capital in any way and in particular and without prejudice to the generality of the forgoing power, may:

1. Reduce or extinguish the liability on any of its shares in respect of share capital not paid up e.g., where the shares are of Rs. 100 each with Rs. 75 paid-up reduce them to Rs. 75 fully paid-up shares and thus relieve the shareholders from liability on the uncalled capital of Rs. 25 per share;
2. Either with or without extinguishing or reducing liability on any of its shares, cancels any paid up share capital which is lost, or is unrepresented by available assets or
3. Either with or without extinguishing or reducing liability on any of its shares, pay of any paid up share capital which is in excess of the wants of the company where the shares are fully paid-up, reduce them to Rs. 75 each and pay back, Rs. 25 per share, and
4. By following a combination of any of the preceding methods.

Answer 1(c)

Model Articles of Association under Table F of Companies Act, 2013 provides for Forfeiture of shares. A company may, forfeit shares for non-payment of calls only if it is authorised by its Articles of Association. It must be exercised strictly in accordance with the regulations regarding notice, procedure and manner stated therein, otherwise the forfeiture will be void. Forfeiture will be affected by means of Board resolution. The power of forfeiture must be exercised bona fide and in the interest of the Company.

Hence a public limited company incorporated under the Companies Act, 2013 can forfeit its shares only when the Articles so empower. Where the Articles do not contain such a provision, the Articles have to be amended.

Answer 1(d)

An incorporated company never dies, except when it is wound up as per law. A company, being a separate legal person is unaffected by death or departure of any member and it remains the same entity, despite total change in the membership. Perpetual succession means that the membership of a company and composition of the Board of Directors may keep changing from time to time, but that shall not affect its continuity. The membership of an incorporated company may change either because one shareholder has sold/transferred his shares to another or his shares devolve on his legal representatives on his death or he ceases to be a member under some other provisions of the Companies Act. Thus, perpetual succession denotes the ability of a company to maintain its existence by the succession of new individuals who step into the shoes of those who cease to be members of the company.

However in case of merger, the transferor company is dissolved without winding up.

Attempt all parts of either Q.No. 2 or Q.No. 2A

Question 2

Distinguish between the following :

(a) 'Company' and 'limited liability partnership'.

LLP will have lesser compliance requirements as compared to a company

LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership. LLP can continue its existence irrespective of changes in partners. It is capable of entering into contracts and holding property in its own name. LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.

LLP is a body corporate and a legal entity separate from its partners, having perpetual succession. LLP form is a form of business model which

(i) is organized and operates on the basis of an agreement in between partners;

(ii) provides flexibility without imposing detailed legal and procedural requirements;

(iii) enables professional/technical expertise and initiative to combine with financial risk taking capacity in an innovative and efficient manner.

Answer 2(b)

Preference shares and Equity Shares

1. Preference shares are entitled to a fixed rate of dividend, whereas, the rate of dividend on equity shares depends upon the recommendation of the Board of directors which in turn depends on the amount of profit available and the funds requirements of the company for future expansion etc.
2. Dividend on the preference shares is paid in preference to the equity shares,
3. In case of winding up, preference share holder get preference over equity shareholders with regard to the payment of capital.
4. Dividend on preference share may be cumulative, whereas, the dividend on equity shares is paid only after the preference dividend has been paid and it is not cumulative.
5. The voting rights of preference shareholders are restricted, whereas, A preference shareholder can vote only when his special rights as a preference shareholder are being varied, or on any resolution for the winding up of the company or for the repayment or reduction of its equity or preference share capital or their dividend has not been paid for a period of two years or more [section 47(2)]. An equity shareholder can vote on all matters affecting the company.
6. No bonus shares/right shares are issued to preference shareholders, whereas, a company may issue rights shares or bonus shares to the company's existing equity shareholders.
7. Redeemable preference shares may be redeemed by the company, whereas, equity shares cannot be redeemed except under a scheme involving reduction of capital or buy back of its own shares.

Answer 2(c)

Memorandum of Association and Articles of Association

1. Memorandum of Association is the charter of the company and defines the fundamental conditions and objects for which the company is granted

(b) where the subsidiary company holds such shares as a trustee; or

(c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company:

In the present case Trust Ltd. is the subsidiary of Reliable Ltd. which is holding 75% of the paid-up share capital of Trust Ltd. It does not fall in any of the exceptions given above. A subsidiary cannot hold shares in its holding company. Hence, the objection raised by some of the members that company is in violation of the provisions of Companies Act, 2013 is correct.

