.No.58. 500 equity shares in 'XYZ' Limited were acquired by Mr. 'B'. But the signature of Mr. 'A', the transferor, on the transfer deed was forged. Mr. 'B'. After getting the shares registered by the Company in his name, sold 200 equity shares to Mr. 'C' were not aware of the forgery. What are the rights of Mr. 'A', 'B' and 'C' against the Company with reference to the aforesaid shares?

Sol.: Forgery does not confer any title. It is because in case of forgery there is not merely an absence of free consent but there is not consent at all. Hence a forged transfer can never confer ownership upon the transferee thereof, however genuine the transaction may appear. Thus, if a transfer is forged and the Company registers the transfer, the true owner can apply to the Company for his name to be placed back in the register. As a forged transfer is a nullity, Mr. A, the original owner continues to be the share-holder and the Company is bound to restore the name of transferor in the register of members.

A person who presents a transfer of shares for registration by a Company thereby represents that the instrument of transfer is genuine, and if it turns out to be a forgery, the Company is not stopped from denying his title to the shares, even though he did not know that the transfer was forged when he presented it. Consequently, even if the Company issues a share certificate to the person who presents the transfer, and he relies on it, the Company may remove his name from the register of members and he cannot claim damages for wrongful removal. Therefore, B the transferee is not entitled to the shares on the contrary, he is liable to indemnify the Company against the consequences of the damages which may have to be paid by the Company to the true owner of the shares.

According to Sec.84(1) of the Companies Act, a share certificate specifying any shares held by any member is a prima face evidence of the title of the member to such shares of the Company has issued a share certificate to the transferee and he has sold the shares to an innocent purchaser, the Company cannot deny his title, for the certificate stops it from doing so. Therefore the innocent purchaser is entitled to compensation from the Company.

Q.No.59. A' Commits forgery and there by obtains a certificate of transfer of shares from a Company and transfers the shares to 'B' for value Acting in good faith. Company refuses to transfer the shares to 'B'. Whether the Company can refuse? Decide the liability of 'A' and of the Company towards 'B'.

Sol.: A forged transfer is a nullity. It does not give the transferee concerned any title to the shares. Since the forgery is an illegality therefore it cannot be a source of a valid transfer of a title. Although the innocent purchaser acting in good faith could validly and reasonably assume that the person named in the certificate as the owner of the shares was really the owner of the shares represented by the certificate. Even then the illegality cannot be converted into legality. Therefore, in this case Company has right to refuse to do the transfer of the shares in the name of the transferee B.

Here, as regards to the liability of A against 'B', A does not stand directly responsible according to provisions of Company law as he has already committed forgery which is illegal but A is liable to compensate the Company as he has lodged the forged transfer and the Company has suffered the loss.

As regards to the liability of the Company towards B, the Company shall be liable to compensate to B so far as the Company had issued a certificate to transfer and was, therefore, stopped from denying the liability accruing from its own Act. Further as the Company has refused to register him as a shareholder, Company has to compensate B. However, in this case the interest of the original shareholder will be protected.

Q.No.60. Sushil, a shareholder, holding 100 shares in XYZ Ltd. applied to the Company for issuing of a duplicate shares certificate. As a Company secretary advise the Company with particular reference to the circumstances and conditions subject to which duplicate shares

certificates can be issued.

Sol.: Section 84(2) provides that a certificate may be renewed or a duplicate of a certificate may be issued if such certificate:

- a. Is proved to have been lost or destroyed or
- b. Having been defaced or mutilated or torn is surrendered to the Company.

For the term and conditions on which duplicate certificates may be issued, Companies (issue of Share Certificates) Rules, 1960 has to be followed. A duplicate share certificate cannot be issued unless:

- a. The consent of the Board is taken.
- b. Payment of fees, if any, not exceeding ₹2 is made by the shareholder.
- c. Proper evidence and indemnity to the satisfaction of the Company is furnished.
- d. Out of pocket expenses estimated to be incurred by the Company in investigating the evidence, as the Board may think fit, are deposited with the Company.
- e. The fact that the certificate is duplicate should be inscribed with the words "duplicate issued in lieu of share certificate no".
- f. Mutilated defaced or torn certificates surrendered shall be defaced by a cancellation mark and destroyed after three years with the authority of the Board.

A Company can, however, issue a duplicate share certificate only to a registered shareholder.

Q.No.61. Is a share warrant holder a member of the Company?

Sol.: No, the share warrant holder is not member of the Company. As per Sec.115 on issue of share warrant the Company shall strike out name of the person from its register of members. As per Sec.41 of the Act, a person can become a member of the Company by agreeing in writing to become the member of the Company and whose name is entered in the Register of Members of the Company.

Q.No.62. Every Company is required to keep the share certificate ready for delivery within three months from the date of allotment.

Sol.: False., Under Sec.113 every Company is required to deliver (Not ready for delivery) the share certificates within a period of 3 months from the date of allotment and within 2 months from the date on which the certificates are lodged with the Company for transfer.

Q.No.63. Under Sec.113 the NCLT can grant extension of time for delivery of shares certificates.

Sol.: Under section 113 of the Act, the NCLT has been vested with the powers to extend the duration within which the certificates for debentures are to be delivered by the Company to the debenture holders. The NCLT is not vested with similar powers in respect of share certificates.

Q.No.64. Share warrants can be issued against fully paid up preference share also.

Sol.: A public Company limited by shares, if so authorized by its articles, may, with the

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previous approval of the Central Government, with respect to any fully paid-up shares, issue under its common seal, a warrant stating that the bearer of the warrant is entitled to the shares therein specified. The words used in the section are "fully paid-up shares". Under the section, there is no distinction between the equity shares and preference shares and thus, the Company can issue share warrants in respect of fully paid preference shares also. (Sec.114)

Q.No.65. X Ltd. is authorised by its articles to accept the whole or any part of the amount of remaining unpaid calls from any member although no part of that amount has been called up. 'X' a shareholder of the X Ltd., deposits in advance the remaining amount due on his shares without any calls made by X Ltd. Discuss the rights and liabilities of Mr. X, which will arise on the payment of calls in advance.

Sol.: A Company may, if so authorised by the articles, accept from any member the whole or a part of the amount remaining unpaid on any shares, although no part of that amount has been called up.

Rights & Liabilities of payment of calls in advance:

- a. **Voting rights:** The shareholders are not entitled to voting rights in respect of the calls so paid in advance by them until the same would become presently payable.
- b. **Liability:** The shareholder's liability in respect of the call for which the advance call is paid, is extinguished.
- c. **Interest:** The shareholder is entitled to claim interest on the amount of the call. If there are no profits, interest must be paid out of capital. The rate of interest can be up to as provided in articles of association. Table A provides payment of interest at 6% p.a.
- d. **Non refundable:** The amount received as calls in advances is not refundable.
- e. **Rank before:** In the event of winding up, the shareholder must be paid of his amount with interest, if any, before other shareholders are paid off.

Q.No.66. Strict compliance with the Articles is necessary for forfeiture of shares.

Sol.: Yes. Forfeiture of shares is governed by the provisions of the articles of association of the Company and there should be strict compliance with the procedural formalities in respect of forfeiture of shares.

Q.No.67. A Company refuses to register transfer of shares made by X to Y. The Company does not even send a notice of refusal to X or Y within the prescribed period. Has the aggrieved party any right(s) against the Company for such a refusal? Advise.

Sol.:

1. When entitled to remedy:

- a. If a Company refuses to register the transfer or transmission of shares or debentures, it shall, within 2 months from the date on which the application for transfer or transmission was delivered to the Company, send notice of such refusal to the applicant, giving reasons for such refusal.
- b. The applicants may appeal to the NCLT against any refusal of the Company to register the transfer or transmission, or against any failure to send notice of its refusal within 2 months.

2. Time limit for application:

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- a. Within 2 months of receipt of notice of refusal or
 - b. Where no reply has been received within 4 months of lodging documents for registration.
3. **NCLT Decision.** NCLT after the enquiry, direct the Company to accept the transfer/transmission or to rectify its register. NCLT has the power to pass interim orders including suspending the voting rights till the enquiry is complete. It may also direct the Company to pay the damages to the aggrieved person.
4. The order of NCLT shall be complied within 10 days of the receipt of the order.
5. **Penalty.**
- a. Default in complying with the order of NCLT will invite the Company and every officer of the Company who is in default punishable with a fine which may extend to `10,000 and with a further fine which may extend to `1000 per day during which the default continues.
 - b. Default in complying with this section will invite the Company and every officer of the Company who is in default punishable with a fine which may extend to `500 per day during which the default continues.

Q.No.68. The Company, without serving a proper notice, forfeited shares held by Mr. P Can Mr. P Claim rectification of the register of members.

Sol.: Yes. Mr. P can claim rectification of register of members of the Company where shares held by him are forfeited by the Company without serving a proper notice for the same. (Sec.111)

Q.No.69. Instrument of transfer is not required to be executed in case of transmission.

Sol. True., when the shares are transferred under the operation of law, either on the death of the shareholder or on his becoming insolvent or when the shareholder is the Co. and such Co. goes into liquidation. For this no transfer deed & payment of stamp duty is required. (Sec.109)

Q.No.70. Before registering transfer of partly paid up shares the Company is required to give a registered notice to the transferor.

Sol.: If transfer is of partly paid up shares and application for transfer is made by transferor transfer not to be registered by the Company, unless Company gives notice of application to the transferee, and transferee makes no objection to the transfer within two weeks from the receipt of notice. Notice deemed to be duly given if despatched by prepaid registered post to the transferee at address given in instrument of transfer. Board of Directors on satisfaction of above steps, recognise the transferee as new holder. (Sec.110)

Q.No.71. Charge can be created on Reserve Capital?

Sol.: False., Sec.125 of the Companies gives the list of assets on which charge can be created.

- a. A charge on any immovable property.
- b. A floating charge on the undertaking or any property of the Company including stock in trade.

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- c. A charge for the purpose of securing any issue of debentures.
- d. A charge on uncalled share capital of the Company.
- e. A charge on calls made but not paid.
- f. A charge on the book debts of the Company.
- g. A charge on Goodwill, Patent, License.
- h. A charge created outside India comprising property situated outside India.
- i. A charge created in India comprising property outside India.
- j. Purchase of a property in India but already subject to charge.
- k. Purchase of a property situated abroad but already subject to charge.

The list given above does not contain "Reserve Capital" and, thus, no charge can be created on it.