Attempt all parts of either Q.No. 3 or Q.No. 3A

Question 3

(a) Referring to the provisions of the Companies Act, 2013, state as to when shall a company incorporated outside India be considered as a 'foreign company' within the meaning of the Companies Act, 2013. Also examining the provisions of the Act, state whether in the following cases, the company shall be considered as a 'foreign company':

(i) A company incorporated outside India has a representative in India, who on behalf of the company merely receives orders from the customers.

(ii) A company incorporated outside India holds its Board meetings and general meetings in India. *(4 marks)*

(b) Net profits of PQR Ltd. during the following years as disclosed in the statement of profit and loss are as under:

Financial year ended	*Net profits (₹ in crore)*
31st March, 2013	*10*
31st March, 2014	*12*
31st March, 2015	*08*

The Board of directors of the company at its meeting decides to contribute to a charitable organisation, for charitable purposes, a sum of ₹3 crore out of the net profits of the financial year ended 31st March, 2015. This contribution has been made by the Board without seeking approval of shareholders in general meeting.

In the light of the provisions of the Companies Act, 2013, examine the validity of the contribution made by the company. What shall be your answer in case the Board decides to contribute ₹1 crore only? *(4 marks)*

(c) A group of persons wants to form a company for a future project and acquire the status of a 'dormant company'. The group seeks your advice about the procedure and the conditions to be complied with. State the privileges and exemptions available to such a company under the provisions of the Companies Act, 2013. *(4 marks)*

(d) Manohar, the auditor of Belle Ltd. appointed by the company in its last general meeting has resigned from the office of auditor of the company for some personal reasons. Referring to the provisions of the Companies Act, 2013, answer the following:

(i) Who is the competent authority to accept and approve the resignation?

shall be signed only by one director. Hence in case the company is a One Person Company, the authentication stands valid

Reference

As per Section 134 of the Companies Act, 2013 Financial statement should be signed on behalf of the board at least by the chairperson of company, where he is duly authorised by the Board or by at least two directors of whom one should be the managing director and chief executive officer, if he is a director in the company, Chief financial officer and Company Secretary, if any in the company.

Question 4

(a) *In view of the provisions of the Companies Act, 2013 relating to 'securities premium', state whether the amount lying in securities premium account of a company can be used :*

(i) *For issuance of bonus shares; and*

(ii) *For payment of dividend declared by the company at its general meeting.* (4 marks)

(b) *Board of directors of Pious Ltd. gives you the following information extracted from the company's financial statements as at 31st March, 2015 :*

		₹
Authorised equity share capital (1 crore shares of ₹10 each)	....	10 crore
Paid-up equity share capital	....	5 crore
General reserve	....	5 crore
Debenture redemption reserve	....	2 crore

Board of directors by a resolution passed at its meeting decides to go for buy-back of shares to the extent of 20% of the company's paid-up share capital and free reserves. Examine the validity of the Board's resolution with reference to the provisions of the Companies Act, 2013. (4 marks)

(c) *Explain clearly the meaning of the terms 'fixed charge' and 'floating charge'. State the circumstances under which a 'floating charge' automatically becomes 'fixed'.* (4 marks)

(d) *Examine the validity of transfer and transmission of shares in favour of a minor under the provisions of the Companies Act, 2013.* (4 marks)

Answer 4(a)

(i) Sources for issue of Bonus shares

According to section 63(1), a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

(i) its free reserves;

(ii) the securities premium account; or

(iii) the capital redemption reserve account.

Hence amount securities premium account may be utilized by the company for bonus issue.

Answer 4(d)

The word transfer indicates an act of parties or of the law, by which title to the property is conveyed from one person to another. It is called inter vivos transfer, i.e., between two living persons. Whereas the word transmission is referred to devolution of title by operation of law. It may be by succession or testamentary transfer after the death of the person.

Under section 11 of the Indian Contract Act, 1872 only a person who has attained the age of majority is competent to contract, a minor hence is not competent to enter into any contract.

Since a minor cannot enter into a contract or agreement except through a guardian, and since no notice can be taken of the fact that the guardian holds a share in trust for a minor, it follows that his name cannot be entered in the Register of Members and therefore, he cannot become a member of a company.