Q.No.72. The Company was offered a term loan of `200 crores by a financial institution against the security of entire fixed assets of its two factories situated in Alwar & Parwanoo. After repayment of more than 75% of the loan amount the financial institution agreed to release fixed assets of one of its factory from charge. State whether Company can file part satisfaction of charge or it would amount to modification of charge.

Sol.: The concept of partial satisfaction of charge is not there. Satisfaction shall be in full only. These amounts to modification of charge and the Company will have to file particulars of modification of charge, for registration. (Sec.135)

Q.No.73. Charge can be created on assets which are in possession of the Company on the date of creation of charge.

Sol.: False., Charge can be created even on assets which will come into Company's possession at any future date e.g. future debts, current assets etc. This is called floating charge.

Characteristics of a floating charge:

- a. It is a charge on a class of assets of the Company, both present and future. It does not mean only those assets which were in existence when the charge was created.
- b. The class of assets charged is one which in the ordinary course of business, is changing from time to time.
- c. Until some steps are taken to enforce the charge by the creditors, the Company may continue to deal with the assets charged in the ordinary course of business.
- d. The possession of assets charged is not given to the charge (i.e. creditors).

Q.No.74. ABC Ltd. observed on 2nd May, 2001 that particulars of charge created on 12th March, 2001 in favour of a Bank were not filed with the Register of Companies for Registration. What procedure should the Co. follow to get the charge registered with the Registrar of Companies? Would the procedure be different if the charge was created on 12th February, 2001 instead of 12th March, 2001? Explain with reference to the relevant provisions of the Companies Act, 1956.

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Sol.: The prescribed particulars of the charge together with the copy of instrument of charge shall be filed with the Registrar within 30 days after the date of the creation of charge. In this case particulars of charge have not been filed within the prescribed period of 30 days.

However, the Registrar is empowered to extend the period of 30 days by another 30 days on payment of such additional fee not exceeding 10 times the amount of fee specified on Schedule X. Taking advantage of this provision, ABC Ltd., should immediately file the particulars of charge with the Registrar and satisfy the Registrar that it had sufficient cause for not filing the particulars of charge within 30 days of creation of charge.

If the charge was created on 12th Feb., 2001, then the Co. has to apply to the NCLT under Sec.141 and seek extension of time for filing the particulars for registration. The Co. must satisfy the NCLT that the omission was accidental or due to some other sufficient cause or was not of the nature to prejudice creditors, or that it is just and equitable to grant relief on the other grounds. On such satisfaction, the NCLT may extend the term for the registration of charge on such terms and conditions as it may think fit.

Q.No.75. A meeting was properly convened and was subsequently adjourned by the Chairman. No fresh notice is given for the adjourned meeting which is held subsequently. State whether the adjourned meeting is valid.

Sol.: According to sec.174 of the Companies Act 1956, if within half an hour from the time appointed for holding a meeting of the Company, a quorum is not present, the meeting shall stand adjourned to the same day in the next week, at the same time and place unless the directors determine otherwise. No Fresh notice is, therefore, required to hold the adjourned meeting. Besides, no quorum is necessary in the adjourned meeting. Thus, the adjourned meeting in question is valid.

Q.No.76. The Chairman counts six votes in favour and seven against the resolution. Can the chairman cast his own vote, which he had not exercised earlier, in favour of the resolution and also casting vote which the Articles authorise and declare the resolution as passed?

Sol.: The Chairman after ascertaining the sense of the meeting by show of hands, that 6 votes are in favour and 7 are against the resolution, may before declaration of result cast his vote in favour of the resolution and also the casting vote and declare the resolution as passed.

Q.No.77. The articles of association of M/s. QPR Private Limited provides that 5 members present in person constitute the quorum. The total number of members of the Company is also 5. A general meeting of the Company was held on 25/1/1999 and it was attended by 4 members as the 5th member had expired sometime earlier. In the said meeting a resolution was passed by a majority of 3 to 1 removing one Mr. Doubtful as a director for indulging in anti Company Activities. Mr. Doubtful challenges the validity of the resolution on the ground of lack of quorum in terms of the Articles of Association. Discuss with reference to the relevant provisions of Companies Act whether the contention of Mr. Doubtful is correct.

Sol.: Section 174 of the Companies Act, 1956 stipulates that unless the articles of association of the Company provide for a larger number, two members personally present shall constitute quorum in case of Private Company. Hence a private Company may provide a larger number for quorum. The general principle is that if no quorum is present, the meeting and the proceedings are void. However, there can be situations when quorum becomes immaterial. If all the members are present, it is immaterial that the quorum required is more than the total number of members thus in this case. Mr. Doubtful cannot

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successfully challenge the resolution.

Q.No.78. The Articles of Association of X Ltd., require the personal presence of six members to constitute of General Meetings. The following persons were present at the time of commencement of an extraordinary general meeting to consider the appointment of Managing Director.

1. Mr. G. the representative of Governor of Gujarat.
2. Mr. A and Mr. B shareholders of Preference shares.
3. Mr. L., representing M Ltd N Ltd and X Ltd.,
4. Mr. P, Mr. Q, Mr. R and Mr. S who were proxies of shareholders.

Can it be said that quorum was present? Discuss.

Sol.: In this case quorum for a General meeting is six members to be personally present. For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting. Again, only members present in person and not by proxy, are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purpose of quorum.

If a Company is a member of another Company, it may authorize a person through resolution to act as its representative at a meeting of the other Company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum (Section 187).

Where two or more companies appoint a single person as their representative, then each of such company will be counted quorum at a meeting of the latter Company.

Again, section 187 a provides that the President of India or Governor of State if he is a member of a Company may appoint such person, as he thinks fit, to Act as his representative at any meeting of the Company. A person so appointed shall be deemed to be a member of such a Company and, thus considered as member personally present.

In view of the above there are only four members personally present, namely, Mr. G and Mr. L (representing three Companies and thus effectively equal to three members) Mr A and Mr. B the preference shareholders have been excluded since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have any voting rights. Thus it can be said that the requirement of quorum being six, four members personally present shall not constitute a valid quorum.

Q.No.79. Immediately upon conducting the last general meeting held in July, the Chairman went overseas for medical treatment. Accordingly, the minutes of the said meeting could not be signed by him. To meet the requirements of the law, he sent a letter of authority to the secretary authorizing the latter to sign the minutes on the former's behalf. Can the Secretary Act on the letter of authority? if not, what procedure should be followed?

Sol.: Each page of the minute book should be signed and in the last page of the record of proceedings of each meeting in the minutes book shall be dated and signed by the Chairman of the said meeting. In the event of death or inability of the chairman, by the director duly authorised for the purpose. The Company Secretary cannot carry out the said function, although he had been authorised by the Chairman.

Q.No.80. If a Chairman of General Meeting is unable to sign minutes of General meeting he may authorize any other person to sign the minutes on his behalf.

Sol.: False., Provisions of section 193(1A)(b) provides that the minutes of the proceeding of the general meeting shall be signed by the chairman of the same meeting within a period of 30 days or in the event of death or inability of the chairman by a Director duly authorized by the Board for the purpose.

Q.No.81. The required quorum is not present within ten minutes of the scheduled time of holding of annual general meeting.

Sol.: Quorum is the minimum number of members of a Co. whose presence is necessary for commencing the meeting. If within half an hour for the time appointed for holding a meeting of the Co., a quorum is not present, the annual general meeting shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as determined by the Board. In the present case, as the quorum is not present within 10 minutes of the scheduled time of holding the annual general meeting, the legal position is that the people present will have to wait for another 20 minutes to ascertain whether requisite quorum is present or not, before any decision regarding the conduct of the meeting can be taken.

Q.No.82. XYZ Ltd. wants to hold its annual general meeting on Sunday, the 30th June to facilitate the share holders to attend it. Advise the legal position.

Sol.: According to the provisions of Section 166(2) read with Section 171(1) every Annual General Meeting should be called with at least 21 clear days notice and must be held on a day other than a public holiday i.e., it should be held on a working day during business hours. It is clarified that if any day is declared by the Central Government to be a public holiday after the issue of the notice convening such a meeting, it shall not be deemed to be a public holiday in relation to the meeting. In view of the above mentioned provisions, XYZ Ltd. cannot hold the AGM on Sunday, the 30th June as Sunday is a public holiday.

Q.No.83. Mr. X a shareholder of 100 equity shares of P Limited sent a letter to the Company that the notice of annual general meeting is to be sent to him only by registered post. Is Company under obligation to accept such a request from the shareholder?

Sol.: The Company is under obligation to accept such requests subject to the condition that the expenses to be incurred by the Company for giving the notice by registered post are deposited by the member with the Company, in advance. (Sec.53) In the given case since Mr. X has not deposited any such amount the Company is under no obligation to accept request.

Q.No.84. Pref. shareholders, not being entitled to exercise voting rights are not entitled to attend the general meeting also.

Sol.: False., What the Act prohibits is only their exercise of voting but not the attendance of the meeting. Further they have the right to receive the notice of general meeting of the Company and therefore, the right of preference shareholder to attend the general meeting of the Co. is implied.

Q.No.85. Every Company limited by guarantee must hold a statutory meeting within the time limit prescribed under section 165 of the Act.

Sol.: False., In accordance with the provisions of section 165 only public Companies having share capital or public Companies limited by guarantee and having share capital are

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required to hold the statutory meeting and, thus, a Company limited guarantee and having no share capital is not required to hold annual general meeting.

Q.No.86. A copy of the statutory report is required to be filed with the Registrar of Companies after having been placed before the shareholders in the statutory meeting.

Sol.: False., In accordance with sub-section (5) of section 165, a copy of the statutory report is required to be filed with the Registrar immediately after having been sent to the shareholders.

Q.No.87. If a Company fails to hold the AGM it may be ordered to hold the annual general meeting by the central government on an application made by any person interested in the Company.

Sol.: False., In accordance with the provisions of section 167 of the Act if a Company fails to hold the annual general meeting it may be ordered to hold the annual general meeting by the Central government on an application made by any member of the Company.

Q.No.88. Even a single person present in the annual general meeting held on instructions of the central government constitutes valid quorum.

Sol.: False., Sec.167 provides that the central government while issuing instructions for holding the annual general meeting on a complaint of a member may also issue a direction that even a single member present in the meeting shall constitute a valid quorum. Thus, except where special orders are made by the C.G., single member present in the meeting will not constitute quorum.

Q.No.89. All ordinary business are required to be transacted by ordinary resolution and all special businesses are required to be transacted by special resolution.

Sol.: False., All ordinary businesses are normally transacted through ordinary resolutions except the appointment of auditor under Sec. 224A where the appointment of auditor is required to be made by passing a special resolution. All special businesses are not compulsorily required to be transacted by special resolution. The kind of resolution depends on the provisions of the Act & Articles of the Co.

Q.No.90. 30th June & 31st December have been declared as Public holidays under the negotiable Instrument Act, 1881. Hence, AGM of any Company shall not be held on these dates.

Sol.: False., 30th June & 31st December have been declared as public holiday under the negotiable Instrument Act, 1881 only for the limited purpose of closing of accounts of banks/treasuries etc, and, thus, these two dates shall not be treated as public holiday for the purpose of holding annual general meeting of the Company.

Q.No.91. The shareholders need not disclose reasons for requisitioning extraordinary general meeting while submitting a requisition to the Company therefore.

Sol.: True. In the case of LIC Vs. Escorts Ltd. the Supreme Court has laid down that every shareholders has statutory right to call an extraordinary general meeting and he is not bound to disclose the reason for the resolution proposed to be moved at the general meeting.

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Q.No.92. If quorum is not present within 30 minutes from the appointed time in a general meeting called on a requisition of members of the Company the meeting stands dissolved.

Sol.: True. Sec.174 provides that "If within half an hour from the time appointed for holding a meeting of the Company, a quorum is not present, the meeting, if called, upon the requisition of members, shall stand dissolved".

Q.No.93. Quorum is required to be present throughout the meeting.

Sol.: As per Reg.49 of Table A, quorum should be present at the commencement of the meeting and subsequent absence thereof will not invalidate the proceedings. In case of own articles, in the absence of a provision similar to Reg.49, then it is presumed that quorum should be present throughout the meeting.

Q.No.94. The articles of association of a Company provided that the proxy to be valid shall be deposited at least 24 hours before the commencement of the general meeting. The Company cannot prescribe less than 48 hours time.

Sol.: False., The provisions of the Act provide that the articles of a Company cannot provide more than 48 hours time for lodging the proxy. This even, if articles of Company require proxy to be deposited more than 48 hours before the commencement of the meeting, that shall have effect as if 48 hours time has been provided. However, Companies are free to provide any time less than 48 hours for the same purpose in their articles.

Q.No.95. A resolution put to vote in the general meeting shall be decided by poll unless a demand is made for deciding the matter by show of hands.

Sol.: False., Section 177 provides that, at any general meeting, a resolution put to vote of the meeting shall, unless a poll is demanded, be decided on a show of hands. Therefore, the poll is to be taken only when demanded.

Q.No.96. Poll demanded on the question of election of Chairman and on the question of adjournment of the general meeting must be taken forthwith.

Sol.: True. In accordance with the provisions of section 175 and section 180 of the Act, poll demanded on the question of election of chairman and on a question of adjournment of the meeting shall be taken immediately.

Q.No.97. A body corporate can be represented in the general meeting of any other Company of which it is a member, only by its managing directors.

Sol.: False, Section 187 provides that the Companies shall be represented in the general meeting of the other Companies through any person duly authorized by a resolution and that the presence of such person in the general meeting shall be considered as personal presence of the body corporate represented by him.

Q.No.98. An annual general meeting is called on a fixed day. After the sending of the notice of the meeting, the Government notifies that date as a public holiday. Can the meeting proceed as scheduled?

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Sol.: Yes, the meeting can proceed, as scheduled. According to Sec.166 (2) of the Companies Act, 1956 an annual general meeting must be held on a day which is not a public holiday. But if the date of AGM becomes a public holiday after issue of notice - Meeting can be held on such public holiday.

Q.No.99. A preference shareholder has lodged a complaint with the Company for not receiving notice of an annual general meeting. The secretary of the Company contends that he was not entitled to such notice. Advise the shareholder.

Sol.: The shareholder contention is right and he is entitled to the notice of the annual general meeting. According to section 172 of the Companies Act, 1956, notice of every general meeting of a Company shall be given to every member of the Company. A preference shareholder is also a member because, under the Companies Act, every shareholder- whether ordinary or preference- is a member. As such, he is entitled to the notice of the meetings. In the given problem, the preference shareholder should have been issued a notice and the contention of the secretary is wrong.

Q.No.100. Will a person representing one Company under Sec.187 of the Companies Act, 1956, in addition to representing himself as a member in general meeting of a Company, be counted as two persons for the purpose of quorum?

Sol.: Yes, the person representing one Company under Sec. 187 of the Companies Act, 1956, and also himself as a member shall be counted as two persons for purposes of quorum at general meetings of a Company. This is because of the fact that a person representing a Company Sec. 187 is deemed to be a member of the Company. As he presents himself in two different capacities, he is to be counted as two persons.

Q.No.101. At an adjourned meeting (Which was adjourned previously for want of quorum) of a public Company, the chairman after waiting for half-an-hour after the schedule time finds that only 3 persons are present. Can he declare the meeting closed for want of quorum?

Sol.: No, the chairman cannot declare the meeting closed for want of quorum. In case of a public Company, five members personally present shall be the quorum for a general meeting. But, the Companies Act, if at the adjourned meeting, a quorum is not present within ½ hour from the time appointed for holding the meeting, the members, present shall be a quorum. This being an adjourned meeting, the members present constitute the quorum and, thus, the chairman cannot declare the meeting closed for want of quorum in this case.

Q.No.102. The Governor of a State is a member of a Company and has appointed X as his representative for the purpose of attending meetings. His representative is unable to attend the forthcoming general meeting. Can anything be done in these circumstances?

Sol.: Sec. 187-A of the Companies Act, 1956, provides that a person so appointed is entitled to exercise the same rights and powers as the Governor could exercise. Since a member is entitled to appoint a proxy in his place to attend the meeting of the Company, therefore, a representative of the Governor by virtue of Sec. 187-A of the Companies Act, 1956, is also entitled to appoint a proxy who can attend the meeting on behalf of the representative.

Q.No.103. A proxy duly executed by one of the joint shareholders was lodged 48 hours

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before the commencement of an adjourned general meeting of a Public Ltd Co. If the proxy so lodged valid?

Sol.: No, the proxy lodged is invalid. Sec. 176 of the Companies Act, 1956, provides that an instrument appointing a proxy must be in writing and must be signed by the appointer. In other words, the proxy form must be signed by the member who desires to appoint a proxy. However, where the shares are held jointly by two persons, obviously, such right can be exercised by both of them jointly. As such, in case the shares are held jointly by two or more person, the proxy form must be signed by all of them. Accordingly in the given problem as the proxy has been executed by one of the joint shareholder's it is invalid.

Q.No.104. XYZ Co. Ltd. called its AGM on 7th September 1997. The notice of AGM was posted on 16th August 1997. One member holding 20 shares wishes to challenge the resolutions passed at the AGM on the ground that the notice was not valid. Advise him.

Sol.: According to Companies Act a general meeting of a Company may be called by giving not less than 21 days notice in writing. Not less than 21 days means 21 clear days i.e. excluding both the date on which the notice was served and the date of the meeting. In case the notice of the general meeting is sent by post, service notice of the meeting shall be deemed to have been effected at the expiry of 48 hours after it was posted. In the instant case, the notice was short of one day:

16 th August to 7 th September	23 days
Less. date of service and date of meeting	2 days
Less. 48 hours of posting but 24 hours are common between date of service and 48 hours of posting.	1 day
Total Days.	20 days

Therefore, the meeting was invalid and the resolutions passed were invalid. However in case of AGM, where all members entitled to vote consent, the meeting may be held on shorter notice.

Q.No.105. Examine the validity of the following proxies and suggest remedies where possible.

- L, a member of a private Company, appoints B and C as proxies dividing his voting rights between them. B and C are not members of the Company.
- X, the director of Y Limited is authorized to represent Y Limited at the general meeting of ABC Limited. He in turns appoints a proxy Z.
- Y, a member of a Company not having share capital, appoints a proxy. Articles of the Company are silent as to the power to appoint proxies.

Sol.:

- In case of private Companies only one proxy can be appointed (proviso b to 176) and the proxy need not be a member.
- By virtue of Section 187, if a Company is a member of another Company, it may appoint a representative to vote. A person authorised by resolution as aforesaid shall be entitled to exercise the same rights and powers (including the right to vote by proxy) on behalf of the body corporate. Therefore the proxy Z is a valid one.
- In the case of a Company not having share capital, the right to appoint a proxy is available only if the Articles make a specific provision about the same and therefore appointment is invalid. The Company would have to pass a special resolution to alter

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the Articles of Association; when the same is done, this power may be exercised by the members.

Q.No.106. The paid up share capital of ABC Limited is ` 5 lakhs consisting of 50,000 equity shares of `10 each fully paid-up. Certain members of the Company holding the following shares requisitioned an extra-ordinary general meeting on 1.2.2000: A - 2,250 shares, B - 2,000 shares including 500 bonus shares C - 1,000 shares including 500 rights shares. The directors have failed to call the meeting on the contention that the articles have not permitted the same. What is the course of Action open to the aforesaid members?

Sol.: As per sec.169 of the Companies Act the members of a Company may also ask for an extraordinary meeting to be held.

Persons entitled to requisition. A requisition for convening an extraordinary general meeting may be made by member(s):

- a. Holding 10% of the paid-up share capital of the Company and having a right to vote at the date of deposit of requisition, on the matter to be discussed **Or**
- b. Company has no share capital, members having 10% of the voting power of all members having a right to vote at the date of deposit of the requisition, on the matter to be discussed.

Here the total share capital held by the requisitionists amounts to ` 52,500 and exceeds one tenth of the total of ` 5 lakhs as on the date of requisition on 1.2.2000. Bonus and rights shares are at par with ordinary shares and are to be included in arriving at the eligible value. Therefore the requisition is a valid one. Members can call themselves an EGM called requisitionists meeting satisfying the conditions like time limit, number of required members etc.

Q.No.107. Examine the validity of the following:

- a. J, a member of a private Company, being unable to attend a meeting of the members of the Company appoints more than one proxy on the same occasion. The articles of association of the Company are silent on this issue.
- b. D, a member of MR & Company Limited, holding shares in his own name on which final call money has not been paid, is denied voting right at a general meeting of the Company on the ground that the articles of association do not permit a member to vote if he has not paid the calls on the shares held by him.