There is, however, no objection in law to the guardian of a minor entering into a contract on behalf of a minor, by virtue of the statutory right conferred on him. Since Section 56 of the Companies Act, 2013 enables execution of transfer deed by or on behalf of the transferor or the transferee, the transfer deed can be executed by a minor through his natural guardian as transferee, and the contract so entered into by a minor through his natural guardian is a binding and valid contract.

Where the nominee is a minor, the holder of the securities, making the nomination, may appoint a person in Form No. SH. 14, who shall become entitled to the securities of the company, in the event of death of the nominee, during his minority. On death of the shareholder during the minority of the Nominee, the Shares should be transmitted to the Minor under the guardianship as mentioned in the nomination form till the Minor attains majority; however, the beneficial interest will be with the Minor.

Question 5

(a) *In Bright Ltd., vacancy of a director is caused by the death of Mohan, a director of the company, after three months of his joining the company as director. The Board of the company, therefore, appointed Sumit in his place but did not seek approval of the company in general meeting. Referring to the provisions of the Companies Act, 2013, examine the validity of Sumit's appointment.* (4 marks)

(b) *Johnson, a director in Disha Ltd. proceeds on leave for 8 months to France for personal reasons. Board of directors at a meeting appoints Peter for a period o two months, as an alternate director. Articles of association of the company d not confer upon the Board of directors any such power to appoint anyone a alternate director. Referring to the provisions of the Companies Act, 201 examine the validity of the above appointment. What shall be your answer case the Board appoints Peter for the entire period of Johnson's leave ?* (4 mar

(c) *Examining the provisions of the Companies Act, 2013, relating to the constitu of a 'Nomination and Remuneration Committee' and 'Stakeholders Relation Committee', answer the following :*

(i) *Is it mandatory for a listed company to constitute such committees ? state whether it is mandatory for a non-listed public company having pa share capital of ₹5 crore to constitute such committees ?*

financial data extracted from the company's financial statements as at 31st March, 2015:

Particulars		₹(in crore)
Authorised equity share capital	..	60
Paid-up equity share capital	..	10
Debenture redemption reserve	..	10
Securities premium account	..	20
Profit and loss (loss)	..	(10)
Revaluation reserve	..	20

Due to losses in the financial year 2014-15, the company is not in a position to pay any remuneration to Ms. Jyoti, Managing Director of the company. As per the agreement of service between Ms. Jyoti and the company, in case of losses or inadequacy of profits in any financial year, she is to be paid remuneration on the basis of 'effective capital' of the company.

Based on the provisions of the Companies Act, 2013, decide the maximum remuneration payable to Ms. Jyoti for the financial year 2014-15 without the approval of the Central Government. *(4 marks)*

(d) *Referring to the provisions of the Companies Act, 2013, state the grounds on which the Registrar of Companies can file a petition for winding-up of a company.* *(4 marks)*

Answer 6(a)

Secretarial Audit is a compliance audit and it is a part of total compliance management in an organisation. The Secretarial Audit is an effective tool for corporate compliance management. It helps to detect non-compliance and to take corrective measures.

Secretarial Audit is a process to check compliance with the provisions of various laws and rules/ regulations/procedures, maintenance of books, records etc., by an independent professional to ensure that the company has complied with the legal and procedural requirements and also followed the due process. It is essentially a mechanism to monitor compliance with the requirements of stated laws.

Considering the increasing importance of Corporate Governance, Section 204 of the Companies Act, 2013 read with Rule 9 of Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014 mandates every listed company and

(a) every public company having a paid-up share capital of fifty crore rupees or more; or

(b) every public company having a turnover of two hundred fifty crore rupees or more,

to annex a Secretarial Audit Report, given by a company secretary in practice with its Board's report in form MR 3

Answer 6(b)

As per section 2(51) "key managerial personnel", in relation to a company, means—

(i) the Chief Executive Officer or the managing director or the manager;

(ii) the company secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; and

(v) such other officer as may be prescribed.

The Key managerial Personnel shall be appointed only by means of Board resolution containing the terms and conditions of the appointment including the remuneration which shall be passed at the meeting of Board of Directors.

Answer 6(c)

As per Schedule V, Section II of the Companies Act, 2013, in case of inadequate profits in the company, the company may without Central Government approval, pay remuneration to the managerial person not exceeding the higher limits on the basis of effective capital i.e.