Sol.:

- a. As per the Companies Act, unless the articles otherwise provide a member of a private Company shall not be entitled to appoint more than one proxy to attend on the same occasion. Thus based on the above provisions, J in the given case cannot, appoint more than one proxy on the same occasion. Since the articles of the Company also do not provide for the above, he cannot do so.

b. Restrictions on voting rights - Section. 181.

- Y The AOA may prohibit any member from exercising the voting rights if any call money is due on such shares on the date of voting.(If such a provision is not available then a member cannot be prevented from exercising his voting right).
- Y A public Company or a dependent Company shall not put any other restriction on voting rights other than given under Sec.181 of the Act.
- Y However, an independent private Company can provide in their AOA further restrictions like only holders of shares for a specified period alone can exercise voting

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rights.

Q.No.108. State whether the following persons can be counted for the purpose of quorum in a General Meeting of a Public Company.

- a. A person representing three member Companies.
- b. Both the joint owners of shares are present at the meeting.

Sol.:

- a. A representative of a body corporate appointed under Sec.187 is a member personally 'present' for purposes of counting of quorum. If one individual represents three member Companies, his presence be counted as three members being present in person for purpose of quorum.
- b. **Joint shareholders.**
 - Y In the case of joint holders it would be seen prima facie that any one of them may be counted in a quorum.
 - Y It should be noted that Act specifically provides that for certain purposes where two or more persons hold any shares jointly, they shall be counted only as one member. (**E.g.** Under Sec.3(1) (iii) for the purposes of counting the number of members in a private Company).
 - Y If the Act does not provide anything to the contrary, it appears that two or more joint holders when personally present can be counted as so many members for the purpose of quorum.
 - Y Further, in a case, it has been held that two joint holders are each member and are to be counted towards a quorum as two members personally present.

Q.No.109. Examine the validity of the following:

- a. The Board of Directors of a Company refuse to convene the extraordinary general meeting of the members on the ground that the requisitionists have not given reasons for the resolutions proposed to be passed at the meeting.
- b. The Board of Directors refuse to convene the extra ordinary general meeting on the ground that the requisitions have not been signed by the joint holder named first in the register in respect of the shares held by the joint share holders.
- c. Holding of extra general meeting at a place other than the village in which the registered office of the Company is situated, on the ground that it is more convenient for the members to attend the meeting at a place other than the village in which the registered office of the Company is situated.
- d. Adjournment of extra ordinary general meeting called upon the requisition of the members on the ground that the quorum was not present at the meeting.

Sol.:

- a. Action of the Board of Directors in the given case is not valid in view of the Supreme Court decision in LIC Vs. ESCORTS LTD. Requisitionists are not bound to give reasons for the resolutions proposed to be passed at the meeting.
- b. Sec.169 provides that, in the case of joint shareholders requisition signed by one shareholder is sufficient. The Action of the Board of Directors is not valid.
- c. Provisions of Sec.166(2) of the Companies Act, 1956 apply to AGM. EGM can be held at any place. In the given case Action of the Board of Directors is bonafide and hence it is

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valid.

- d. In the given case unless the Articles of the Company otherwise provide, the meeting shall stand dissolved, if called upon the requisition of members, in case the quorum is not present with half hour from time appointed for a meeting of the Company.

Q.No.110. The quorum for a general meeting of a Company is 9 members personally present according to the provisions in the articles of association of the Company. Examine with reference to the relevant provisions of the Companies Act, 1956 whether there is proper quorum at a general meeting of the Company, which was attended by the following persons.

- 7 members personally present out of which 2 members are also proxies for 5 members.
- 5 members represented by proxies who are not members of the Company.
- One person representing two member Companies.

Sol.: In this case, the quorum for a general meeting is 9 members personally present according to the provisions in the Articles of Association of the Company. For the purpose of ascertaining quorum, only members present in person and not by proxies, are to be counted. If a Company is a member of another Company, it may authorise a person by a resolution to Act as its representative at a meeting of the latter Company, then such a person shall be deemed to be a member present in person and counted for the purposes of quorum. Where two or more Companies being members of another Company appoint a single person as their representative, then each of such Companies will be counted in quorum. Hence the meeting is attended by 9 members personally consisting of 7 members personally present & 2 member companies and there is proper quorum.

Q.No.111. Any document sent to the member by the Company will be deemed to have been delivered to him on expiry of 48 hours from the time of delivery.

Sol.: False., Sec.53 provides that the notice of a meeting shall be deemed to have been served on members at the expiration of 48 hours after the letter containing the same is posted and in case of any other documents to be served on members it shall be deemed to have been delivered at the time at which the letter would be delivered to him in the ordinary course of post.

Q.No.112. MR Co. Limited could not hold its first AGM within 18 months from the date of its incorporation. The Board of Directors of the Company by a resolution decide not to call first AGM at all on the ground that most of the directors were outside India on a business trip and since the Company was under gestation period it would cost the Company heavily. Referring to the provisions of the Act, examine whether:

- The Board of Directors decision is legally justified.
- What course of Action is open to the Company if one of the members writes to the Company for holding the meeting though the statutory time limit is over?

Sol.: According to Section 166 of the Companies Act, 1956 every Company shall in each year hold in addition to any other meetings a general meeting as its AGM and shall specify the meeting as such in the notices calling it and not more than 15 months shall elapse between the date of one AGM of a Company and that of the next. The **First** AGM of the Company must be held within 18 months from the date of incorporation of the Company. If the AGM is held within that period and consequent to which the Company had not held an AGM in the year of incorporation or in the following year there is no violation of the Act. Further the Registrar may extend the time within which any AGM (not being the first AGM)

shall be held by a period not exceeding three months.

Thus, applying the above provisions, the questions can be answered as follows:

- a. The Board of Directors decision is not legally justified. Holding of First AGM is a statutory requirement. No Company can be exempted from this.
- b. The course of Action open is that any member should apply to the CG under Section 167 and the CG in turn shall call or direct the calling of a general meeting of the Company with necessary directions and a meeting held according shall be an AGM. The member should approach the CG and seek its assistance to fulfill his demand. Member may, therefore, be advised accordingly.

Q.No.113. Examine the possibilities of the following:

- a. Signing of minutes of general meeting of a Company by a person other than the Chairman of the said meeting.
- b. Holding of annual general meeting of a Private Company in New Delhi when its registered office is situated in Lucknow.

Sol.:

- a. As per the Companies Act the minutes of the proceedings of a general meeting must be signed by the chairman of the same meeting within a period of 30 days of the conclusion of such meeting. But in the event of death or inability of that chairman within that period, the minutes of the said general meeting may be signed by a director duly authorised by the Board for the purpose.
- b. As per the Companies Act every annual general meeting of a Co. must be held either at the registered office of the Co. or at some other place within the city, town or village in which the registered office of the Co. is situate. But the proviso to Sec.166(2) permits a Private Co. which is not a subsidiary of a public Co. to fix a place for holding the AGM by a resolution agreed to by all the members. So it is possible to hold the AGM in New Delhi provided it is agreed by all the members by a resolution and the private Company is not subsidiary of a public Company.

Q.No.114. A & B are joint-holders of 1,000 shares in ABC Ltd. which has adopted Table A as its Articles. For the general meeting of the Company, A whose name stands first in the order of names executes a proxy authorising X to attend the meeting. On the other hand B appoints Y as his proxy for the meeting.

- a. Of the two proxies X and Y who will have the right to attend and vote in the meeting?
- b. Would it make any difference to your answer if A's proxy is registered first with the Company and B's proxy is registered later?
- c. What would be your answer if B personally attends the meeting?

Sol.:

- a. According to regulation 57 of Table A, in the case of joint holders of shares, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders. As such, the seniority shall be determined by the order in which the names stand in the register of members. Unless the Company has modified Regulation 57 of Table A, the proxy appointed by A will have the right to attend and vote in the general meeting. Y, the proxy appointed by B, will have no right to attend and vote in the meeting.
- b. The proxy appointed by A will be valid. The time of its lodgment with the Company is immaterial. Though B has lodged his proxy later, but as given above (Regulation 57 of Table A) it cannot supersede A's proxy.

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- c. After giving a proxy if a member personally attends the meeting and votes thereat, the proxy is automatically cancelled. If B personally attends the meeting, both the Proxies X and Y shall be revoked.

Q.No.115. A Company served a notice of a general meeting upon its members. The notice stated that a resolution to increase the share capital of the Company would be considered at such meeting. A shareholder complains that the amount of the proposed increase was not specified in the notice. Is the notice valid?

Sol.: Section 173 of the Companies Act, 1956 requires a Company to annex an explanatory statement to every notice for a meeting of Company, at which some Special Business to be transacted. This explanatory statement is to bring to the notice of the members all material facts relating to each item of special business. Section 173 further specifies that all business in case of any meeting other than annual general meeting is regarded as special business. Thus, the objection of the shareholders is valid since the details on the item to be considered are lacking. The notice is, therefore, not a valid notice under Section 173 of the Companies Act, 1956.

Q.No.116. The secretary of a Co. while sending out to members of the Co. notices of a special resolution to be proposed at the AGM inadvertently omitted to send notice to one member. The resolution was passed at the meeting. Discuss whether the resolution is valid or not.

Sol.: Section 172(3) of the Companies Act requires that proper notice must be served on all the persons entitled to receive such notice. Deliberate omission to give notice even to a single member entitled to receive notice, shall invalidate the proceedings of the meeting. But, however, it provides that an accidental omission to give notice to a member or if the member does not receive the notice, the meeting cannot be held invalid. Thus, in the present case, the resolution shall be valid since the omission is stated to be inadvertent (i.e. unintentional).

Q.No.117. The auditor of a Company complains that he was not given notice of a recently held general meeting of the Company. The secretary of the Company contends that as no part of the business of that meeting concerned the auditor, no notice was required to be given to him. Do you agree with the secretary? If the auditor attends a general meeting, can he participate in the meeting?

Sol.: The contention of the secretary is not correct. The auditor has a statutory right under Companies Act to receive all notices of any general meeting of a Company, which any member is entitled to have sent to him. Failure to send notice of general Meeting to the Company's auditor, whether he is concerned or not with any part of the business to be transacted at the meeting, amounts to a default on the part of the Company. Sec.231 further entitles the auditor of a Company to attend any general meeting of the Company. He cannot participate in the meeting.

Q.No.118. Discuss the validity of the following: ABC (Pvt.) Ltd. provides in the Articles of Association of the Company special requirements for the forms of proxy. 'Z', a member, submits a form of proxy to the Company in the form given in Sch. IX of Companies Act. The Company rejects the proxy.

Sol.: Section 176(6) provides that an instrument appointing a proxy, if in any of the forms set out in Schedule IX shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the Articles. The aforesaid provisions are applicable to both public as well as private Companies. Accordingly, Company is guilty of wrongful rejection.

Q.No.119. The Registrar of Companies on examining the statutory report filed by M/s De Jyoti Company Ltd finds that the report has been certified as correct, by all the directors of

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the Company except the Managing director. The ROC refused to register the document on the ground that it is not signed by the Managing Director of the Company, and further wants to hold the Company liable to penalties for non-compliance of the provisions of the Companies Act. State in this connection

- a. What provisions of the Companies Act have not been complied with by the Co. and its officers?
- b. Whether the Registrar of Companies can hold the officers of the Company liable?

Sol.:

- a. Sec.165 of the Companies Act, 1956 requires the statutory report to be certified as correct by at least two directors of the Company one of whom must be a managing director, where there is one. Thus, the aforesaid provision of Section 165(4) has not been complied with.
- b. Yes, the Registrar can hold the officers of the Company liable.

Q.No.120. At an annual general meeting held on 25th Sept. 1989, the auditor was appointed to hold office up to the conclusion of next annual general meeting. The next annual general meeting was convened on 20th September, 1990 but stood adjourned without transacting any business. Does the retiring auditor continue in office?

Sol.: According to the Companies Act, 1956, an auditor who is appointed at an annual general meeting holds office from the conclusion of that AGM to the conclusion of the next AGM. In the given case, the auditor was to hold office up to conclusion of the AGM duly convened but which stood adjourned. As the adjourned meeting is merely a continuation of the original meeting, the retiring auditor continues to hold the office till the conclusion of meeting.

Q.No.121. Annual general meeting of a public Company was scheduled to be held on 15.12.1899. Mr.X, a shareholder, issued two proxies in respect of the shares held by him in favour of Mr.A and Mr. B. The proxy in favour of Mr. B was lodged on 12.12.1889 and the one in favour of Mr. A was lodged on 15.12.1889. The Company rejected the proxy in favour of Mr.B as the proxy in favour of Mr. B was dated 12.12.1889 and that in favour of Mr.A was dated 13.12.1889. Is the rejection by the Company in order?

Sol.: In case more than one proxies have been appointed by a member in respect of the same meeting, one which is **later in time** shall prevail and the earlier one deemed to have been revoked. Thus, in the normal course, the proxy in favour of Mr. A, being later in time, should be upheld as valid. But as per Sec.176. A proxy should be deposited 48 hours before the time of the meeting. In this case, the proxies should have, therefore, been deposited on or before 13.12.1889 (the date of the meeting being 15.12.1889). But, Mr. A deposited the proxy on 15.12.1889. Therefore, proxy in favour of Mr. A has become invalid. Thus, rejecting the proxy in favour of Mr. B is unsustainable. Proxy in favour of Mr. B is valid since it is deposited in time.

Q.No.122. Once annual General Meeting was called by a Company in December 1994. This meeting was adjourned to march 1995 and then held. Subsequent meeting was held in February 1996. Is the Company liable for any irregularity?

Sol.: Sec.166 of the Companies Act, 1956 requires a Company to hold its annual general meeting every calendar year. Thus, in the above case the meeting held in March 1995 is actually the meeting of December 1994. Since, the next meeting is held only in February 1996, the meeting of December 1995 has been missed. Under these circumstances, unless permission of the registrar was obtained for extension of time, which may be granted up to a period of 3 months under certain special circumstances, the Company shall be convicted.

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Q.No.123. At an adjourned extraordinary general meeting of a public limited Company only three members are personally present. Comment.

Sol.: As per Section 174(5), if a meeting is adjourned for want of quorum and at the adjourned meeting also quorum is not present within half-an hour from the time appointed for holding the meeting, the members present shall be quorum. Assuming that the given situation, i.e. adjournment of the meeting is caused because of absence of quorum, the above-stated position will prevail. Accordingly, three members who are personally present can validly conduct the meeting. But if adjournment has taken place for any reason other than absence of quorum, the quorum as per Articles or at least five members must be present.

Q.No.124. M, a foreign shareholder, receives notice of the annual general meeting after it was held.

Sol.: Under Sec.53 of the Companies Act a Company is required to serve notice of meeting on foreign shareholders only if they have left their Indian address. Further, in such cases it would be enough if the notice excluding the explanatory statement is advertised in a newspaper circulating in the neighbourhood of the Registered Office of the Company. However, the fact that the explanatory statement has been sent along with the notice of the meeting should be mentioned in the advertisement. Therefore, 'M' attention should be drawn to the notice published in the newspaper.

Q.No.125. At a general meeting of a Company a matter was to be passed by a special resolution. Out of 40 members of the Company 20 voted in favour of the resolution, 5 voted against it and 5 votes are cancelled. The remaining 10 members abstained from voting. The chairman declared the special resolution as passed. Is the decision valid?

Sol.: In case of a special resolution votes cast in favour of the resolution must be at least three times the votes cast against it. Votes cancelled or votes of members who abstain from voting are not taken into account. In the given case, since the votes cast in favour(20) are more than three times the votes cast against the resolution(5) the decision of the chairman treating the resolution passed is valid.

Q.No.126. Dividend can be paid on the basis of called up capital.

Sol.: False. Dividend shall be paid up only on paid up capital. (Sec.93)

Q.No.127. Under section 205 Companies defaulting in compliance with the provisions of section 80A can not pay dividend on equity share till default continues.

Sol.: True. Section 80A relates to redemption of irredeemable preference shares. Sec.205 of the companies act provides that the Company which fails to comply with the provisions of Sec.80A shall not declared any dividend on its equity shares as long as the failure continues.

Q.No.128. Dividend cannot be paid in kind.

Sol.: True. Sec.205 provides that the dividend shall be paid in cash and that issue of fully paid- up Bonus shares is not prohibited by capitalizing the profits or reserves of the Company.

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Q.No.129. Company can adjust amount of dividend payable to a shareholder against any sum due to it from the shareholders.

Sol.: True. As per Sec.207 the dividend payable by the Company to any person can be lawfully adjusted by the Company against any sum due to it from the shareholders.

Q.No.130. Strike in postal dept. could be a valid reason for delay in dispatch of dividend warrants?

Sol.: True. Sec.207 provides that the Company shall not attract any penalty for delay in payment of dividend for any other reasons not due to any default on the part of the company.

Q.No.131. Academic qualification of a member is also required to be entered in the Register of Members of the Company.

Sol.: False., Sec.150 of Act requires the following to be entered in Register of Members:

- a. The name and address, and the occupation, if any, of each member;
- b. In the case of a Company having share capital, the shares held by each member, distinguishing each share by its member and the amount paid or agreed to be considered as paid on those shares;
- c. The date at which each person was entered in the Register as a member; and
- d. The date at which the person ceased to be a member.

The particulars mentioned above are the only particulars of a member which are required to be entered in the Register of Members maintained by the. There is no requirement of entering academic qualification of the members in the Register of Members.

Q.No.132. All private limited Companies are required to maintain index of members.

Sol.: False., Under section 151 every Company in which number of members exceed 50 is required to maintain an alphabetical index of all the members. Private limited Companies, generally, do not have more than 50 members and thus these are not required to maintain an index of members. However, if number of members in private Companies also exceeds fifty, then such Companies will also be required to maintain index of members.

Q.No.133. Company can maintain its books of account on single entry system of accounting.

Sol.: False., Sec.209 provides that the Company shall not be deemed to have maintained proper books of account unless these have been maintained on accrual basis and on double entry system of accounting.

Q.No.134. In accordance with the provisions of section 2 (17) of the Act "financial year" refers to a period of 12 months

Sol.: False., Under Sec.2(17) "financial year" means", the period in respect of which any profit and loss account of the Company is made up, whether that period is a 12 months or not. Financial year of Company may extend up to 18 months.

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Q.No.135. Any partnership firm having more than 20 partners is necessarily required to be registered under the Act as a Company?

Sol.: True. An association of more than 10 persons carrying on the business of banking Or An association more than 20 persons carrying on any other type of business, not registered under the Companies Act or any other law is an 'Illegal Association' (Sec.11). In such a case such association must have to be registered under the Companies Act or any other Indian law.

Q.No.136. Mr. M applied for allotment of shares in the name of Mr.Dara. Subsequently it transpired that the particular application made in the name of Mr.Dara was in fictitious name. Did Mr. M. incur any penalty under the Companies Act, 1956?

Sol.:

- a. **1st Declaration.** Sec.187C provides that a person, whose name is entered in the register of members of a Company as the holder of a share in that Company but who does not hold the beneficial interest (called registered holder) in such shares, shall make a declaration to the Company in the prescribed form specifying the name and other particulars of the person who holds the beneficial interest in such share. Such declaration shall be made by the registered holder within 30 days after his name is entered in the register of members.
- b. **2nd Declaration.** Similarly a person who holds a beneficial interest in a share of a Company, shall, within 30 days after his becoming such beneficial owner, make a declaration to the Company in the prescribed form specifying the particulars of the person in whose name the shares stand registered.
- c. **Penalty.** If the registered holder or the beneficial owner fails to make the aforesaid declarations, without any reasonable excuse to do so, he shall be punishable with the fine up to `1000 for every day during which the default continues.

Q.No.137. The name of Shri A.K. Modi appears in the register of members of XYZ Ltd. as holding 5,000 Equity' shares of `10 each. However, according to the information given to you, Shri R.S. Darna is the beneficial owner of the said shares. Advise XYZ Ltd. about the procedure to be followed under the provisions of the Companies Act.

Sol.: Refer to the previous question.

Q.No.138. The rates of equity dividend declared and paid by a Company are as follows: Year 2002 - 15%, Year 2001 - 12%, and Year 2000 - 12%. The Company has earned sufficient profit after tax in 2003 and wishes to propose a dividend on equity shares at 11% of the current profits. It also wishes to transfer more than 10% of Current Profits to its Reserves. The Company did not issue bonus shares during last few years. The Company's PAT for the past years are: Year 2003 - ` 10,00,000, Year 2002 - `17,00,000, Year 2001 - ` 15,00,000, and Year 2000 - ` 18,00,000. Comment on whether the Company is allowed to transfer a higher rate of profits to Reserves.