(1)	(2)
Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rupees)
(i) Negative or less than 5 crores	30 lakhs
(ii) 5 crores and above but less than 100 crores	42 lakhs
(iii) 100 crores and above but less than 250 crores	60 lakhs
(iv) 250 crores and above	60 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores

Therefore, accordingly, maximum yearly remuneration that can be paid to Ms. Jyoti, Managing Director of Wise (India) Ltd. is Rs. 42 lakhs without permission of the Central Government.

However, by passing Special Resolution her remuneration can be double i.e. Rs. 84 lakhs.

Answer 6(d)

On the following grounds under Section 272 read with Section 271 of Companies Act, 2013, the Registrar is entitled to present a petition for winding up of a company under:

- if the company is unable to pay its debts.
- if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.
- if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up.
- if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years.

***

As per section 178(5) the Board of Directors of a company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee.

Accordingly, all listed companies are mandatorily required to constitute Nomination and remuneration Committee and Stake holder relationship committee and all unlisted public companies having paid up capital of ten crore rupees or more are only required to constitute the Nomination and remuneration committee.

Further, In case the company consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year, whether or not listed, shall have to constitute a Stakeholders Relationship Committee.

Answer 5(c)(ii)

The Nomination remuneration Committee shall consist of three or more non-executive directors out of which not less than one-half shall be independent directors.

The Stakeholders Relationship Committee shall consist of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.

Answer 5(d)(i)

Section 149(4) read with Rule 4 of Companies (Appointment and Qualification of Directors) Rules 2014 , the following companies shall have Independent Director

— Every listed public company and every

— Public Company having paid up share capital of ten crore rupees or more; or

— Public Company having turnover of one hundred crore rupees or more; or

— Public Company which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.

Answer 5(d)(ii)

Tenure of Independent Director

Tenure of Independent Director: a term up to five consecutive years [Section 149(10)]

Number of Term : **Not more than two consecutive term [149(11)]**

Yes, According to Code of Independent Directors (Schedule IV), independent directors are required to hold at least one meetings of their own without the presence of non-independent directors.

Question 6

(a) *Explain with reference to the provisions of the Companies Act, 2013, the meaning and importance of 'secretarial audit'. Which companies are required to get the 'secretarial audit' conducted ?* (4 marks)

(b) *Who are key managerial personnels (KMPs) ? State the manner in which they can be appointed in a company.* (4 marks)

(c) *Ms. Jyoti is the Managing Director of Wise (India) Ltd., incorporated under the Companies Act, 2013. Board of directors of the company presents the following*

(ii) *What shall be the composition of the committees in case the company is required to constitute such committees ?* *(4 marks)*

(d) *In terms of the provisions of the Companies Act, 2013, answer the following :*

(i) *Which companies are required to have independent directors ?*

(ii) *What is the tenure of independent directors and the number of terms for which such a director can be appointed ? Are independent directors required to hold meetings of their own without the presence of non-independent directors ?* *(4 marks)*

Answer 5(a)

According to section 161(4), if any vacancy is caused by death or resignation of a director appointed by the shareholders in General meeting, before expiry of his term, the Board of directors can appoint a director to fill up such vacancy subject to any regulations in the articles of the company. The appointed director shall hold office only up to the term of the director in whose place he is appointed.

In the given case Mr. Sumit is appointed against the casual vacancy caused by Mohan's demise, Sumit's appointment is valid and shall continue till Mohan's tenure expires.

Answer 5(b)

In this case the appointment of an alternate director is in violation of the provisions of the Companies Act, 2013 because Articles do not authorize the Board to appoint alternate Director nor is the appointment made in general meeting.

The answer would be the same even if Peter is appointed for the entire period of Johnson's leave.

Reference:

Following are some relevant conditions which must be satisfied in case of appointment of alternate director. According to section 161(2) of the Act:

1. The Board of Directors of a company must be authorised by its articles or by a resolution passed by the company in general meeting for appointment of alternate director.
2. The person in whose place the Alternate Director is being appointed should be absent for a period of not less than 3 months from India.

Answer 5(c)(i)

As per section 178(1) read with Rule 6 of Companies (Meetings of Board and its Powers) Rule, 2014, the Board of Directors of the following companies shall constitute a Nomination and Remuneration Committee

(a) every listed company

(b) all public companies with a paid up capital of ten crore rupees or more;

(c) all public companies having turnover of one hundred crore rupees or more;

(d) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

(ii) **For payment of dividend declared by the company at its general meeting.**

Securities premium Account since not covered by section 123(1) cannot be utilized for the purpose of declaring dividend

Reference:

As per Section 123(1) of Companies Act 2013 provides that no dividend shall be declared or paid by a company for any financial year except—

(a) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of both; or

(b) out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government.