Sol.: A company may transfer a higher percentage of profits (i.e., more than 10%) by satisfying the below given conditions:

- a. **Minimum rate:** The company is to maintain a rate of dividend for the current year equal to the average rate of dividend for the immediately preceding 3 years. In the given case, the average rate of dividend for the previous three years $= (15+12+12)/3 = 13\%$ and higher than the proposed dividend rate of 11%. Hence, the first condition is not satisfied.
- b. **Minimum amount:** Where bonus shares have also been issued in the financial year in which the dividend is declared or in the 3 years immediately preceding the financial year, a minimum amount of dividend equal to the average amount of dividend declared over the 3 years immediately preceding the financial years is to be maintained. In the given case, there is no bonus issue and this condition is hence not applicable.
- c. **However,** if the **PAT** for the current year is lower at least 20% compared to the average PAT for the immediately 2 preceding years, the company will not be required to ensure the maintenance of the average **rate/amount** of dividend mentioned earlier. In the given case, PAT of the current year is `10 lakhs, which is 37.5%  $[(16-10)/16]$  lower than that of the average of the immediately preceding two years `16 lakhs, $[(17+15)/2 \text{ Years}]$ The Company may take advantage under this exception.

Other laws**THE PAYMENT OF BONUS ACT**

Q.No.1. An employer had been paying to his employees every year at the time of Deepawali one month's basic wages as Deepawali Bonus for the last 10 years, in addition to the bonus payable under the Payment of Bonus Act. The bonus had been paid even in those years when there were losses. The employer now wants to adjust Deepawali Bonus paid by him for the current accounting year against the bonus payable by him under the Act, for the current accounting year. State whether it is possible for the employer to make the above adjustments.

Q.No.1a) An employer had been paying to his employees every year at the time of 'Diwali' one month's basic wages as bonus for the last 10 years, In addition to the bonus payable under the P.B. Act, 1965. The bonus had been paid even in those years when there were losses. The employer now wants to adjust 'Diwali' bonus paid by him for the current accounting year against the bonus payable by him under the Act for the current accounting year. State with reference to the provision of the Payment of Bonus Act, 1965, whether it is possible for the employer to make the above adjustment.

Sol.: According to Sec.17 of the Payment of Bonus Act, if the employer has paid in any accounting year, Deepawali, Puja or any customary bonus to his employees, the employer is within his rights to deduct the amount of bonus so paid from the amount of bonus payable by him under the Act in respect of that accounting year. Thus, the employer can deduct/adjust the Deepawali bonus already paid against the bonus payable under the Act and the employees shall be entitled to receive only the balance.

Q.No.2. A person has worked only for 35 days in an accounting year. Is he eligible or entitled to be paid bonus by his employer for that year?

Sol.: The employee in the given case has not worked for all working days in an accounting year. Sec.13 provides for proportionate reduction of bonus in such cases. The employees

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shall hence be entitled to bonus for 35 working days only as a ratio of the bonus payable for the total working days.

Q.No.3. X, a temporary employee drawing a salary of `3, 000 per month, in an establishment to which the Payment of Bonus Act applies was prevented by the employers from working in the establishment for two months during the financial year 2001-2002, pending certain inquiry. Since there were no adverse findings 'X' was re-instated in service. Later, when the bonus was paid to other employees, the employers refuse to pay bonus to 'X', even though he has worked for the remaining ten months in the year. Examine the validity of employer's refusal?

Sol.: The employee in the given case has not worked for all working days in an accounting year. Sec.13 provides for proportionate reduction of bonus in such cases. (Sec.13) But Sec.13 does not cover a case where an employee was prevented from working by reason of an illegal order of termination. Thus based on the above, the refusal by the employers to pay bonus to X is not valid and he (X) is entitled to get bonus.

Q.No.4. A Company in a particular accounting year suffered losses and hence was not able to pay even the minimum bonus to its workmen. State in this connection, whether the minimum bonus is payable irrespective of losses and any circumstances that the Company may get exemption under the Payment of Bonus Act, 1965.

Sol.: As per the act, minimum bonus is payable whether or not the employer has any allocable surplus in the accounting year i.e. even if the employer suffers losses during the accounting year he is bound to pay this. However, exemption can be granted by the central government - Write Sec.36.

Q.No.5. In an accounting year, a company to which the payment of Bonus Act, applies, suffered heavy losses. The Board of Directors of the said company decided not to give bonus to the employees. The employees of the company move to the Court for relief. Decide in the light of the provisions of the said Act whether the employees will get relief?

Sol.: As per the act, minimum bonus is payable whether or not the employer has any allocable surplus in the accounting year i.e. even if the employer suffers losses during the accounting year he is bound to pay this (Sec.10). Applying the provisions of as contained in Section 10 the employees shall succeed and they are entitled to be paid minimum bonus at rate 8.33% of the salary or wage earn during the accounting year or ` 100 ( ` 60 in case of employees below 15 Years of age), whichever is higher.

Q.No.6. Mr. Sharma is a supervisor in a factory drawing a salary of `3, 500 per month. In a particular accounting year he was on one month leave with salary. His employer declared minimum bonus as per the Payment of Bonus Act, to all eligible employees. State in this connection:

- What shall be the salary that shall be taken into account for the purpose of calculating bonus payable to him?
- What shall be the total bonus payable to him in that accounting year?
- What would be your answer if the company suffers losses in that accounting year?
- Is bonus payable to him if he was illegally terminated?

Sol.:

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- a. Where the salary or wage of an employee exceeds ₹ 2, 500 per month, the bonus payable to such employee shall be calculated as if his salary or wages were ₹ 2, 500 per month. In the instant case, Mr. Sharma is drawing a salary of ₹ 3, 500 per month. For the purpose of bonus his salary shall be taken at ₹ 2, 500 per month.
- b. The total bonus payable to him in that accounting year shall be ₹ 2, 500 X 12 X 8.33%. For the purpose of calculating the total working days, leave with salary or wages shall be deemed to the working days of an employee. (Sec.14)
- c. Even if the company suffers losses, the employer has to pay the minimum bonus.
- d. Where an employee was prevented from working by reason of an illegal order of termination, Sec.13 and 14 do not apply.

Q.No.7. A Company could not pay bonus to its employees even after the expiry of six months from the close of its accounting year. Can the employees sue the employer for this reason?

Sol.: All amounts payable to an employee by way of bonus shall be paid in cash by his employer, within a period of 8 months from the close of the accounting year. This period of 8 months may be extended up to a maximum of 2 years by the appropriate government, on an application being made by the employer. Since the periods of 8 months have not expired, employees cannot sue the employer.

Q.No.8. An employee drawing a salary of ₹ 5,000 per month is entitled to Bonus. True/false.

Sol.: False. As per the Payment of Bonus Act, 1956, an employee employed on a salary or wage not exceeding ₹ 3,500 per month is entitled to Bonus.

Q.No.9. S joins as a worker with Gokale Sugar Factory on 2nd February, 04. Will he be eligible for Bonus for the financial year 2003- 04?

Sol.: Sec.8 of the Payment of Bonus Act provides that an employee is entitled to bonus if he has worked in the establishment for not less than 30 days. Since S has worked for more than 30 days in the accounting year, he would be eligible for Bonus for 2003-04.

Q.No.10. T Ltd. Carried on three business ventures viz., manufacturing sugar, cement and heavy engineering machinery, locating them in three different places in North India. They employed workmen on different terms in the different units. One of these units was financially feeling ill. The workers of this unit demanded bonus on the basis of treating these three units as one composite establishment. Can the workmen succeed in getting bonus?

Sol.: The payment of bonus act provides that, where an establishment consists of different departments or has branches, all such departments or branches shall be treated as part of the same establishment. Therefore the workmen succeed in getting bonus.

Q.No.11. State whether an employee is eligible for payment of bonus for the following period -

- a) An employee laid off under an agreement.
- b) An employee on casual leave for 5 days in a year.
- c) A woman employee on maternity leave.

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- d) An employee absent due to temporary disablement.
- e) An employee prevented from working by reason of legal order of termination.

Sol.: The eligibility of the following categories of employees to bonus are discussed below

a) An employee laid off under agreement - Eligible for bonus for the period of so laid off (Sec.14)

b) An employee on casual leave - Eligible for bonus for the period of such leaves (Sec.14) as casual leaves are generally leave with salary.

c) Woman employee on Maternity Leave - Eligible if she has been on leave with salary wages.

If she has been absent i.e. with salary /wages, she is not eligible for that period of absence.

d) An employee absent due to temporary disablement eligible only if the temporary disablement

is caused by accident arising out of and in course of employment

e) An employee prevented to work by order of legal termination is eligible for bonus for that period.

Q.No.12. In an accounting year, A company to which the Payment of Bonus Act, 1965 applies, suffered heavy loss. The B.O.D of the Company decided not to give bonus to the employees. The employees of the company move to the court for relief. Decide in the light of the provisions of the said Act, whether the employee will get relief (PEII May 2003).

Sol.: The employees are entitled to get minimum bonus even if the company suffered any loss. As per Sec.10 of Act, Every employer shall bound to pay to every employee a minimum bonus which shall be 8.33% of salary/wages earned by the employee during the accounting year or ` 100 whichever is higher, whether or not the company has allocable surplus. In case of an employee who has not completed 15 years of age, such min. bonus would be ` 60 or 8.33% of the salary/wages, whichever is higher. In the present problem, Employer is liable to pay minimum bonus to the employee.

Q.No.13. Can the appropriate Government exempt an establishment from payment of statutory minimum bonus? If so under what circumstances?

Sol.: As provided in Sec.36 of Payment of Bonus Act, 1965, If the appropriate Government, having regard to the financial position and other relevant circumstances of any establishment is of the opinion that it will not be in public interest to apply, all or any of, the provisions of the Act thereto, it may by notification in the Official Gazette exempt such establishment for such period as may be specified therein and subject to such conditions as it may think fit.

Q.No.14. Mr. K, Who is a casual employee of PQR Company actually worked in a year for 27days. However, he was absent due to temporary disablement caused by an accident arising out of and in the course of his employment for 7 days and has been laid off for 2 days as per the service agreement. Is he eligible to bonus under the Payment of Bonus Act, 1965?