Answer 4(b)

In the present case since buy- back is upto the extent of 20% of the company's paid up share capital and free reserves, the resolution passed by the Board of Directors needs to be approved by shareholders by means of special resolution at a general meeting of the company.

As per proviso to Section 68(2), Board of directors can approve buy-back up to 10% of the total paid-up equity capital and free reserves of the company by means of a board resolution passed at the meeting.

Shareholder approval by means of special resolution is required when buy-back is up to 25% of the total paid-up capital and free reserves of the company and above 10% of the total paid-up equity capital and free reserves of the company.

Considering the statutory provisions, Board of directors can approve only upto 10% of paid up share capital and free reserves.

Answer 4(c)

Fixed or specific charge

A charge is called fixed or specific when it is created to cover assets which are ascertained and definite or are capable of being ascertained and defined, at the time of creating the charge e.g., land, building, or plant and machinery. A fixed charge, therefore, is a security in terms of certain specific property, and the company gives up its right to dispose off that property until the charge is satisfied.

Floating charge

A floating charge, as a type of security, is peculiar to companies as borrowers. A floating charge is not attached to any definite property but covers property of a fluctuating type e.g., stock-in-trade and is thus necessarily equitable. A floating charge is a charge on a class of assets present and future which in the ordinary course of business is changing from time to time and leaves the company free to deal with the property as it sees fit until the holders of charge take steps to enforce their security. "The essence of a floating charge is that the security remains dormant until it is fixed or crystallised".

The rule is meant to protect shareholders and the creditors of the company. If the act is ultra vires (beyond the powers of) the directors only but intra vires the Memorandum of Association , the shareholders can ratify it. If it is ultra vires the articles of association, the company can alter its articles in the proper way.

The doctrine of ultra vires was first enunciated by the House of Lords in a classic case, *Ashbury Railway Carriage and Iron Co. Ltd. v. Riche,* (1878). The facts of the case were that the memorandum of the company in the said case defined its objects thus: "The objects for which the company is established are to make and sell, or lend or hire, railway plants............ to carry on the business of mechanical engineers and general contractors...........".

In this case, The House of Lords held that the contract was ultra vires the company and, therefore, null and void.

In the given case, the prominent Ltd. will not succeed, since the contract itself was ultra vires.

Answer 3A(iii)

According to Section 13 of the Companies Act, 2013 the change of registered office from one State to another State involves alteration of memorandum, and the change can be effected by a special resolution of the company which must be confirmed by the Central Government on an application made to it.

As per Rule 30 (1) of the Companies (Incorporation) Rules, 2014, such an application shall be filed in form INC 23 accompanied by documents prescribed in sub - rule (1) (a) to 5 of Rule 30.

The company shall at least 14 days before the date of hearing advertise the application in form INC 26 in a vernacular newspaper in the district where the registered office of the company is situated.

It shall also serve notices to each debenture holder and creditor of the company.

It shall send a notice and the copy of the application to the Registrar and to the Securities and Exchange Board of India, (in case the company is listed) and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.

A company shall, in relation to any alteration of its memorandum involving change of registered office from one State to another, file with the Registrar the special resolution passed by it in MGT 14.

The notice of change of the registered office of the company and verification thereof shall be filed with Registrar in form INC 22 within 15 days of the change.

Answer 3A(iv)

In the given case the financial statements have been signed by one director and the Company secretary, which is in violation of the above provisions. However if the director so signing is the Chairperson of the company, this would be a valid manner. If the director so signing is not the Chairperson, the financial statement should have been signed by the managing director and another director and in addition by a Chief financial officer if any . Hence, authentication in the given case is not valid.

In case of One Person Company's the section provides that the financial statements will not be treated as having place of business in India. [(*P.J Johnson vs. Astrofiel Armandorn*, 1990 69 com cases 619 (Ker)]

(ii) In case, company merely holds Board meetings or General meetings in India, the company shall not be treated as "foreign company", unless the company carries some business activity and has a place of business in India.

Answer 3(b)

Section 181 of the Companies Act, 2013 provides that the Board of Directors may contribute to 'bona fide' charitable and other funds.

Further, the prior permission of company in general meeting is required if such contribution exceeds five percent of its average net profits for the three immediately preceding financial years.

The average net profits in the case given are Rs 10 crores .