Sol.: As per Sec.8 of the Payment of Bonus Act, 1965, An employee is eligible to bonus if he has worked for not less than 30 working days in the company. Further as provided in Sec.14 of the said Act, and 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 I.D. Act, 1947 or has been absent due to temporary disablement caused by accident arising out of and in course of his employment.

In the given problem, Mr. X has worked for 27 days, temporarily absent for 7 days due to accident arising out of and in the course of employment and laid off for 2 day as per an agreement. Therefore, the total day's eligible for bonus = $27+2+7=36$ days and Mr. X is eligible for bonus under the Payment of Bonus Act, 1965.

Q.No.15. For the financial years 2001-02, 2002-03 and 2003-04 the amount of available surplus allocable as bonus to all employees of the company were ` 6,35,000, ` 2,20,000 and ` 3,75,000 respectively. Maximum amount of bonus payable to all employee of the company as per the Payment of Bonus Act, 1965 is ` 2,50,000 for each of the said years. In terms of the provisions of the said Act calculate the amount a company can pay as bonus to its employees, the amount set on in such year and the cumulative set on amount at the end of the year 2003-04.

Sol.: Considering Sec.15 of P.B. Act, Given problem can be solved in the following way:

Year	Avbl Surplus Allocable as bonus (`)	Amount of bonus payable (`)	Set on or set off or Year c/f (`)	Cumulative set on or set off (`)
2001-02	6,35,000	2,50,000	50,000	2,50,000
2002-03	2,20,000	2,50,000 (incl. `30K for 02-03)	Nil	2,20,000
2003-04 (2.2L + 1.25L)	3,75,000	2,50,000	1,25,000	3,45,000

Q.No.16. State with reference to provisions of the Payment of Bonus Act, 1965 whether the following employees are eligible to payment of bonus in terms of provisions of said Act.

- An employee working in Life Insurance Corporation of India.
- Employees of a university or college.
- Employees employed through contractors on building operation.
- Employees of National Housing Bank.
- Employee of Reserve Bank of India.
- Employees of a Municipal Corporation.

Sol.: Sec.32 of the Payment of Bonus Act, 1965 specially provides employees to whom the provisions of the Act shall not apply. Considering the said provision, the eligibility of the employees in the given problem are stated below.

- | | | |
|---------------------|-----------------|-----------------|
| a.not eligible | c. not eligible | e. not eligible |
| b.not eligible | d. not eligible | f. not eligible |

Q.No.17. Sri. K. Mukherjee, an employee of Bigboss Ltd. left the company on 30.11.04 on health ground. He was on sick leave since 5th August 2004 and did not work from that date. There was an agreement by the company with its worker in 1998 for payment of bonus to employees. The company refused to pay the bonus for the year 2003-04 and threatened the employees of retrenchment in case of any labour trouble in connection with the bonus issue. Explain in terms of the payment of Bonus Act, 1965

- What remedy is available to the workers,
- Can Sri Mukherjee after leaving the company move to recover amt from company?
- What is the power of the appropriate Government to recover the amount?

Sol.: As per Sec.21 of P.B. Act,

(I). Workers can apply to appropriate government for recovery of amount due to them.

(ii). Sri Mukherjee can move to appropriate government within one year from the date the

money became due to him.

(iii). The appropriate government if satisfied that any amount is due to Sri Mukherjee, It shall

issue a certificate for that amount to the collector who shall collect the amount as an

arrear of land revenue.

Q.No.18. Sri. Sanjib is an employee of the Megatele Co. Ltd. There are three trade unions in the company. One of the unions prevented the workers belonging to the workers of another union and as a result Sri Sanjib was prevented from attending to his work for few days. The company paid bonus to its employees during the year 2003-04 but refused to pay full bonus to Sri Sanjib because of his not attending office during the period he was prevented from attending office. Explain in terms of the Payment of Bonus Act, 1965 whether Sri Sanjib would be entitled to bonus for those days.

Sol.: As per Sec.14 of P.B. Act, An employee who is willing to work and is prevented from working is therefore eligible to bonus. Sri Sanjib is entitled to bonus for those periods.

Q.No.19. Sri Bholanath, an employee of Newtele Ltd. destroyed some electronic machines in the company premises after taking alcoholic with his friends in the company premises. He was found guilty and punished under the industrial Disputes Act, 1947. The Company loose huge amount due to break down of the machines. When the company paid bonus in that year to its employees it deducted the amount from the bonus payable to Sri Bholanath 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 Sri Bholanath?

Sol.: As per Sec.18 of P.B. Act, The company can deduct the amount of loss from the bonus payable to Shri Bholanath and it did not violate the provisions of the Act.

CO-OPERATIVE SOCIETIES ACT

Q.No.1. A Co-operative Society with unlimited liability wants to expel its member, who prejudices the society by his misconduct. For this purpose, the society wants to amend its bye-laws. State the grounds which should be included in the bye-laws of the society so as to expel such member from the membership of the society?

Sol.: The society has the right to expel a member who conduct or character is prejudicial to the society. The bye-laws of a society normally provide that a member may be expelled if:

- He fails to fulfill his obligations in the **matter of dues** (the number of month's arrears being specified).
- He becomes a **member of another similar society** and refuses to withdraw (because each member has the right to inspect the books of the society and may pass information to a rival society of which he is a member).
- He is to be proceeded **against for debts**.
- He becomes **insolvent**.

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- e. He engages in such **activities as might be contrary to the principles of the society.**
- f. He becomes **unsound mind.**
- g. He is **convicted** by as criminal court, especially for bribery, forgery, theft or fraud.
- h. He has **committed an act** that is considered **dishonorable** by the managing committee.

Q.No.2. S is a member of a co-operative society registered with the unlimited liability under the Cooperative Societies Act, 1912. Holding shares of the society for ten months, S transfers his shares to Mohan. Decide whether transfer of shares in favour of Mohan is valid?

Sol.: In the case of an **unlimited Society**, a member cannot transfer any shares unless:

- a. He has held such shares for not less than 1 year &
- b. The transfer is made to the society or to a member of the society.

Hence, the transfer of shares by S is not valid since he had held these shares only for 10 months.

Q.No.3. Mr. Ramamurthy is a member of a co-operative society. After one year he becomes member of another society. One of the members of society complains to the society Mr. Ramamurthy's membership in the other society and asked for his expulsion. But Ramamurthy contended that it is his fundamental rights to be members of another society and no one can debar him. Advise the society.

Sol.: The membership of a society is governed by the bye-laws of the society and the Co-operative Societies Act, 1912. It is based on the co-operative principles. The bye-laws of the society generally provide provisions for restriction of multiple memberships of a member. This principle based on the concept that each member has the right to inspect the books of the society and may pass information to other societies which may be against the interest of other member Co-operative societies are established for the benefit of the members. If Mr. Ramamurthy does not withdraw from the membership of the other society he may be expelled form the membership of the society.

Q.No.4. A limited co-operative society earned a net profit of ` 1,00,000 in a year. The member want the profit to be divided among themselves equally. The society has also divisible profit for the past year amounting to ` 20,000. State how the profit will be divided among the members.

Sol.: As per Sec.33 of Co-operative Societies Act, 1912, No part of the profit of a limited society shall be divided among the member 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 the provisions out of net profit of `1,00,000, ` 25,000 being one-fourth of the amount is to be transferred to reserve fund and the balance `75,000 and the past profit of `20,000(total `95,000) may be divided among members subject to the bye-laws of society.

Q.No.5. Mr. X is a member of a co-operative society limited by shares with a share capital of ` 1,00,000. There are 20 members in the society each holding shares of ` 5,000. 5 members of the society want to withdraw from the society and Mr. X wants to buy their

shareholding. Can he do so? What would be the position if a registered society as a member acquires those share?

Sol.: Membership of co-operative society is based on the co-operative principles. Members may withdraw from the membership. When members withdraw their share value may be paid to the member. Further, as provided under Sec.5 of Co-operative Societies Act, 1912, in case of a co-operative society limited by shares no member other than a registered society as member shall shares subject to a maximum of 1/5th of the share capital of the society. From the provision it can be seen that Mr. X can hold upto `20,000 shares. If he takes the shares of the 5 members, his total share would go up to ` 25,000 which is not permissible under the Act. In the second concept, if a registered society acquires the shares of the 5 members, its shares would be ` 25,000 which does not prohibit the provision of law therefore, can acquire the share subject to the bye-laws of the society.

Q.No.6. Mr. Bijay Kumar, a member of a registered co-operative society resigned from the society and his resignation was accepted w.e.f. 01.07.04. On 26.12.04 the society received a claim for `20,000 relating to the year 2002. The existing members are capable of meeting the debt. Explain in terms of the provisions of the Co-operative Societies Act, 1912.

- i) Whether Mr. Bijay Kumar is liable for the debt.
- ii) What would be your answer if Mr. Bijay Kumar had resigned as a member w.e.f. 01.07.02,
- iii) If Mr. Bijay Kumar would have died, explain the position of his legal representative.

Sol.: In terms of the provisions of section 23 and 24 of the Co-operative Societies Act, 1912 a past member shall be liable for the debts of the society for two years from the date when he ceased to be a member. In case a member is dead, his legal representative shall be liable for the debts of the society for one year from the date of the death of the member. So,

- i) Mr. Bijay Kumar is liable for the debt since he resigned w.e.f. 01.07.04 and the claim was made on 26.12.04. It is immaterial to which period it relates.
- ii) If Mr. Bijay Kumar would have resigned w.e.f 01.07.02, he would not have been liable for the debt which arises in December 04 though it relates to the year 2002.
- iii) If Mr. Bijay Kumar would have died his legal representatives would have been liable if the death of Mr. Bijay Kumar would have been within one year from 26.12.04 i.e. Date of claim.

Q.No.7. Sri Gundicha Co-operative Society lent a sum of `20,000 to one of its members on mortgage of gold by the member. Explain in terms of the provisions of the Co-operative Societies Act-

- i) Whether the society can give loan to its members, if it is limited society,
- ii) Whether the society can give loan to its members, if it is an unlimited society
- iii) Would your answer be same if the member would have mortgaged his land to the society for taking the loan?