Thus any contribution in excess of Rs 50 Lacs (5% of average net profits for three immediately preceding financial years) would need members' approval. Board is not empowered to take decisions of contribution in excess of Rs 50 Lacs. Board's decision is invalid.

Further, if the contribution amount was Rs 1 Crore, then also the company would be required to obtain members' prior approval.

Answer 3(c)

As per section 455 (1) of Companies Act, 2013, where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

The Registrar on consideration of the application shall allow the status of a dormant company to the applicant and issue a certificate in form MSC-1.

Further a dormant company shall have minimum number of three directors in case of public company, two directors in case of private company and one director in case of One Person company.

The dormant company shall have to file a Return of Dormant Company annually, inter alia, indicating financial position duly by a chartered accountant in practice along with prescribed annual fee within thirty days from the end of each financial year.

Privileges of a Dormant Company

The privileges and exemptions enjoyed by a dormant company or its advantages over other companies are as follows:

Section	*Nature of exemptions/privileges*
2(40)	The financial statement, with respect to a dormant company, may not include the cash flow statement;
173 (5)	It is required to hold at least one meeting of the Board of Directors in each half of a calendar year and the gap between the two meetings should not be less than ninety days.

(ii) *State the manner in which the vacancy caused by Manohar's resignation shall be filled in.* (4 marks)

OR (Alternate question to Q.No. 3)

Question 3A

(i) Board of directors of Divine Ltd. decides to enter into a contract whereby Manish, a director of the company shall acquire certain assets from the company for consideration other than cash, without seeking approval of the company in its general meeting. Certain shareholders of the company object to the said decision of the Board. Referring to the provisions of the Companies Act, 2013, examine the validity of the Board's decision and state whether the contention of the shareholders shall be tenable. (4 marks)

(ii) Surprise Ltd. was incorporated under the Companies Act, 2013. The memorandum of association of the company in its objects clause stated that the company was established to make and sell or to carry on the business of mechanical engineers and general contractors. The company entered into a contract with Prominent Ltd., a firm of railway contractors to finance the construction of a railway line in Mumbai. The contract was ratified by the shareholders in general meeting. Subsequently, the contract was repudiated by the company on the ground that the contract was ultra vires the objects clause. Prominent Ltd. filed a suit claiming damages for the breach of contract.

Explaining the meaning of doctrine of ultra vires, decide whether Prominent Ltd. will succeed. (4 marks)

(iii) Explain the provisions of the Companies Act, 2013 relating to shifting of the registered office of a company from one State to another. (4 marks)

(iv) Adorable Ltd., incorporated under the Companies Act, 2013 has on its Board, 5 directors and a Managing Director. The company has also appointed a Company Secretary. The financial statements of the company, viz., balance sheet and statement of profit and loss for the year ended 31st March, 2015, were authenticated under signatures of one director and the Company Secretary. Referring to the provisions of the Companies Act, 2013, examine the validity of authentication. What shall be your answer in case the company in question is a 'one person company'? (4 marks)

Answer 3(a)

As per section 2(42) of the Companies Act,2013, "foreign company" means an company or body corporate incorporated outside India which—

(a) has a place of business in India whether by itself or through an agent, physica or through electronic mode; and

(b) conducts any business activity in India in any other manner.

(i) In case, where a company incorporated outside India has a representativ India, who on behalf of the company receives orders from the customers, s be treated as "foreign company" only if such company has place of busine India and conducts business activities. Merely having Representative in proposal, which the Director had earlier disclosed and the draft of the Resolution proposed.

5. The note shall also indicate how a Director shall signify assent or dissent to the Resolution proposed and the date by which the Director shall respond.
6. Each Resolution shall be separately explained. The decision of the Directors shall be sought for each Resolution separately.
7. Not more than seven days from the date of circulation of the draft of the Resolution shall be given to the Directors to respond and the last date shall be computed accordingly.
8. The Resolution, if passed, shall be deemed to have been passed on the last date specified for signifying assent or dissent by the Directors or the date on which assent from more than two-third of the Directors has been received, whichever is earlier, and shall be effective from that date, if no other effective date is specified in such Resolution.
9. The resolution passed through circulation be noted at a subsequent meeting and made part of the minutes of such meeting.

Answer 2A(iii)

Section 2(45) defines a "Government Company" as any company in which not less than fifty one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

In the given case Government of India together with government of Andhra Pradesh, Tamil Nadu, and Maharashtra hold 60% in ABC Ltd. Hence this is a Government Company.

Employees of Government companies are not Government servants, they have no legal right to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay scales should be met by the Government.

This has been decided in *A.K. Bindal* v. *Union of India* (2003) 114 Com Cases 590 (SC). It was decided that since employees of Government companies are not Government servants.

Hence the employees of ABC Ltd. are not the employees of Government therefore they cannot claim salaries from the Government. They are the employees of th Government Company.

Answer 2A(iv)

Section 19 of Companies Act, 2013 provides that no company shall, either by its or through its nominees, hold any shares in its holding company and no holding compa shall allot or transfer its shares to any of its subsidiary companies and any such allotm or transfer of shares of a company to its subsidiary company shall be void.

Further this shall not apply in following cases:

(a) where the subsidiary company holds such shares as the legal representati a deceased member of the holding company; or completion of formalities of the said deal, A sold and transferred the land to a company which he had incorporated with a nominal capital of £100 and of which he and a clerk were the only shareholders and directors. This was done in order to escape a decree for specific performance in a suit brought by B. The Court held that the company was the creature of A and a mask to avoid recognition and that in the eyes of equity A must complete the contract, since he had the full control of the limited company in which the property was vested, and was in a position to cause the contract in question to be fulfilled.

(b) *Where the acts of a company are opposed to workmen*

It has been decided in The Associated Rubber Industries Ltd, Bhavnagar & another, AIR 1986 SC 1 that where the acts of the company are opposed to workmen the corporate veil may be lifted. In this case a new company was created wholly by the principal company with no assets of its own except those transferred to it by the principal company with no, business or income of its own except receiving dividends from share transferred to it by the principal company i.e only for the purpose of splitting the profits into two hands and thereby reducing the obligation to pay bonus. The Supreme Court held that the new company was formed as a device to reduce the gross profits of the principal company and thereby reduce the amount to be paid by way of bonus to workmen. The amount of dividends received by the new company should, therefore be taken into account in assessing the gross profit of the principal company. The corporate veil, therefore was lifted in this case.

Answer 2A(ii)

Resolution may be passed in respect of Board approvals in one of the two ways, either at the Board Meeting or by circulation. The items which could not be transacted and decided at the board meeting, if cannot be deferred till the next board meeting may be passed by circulation provided they do not include such items as are required to be passed only at the meeting of directors under Section 179(3) of the Companies Act,2013.

In order to get the un transacted item pass the Board may consider the following procedure as laid down in section 175 and Point no. 6 of Secretarial Standards on Board Meetings.

1. The resolution in draft form together with the necessary papers may be circulated to the directors or members of committee at their address registered with the company in India by post, hand delivery or through electronic means which may include e-mail or fax.

2. The said resolution must be passed by majority of directors or members entitled to vote.

3. If more than one third of directors require that the resolution must be decided at the meeting, the chairperson shall put the resolution to be decided at the meeting.

4. Each business proposed to be passed by way of Resolution by circulation shall be explained by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal, the nature of concern or interest, if any, of any Director in the

incorporation. Articles of Association are the rules and regulations framed to govern this internal management of the company.

2. Clauses of the Memorandum cannot be easily altered. They can only be altered in accordance with the mode prescribed by the Act. In some of the cases, alteration requires the permission of the Central Government or the Court. In the case of Articles of Association, members have a right to alter the Articles by a special resolution.

3. Memorandum of Association cannot include any clause contrary to the provisions of the Companies Act. The Articles of Association can not include any clause contrary to the Companies Act as well as the Memorandum of Association.

4. The Memorandum generally defines the relation between the company and the outsiders, while the Articles regulate the relationship between the company and its members and between the members inter se.

5. Acts done by a company beyond the scope of the Memorandum are absolutely void and ultra vires and cannot be ratified even by unanimous vote of all the shareholders. But the acts of the directors beyond the Articles can be ratified by the shareholders.

Answer 2(d)

Red Herring Prospectus and Abridged Prospectus

Section 32 of the Companies Act, 2013 deals with Red Herring Prospectus, the Explanation of the Section defines "Red Herring Prospectus" so as to mean a prospectus which does not include complete particulars of the quantum or price of the securities included therein. A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.

Section 2(1) of Companies Act, 2013 defines "Abridged Prospectus" so as to mean a Memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board of India by making regulations in this behalf.

Section 33 states that no form of application can be issued for the purchase of any securities of a company unless it is accompanied by an abridged prospectus.