Sol.: Sec.20 of Co-operative Societies Act, 1912 provides that a registered society can give loan to its members who are individuals. Loan to members who are registered co-operatives requires approval of Registrar. Loan to a member on security of immovable property may be restricted or prohibited by State Government. So,

- i). The society, if it is limited society, can give loan to its members on mortgage of gold.
- ii). The society, if it is an unlimited society, can give loan its members on security of gold (movable property) with approval of the Registrar.
- iii). The society has to see whether there is any restriction or prohibition by the S.G as regards

to such loan on security of immovable property. If there is no such restriction or prohibition,
the society can give the loan.

Q.No.8. All Brothers Co-operative Society made a good profit in the year 2003-04. The Managing Committee of the society recommended payment of dividend @ 10% of the profits to its member and the General Body of the society approved the same. Explain in terms of the provisions of the Co-operative Societies Act, 1912-

- i). Whether the society can distribute dividend if it is a limited society,
- ii). In case it wants to pay dividend what would be the maximum quantum of dividend,
- iii). Can undistributed profits of past years be utilized in paying dividend in the current year?

Sol.: As per Sec.33 of Co-operative Societies Act, 1912,

- i). Society can distribute dividend after transferring $\frac{1}{4}$ th of net profits to reserve fund.
- ii). The quantum of dividend depends upon the policy of the society and the provisions of the bye-laws. After transferring $\frac{1}{4}$ th of net profits to reserve fund. The society can distribute balance amount as dividend and even out of past years profit.
- iii). Undistributed profits of the past years can be paid as dividend if the bye-laws permit.

Q.No.9. Mr. S.M. Gupta is a member of a registered co-operative society. State his rights to vote as a member in terms of provisions of the Co-operative Societies Act, 1912 -

- i). If he has partly paid his membership fee;
- ii). No. of votes he is entitled to cast if the society is a limited society or unlimited society;
- iii). Can he appoint a proxy to vote in his stead?

Sol.: As per Sec.12 of Co-operative Societies Act, 1912, no member shall exercise his right to vote unless he has made the payment in respect of membership to the society as per the byelaws of the society. Sec.13 of the Act provides that in case the liability of the member of the society is not limited by shares, he is entitled to one vote only. Where the liability is limited by shares he is entitled to as many votes as may be prescribed in the bye-laws of the society. A registered society if is a member of another society, it can appoint any member of the society as proxy to attend and vote at the meeting of the society where it is a member. So,

- i). Mr. Gupta is not entitled to vote as a member at the meeting of the society as he has not paid the membership fee.
- ii). If the society is a limited liability society, Mr. Gupta can cast as many as votes as bye laws of the society permits provided he has paid the membership fee and is entitled to vote.
- iii). Mr. Gupta cannot appoint a proxy to vote at the meeting of the society; only societies which are members are entitled to appoint proxies.

Q.No.10. Mr. B.Nayak is a member of Bilana Co-operative Society. He has certain debts payable to the society. Explain in terms of the provisions of the Co-operative Societies Act, 1912

- i). Whether his shares in the society have a charge for the said debt;
- ii). Can the society set off such debt from such shares.
- iii). Can such shares be liable to attachment are claimable by any Official Receiver/Assignee?

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Sol.: As per Sec.20 of Co-operative Societies Act, 1912, the share or interest of any member in the capital of the society will have a charge in respect of any debt due by the member to the society. The society can set off such debt of the member from his share or interest in the society. Sec.21 of Act provides that the share or interest of any member in the capital of the society shall not be liable to attachment claimable by any Official Receiver or Assignee. So,

- i). The shares of Mr. B.Nayak shall have a charge in society for his debts due to the society.
- ii). The society can set off the debts due from Mr. Nayak from his shares or interest in the capital of the society.
- iii). The shares or interest(Mr.Nayak) cannot be claimable by any Official Receiver or Assignee.

MULTI STATE CO-OPERATIVE SOCIETIES ACT

Q.No.1. Examine the validity of the following acts of the society during a particular year:

- a. The Society declares dividend 11% on its paid up share Capital.
- b. The society decides to donate a sum of `10 lakhs out of its 'Net Profits'.

Sol.: As per the provisions of the multi state co-operative society, profits can be used for payment of dividend at a rate not exceeding 12% & donations not more than 5 lakhs. Thus applying the above provisions, the answers to the questions asked are as under:

- a. Declaration of dividend @ 11% on the paid share capital of the society is quite valid as it does not exceed 12%.
- b. The decision to donate `10lakhs out of the society's Net Profits is not valid since the limit is `5lakhs in a year.

Q.No.2. Mr. P, a member of a multi-State co-operative society applied to the society for a loan on security of his shares in the society. Explain with reference to the provision of the Multi-State Co-operative Societies Act, 2002

- i) Whether the Multi-State Co-operative Society can given him the loan.
- ii) Instead of security of his own shares, if one of his relatives offer mortgages of his property.
- iii) If Mr. P would have been a depositor, would the Multi-State Co-operative society provide him he loan on mortgage of such deposit?

Sol.: As per Sec.66 of Multi-State Co-operative Societies Act, 2002,

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

Q.No.3. A Multi-State Co-operative Society is formed with some Individuals as members. Some of the Individual members want to transfer their shares to one of themselves. Explain with reference to the provisions of the Multi-State Co-operative Societies Act, 2002,

- i) Whether the individual members can transfer their shares to another,
- ii) What is the limit of shareholding of an individual shareholder?
- iii) How far the members who transfer their shares liable for the debts of the society.

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Sol.: As per Sec.34 of Multi-State Co-operative Societies Act, 2002, Transfer of shares or interest of members in the capital of a multi-State Co-operative Society shall be subject to such conditions as to maximum holding as specified in Sec.33 of the Act. Sec.33 of the Act provides that no member other than those specified in Sec.25 (1) (c) to (g) shall hold such portion of total share capital of the society not exceeding one-fifth thereof as may be prescribed in the rules or bye-laws of the society. Further as provided in Sec.37 of the Act, the liability of a member shall continue from the date of transfer of the shares till two years from such date. So,

- i) A member can transfer his shares to another.
- ii) An individual member can hold shares as provided in the rules of bye-laws of the society subject to a maximum of one-fifth of the share capital of the society.
- iii) A member who transfers his shares shall be liable for any debts of the society from date of such transfer and continue for a period of two years from such date of transfer.

EMPLOYEES PROVIDENT FUND ACT & MISC. PROVISIONS ACT

Q.No.1. Mrs. Tsunami who was an employee of M/s. Backbone Ltd. died in a sudden accident. She had taken a loan from a bank for purchasing a house and the loan was still out standing. After her death her legal representative applied for payment of her P.F dues. The bank lodged a claim with the authorities for payment of its balance loan amount from the P.F dues. Explain with reference to the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952

- i) Whether the bank can recover the loan amount from the P.F. dues and
- ii) If, Instead of the bank, Mrs. Tsunami had taken any loan from her legal representative what would have been the answer?

Sol.: As per Sec.10 (2) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 any amount standing to the credit of a member in the Fund at the time of his death and payable to his nominee shall vest on the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before death of the member and shall not be liable to attachment by any decree or order of any court. So,

- i) the bank cannot recover its loan dues from the P.F. dues,
- ii) Answer would be same in case the nominee had paid any loan to Mrs. Tsunami before her death.

Q.No.2. M/s Harsh Ltd. has been regularly depositing the P.F. contributions to the Government in respect of the company's contribution as well the employees' contribution. The company is doing well and earning huge profit. But due to reverse market conditions the company suffered loss for the last two years. The management is thinking to reduce the salary/wages of the employees to reduce the company's contribution to P.F. and instead, to pay certain compensatory allowance so that the employee's pay packet remains same. Explain in terms of the provisions of Employee's Provident Fund and Miscellaneous Provisions Act, 1952 whether the company can reduce the salary/wages.

Sol.: As per Sec.12 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, M/s Harsh Ltd. cannot reduce the salary/wages 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.

Q.No.3. M/S Atwal & Co. Pvt. Ltd. is engaged by M/s. Mine managers Ltd. for doing operational work at its mines. There are about 300 employees employed by M/s Atwal & Co. Pvt. Ltd. to do the mining operation. M/s Minemanagers Ltd. deducted from the

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amount payable to M/s Atwal & Co. Pvt. Ltd. a sum of `2, 00,000 being the P.F. contribution of the employees engaged by it. M/s Atwal in response to such deduction, deducted from the employees the entire amount of ` 2, 00,000 in two installments to which the employees protested. Explain in terms of the provisions of Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

- i) Whether M/s Atwal & Co. Ltd. Can deduct from the salary/wages of the employee;
- ii) Whether it can deduct the employee's contribution from the salary/wages paid to the employees in one installment.
- iii) Can it recover the amount from the employees by entering into an agreement with employees?

Sol.: As per Sec.8A of Employee's Provident Fund and Miscellaneous Provision Act, 1952,

i). M/s Atwal may deduct the employee's contribution from the salary/wages of employees.

ii). M/s Atwal may deduct the employee's contribution only from the salary/wages of the Employees in one or more installments.

iii) M/s Atwal cannot recover the employer's contribution from the salary/wages of the employees even by entering into any agreement with the employees.

Q.No.4. Manorama Group of Industries sold its textile unit to Giant Group of Industries. Manorama Group contributed 25% of the total contribution in pension scheme, which was due before sale under the provisions Employees' Provident Fund and Miscellaneous Provisions Act, 1952. The transferee company (Giant Group of Industries) refused to bear the remaining 75% contribution in the Pension Scheme. Decide in the light of the Employee's Provident Fund and Miscellaneous Provisions Act, 1952, who will be liable to pay for the remaining contribution in case of transfer of establishment and upto what extent? (PE II, Nov' 04)

Sol.: As per Sec.17B of Employees' Provident Fund and Miscellaneous Provisions Act, 1952, Both Manorama Group of industries and giant Group of industries are liable to bear the amount of contribution. However, Giant Group of industries will bear only upto the value of the assets obtained by it.

Q.No.5. The P. F. authorities passed an order in 2000 determining dues from Feedback Co. Ltd. in July 2003 the concerned officer who passed the order issued a notice to the company as to why the amount determined earlier should not be re-determined. Explain in terms of the Employee's Provident Fund and Miscellaneous Provisions Act, 1952 as to power of the concerned officer to re-open the case if any amount hand been escaped his determination.

Sol.: Based on Sec.7C of aforesaid Act, the P.F. authorities may re-open the case.

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Tho, If Any Error Is Found By Anyone They Can Kindly Communicate The Same To My Email (Or) Other Communication Means Given Below.

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Thank You,

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