Answer 2A(i)

The separate personality of a company is a statutory privilege and it must be used for legitimate business purposes only. Where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality. The Court will break through the corporate shell and apply the principle/doctrine of what is called as "lifting of or piercing the corporate veil". The Court will look behind the corporate entity and take action as though no entity separate from the members existed and make the members or the controlling persons liable for debts and obligations of the company.

(a) *Where the corporate veil has been used for improper conduct*

The Corporate veil may be pierced in case of improper conduct. As decided ir *Jones V. Lipman* (1962) where A agreed to sell certain land to B. Pendin

(b) 'Preference shares' and 'equity shares'.

(c) 'Memorandum of association' and 'articles of association'.

(d) 'Red-herring prospectus' and 'abridged prospectus'. (4 marks each)

OR (Alternate question to Q. No. 2)

Question 2A

(i) Explain clearly the meaning of 'lifting of corporate veil' in relation to a company incorporated under the Companies Act, 2013. Examining the judicial decisions, state whether 'corporate veil' can be lifted in the following cases :

(a) Where the corporate veil has been used for improper conduct; and

(b) Where the acts of a company are opposed to workmen ? (4 marks)

(ii) As the Company Secretary of Joy Ltd., what steps would you take in case the scheduled Board meeting could not complete the agenda slated thereat. The items of business left untransacted are of extreme importance for the company's growth and the same cannot be deferred until the next Board meeting because of urgency. Advise the Board about the steps to be taken to get the untransacted items passed. (4 marks)

(iii) ABC Ltd. is a company incorporated under the Companies Act, 2013. The paid-up share capital of the company is held as under :

— Government of India 20%

— Government of Andhra Pradesh 20%

— Government of Tamil Nadu 10%

— Government of Maharashtra 10%

Explaining the provisions of the Companies Act, 2013, state whether the said company be called a 'Government company' and also state whether the employees of a Government company can claim their salaries from the Government of India. (4 marks)

(iv) Reliable Ltd. holds 75% of the paid-up share capital in Trust Ltd. Board of directors of Trust Ltd. decides and resolves to hold 10% of the paid-up share capital in Reliable Ltd. The Board's proposal was also approved by Trust Ltd. in its general meeting. However, certain members of Trust Ltd. objected to the decision on the ground that both the Board's proposal and the resolution of the general meeting are in violation of the provisions of the Companies Act, 2013. Examine. (4 marks)

Answer 2(a)

A basic difference between an LLP and a joint stock company lies in that the **internal governance structure** of a company is regulated by statute (i.e. Companies Act, 1956 & 2013) whereas for an LLP it would be by a contractual agreement between partners.

The **management-ownership divide** inherent in a company is not there in a limited liability partnership.

LLP will have more flexibility as compared to a company.

COMPANY LAW

Time allowed : 3 hours

Maximum marks : 100

NOTE : 1. Answer ALL Questions.

2. All references to sections relate to the Companies Act, 2013 unless stated otherwise.

Question 1

Comment on the following :

(a) A company incorporated under the Companies Act, 2013, being an artificial person, is not entitled to sue a natural person or to sue another company incorporated under the same Act.

(b) A company incorporated under the Companies Act, 2013 does not have the right to reduce its share capital on selective basis.

(c) A public limited company incorporated under the Companies Act, 2013 may amend its articles of association so as to confer upon it power to forfeit the shares of those members who have defaulted in the payment of calls made by the company.

(d) A company incorporated under the Companies Act, 2013 never dies except when it is wound-up as per the law. (5 marks each)

Answer 1(a)

A Company is an artificial person created by law. It is recognized as a legal person, which, can enter into contracts, possess properties in its own name, sue and can be sued by others etc. It is capable of enjoying rights and being subject to duties. To sue means to institute legal proceedings against (a person) or to bring a suit in a court of law. All legal proceedings against the company are to be instituted in its name. Similarly, the company may bring an action against anyone in its own name.

Hence a company is entitled to sue a natural person or to sue another company incorporated under the Companies Act, 2013 in its own name.

Answer 1(b)

The company has every right to reduce its share capital on selective basis. The statement is incorrect.

Reference

The provisions of section 66 have not been enforced so far. Section 100 of Companies Act, 1956 is still applicable in this context. Accordingly, subject to confirmation by the court, a company limited by shares or a company limited by guarantee and having a share capital may, if authorized by its articles, by special resolution, reduce its share