SOLVED PAPER – MAY 2019
CORPORATE & OTHER LAWS – CA - INTERMEDIATE

Q-1(a) As at 31st March, 2018, the paid-up share capital of S Ltd. is Rs. 1,00,000 divided into 10,00,000 equity shares of Rs. 10 each. Of this, H Ltd. is holding 6,00,000 equity shares and 4,00,000 equity shares are held by others. Simultaneously, S Ltd. is holding 5% equity shares of H Ltd. out of which 1% shares are held as legal representative of deceased member of H Ltd. on the basis of the given information, examine and answer the following queries with reference to the provisions of the Companies Act, 2013:

I. **Can S Ltd. make further investment in equity shares of H Ltd. during 2018-19?**
II. **Can S Ltd. exercise voting rights at Annual General Meeting of H Ltd.?**
III. **Can H Ltd. allot or transfer some of its shares to S Ltd.?**

Answer

In the given case, it can be understood that H Ltd. is holding company of S Ltd. Section 19 of Companies Act, 2013 contain provisions for holding of shares by subsidiary company into holding company.

I. Subsidiary company cannot purchase further shares into holding company or holding company cannot allot further shares to its subsidiary company after establishment of relation of holding and subsidiary. Hence, S Ltd. cannot make investment in equity shares of H Ltd. during 2018-19.

II. Subsidiary company has right to vote at meeting of holding company only in respect of shares held by it as legal representative or as a trustee. Here, S Ltd. is holding 1% shares as legal representative of deceased member of H Ltd. For those shares (i.e., 1%) it has voting right.

III. Holding company cannot transfer or allot shares. If it allots shares, allotment will be void.

Q-1(b) (i) Modern Jewellery Ltd. decides to pay 5% of the issue price gap of shares as underwriting commission to the underwriters, but the Articles of the company authorise only 4% underwriting commission on shares. Examine the validity of the above decision under the provisions of the Companies Act, 2013.

Answer

Please refer answer to question no. 1 from past examination question of Chapter no. 4A – Share Capital (Allotment of Shares, Capital & Alteration of Capital)

Q-1(b) (ii) PQ Ltd. declared and paid 10% divided to all its shareholders except Mr. Kumar, Holding 500 equity shares, who instructed the company to deposit the divided amount directly in his bank account. The company accordingly remitted the dividend, but the bank returned the payment on the ground that the account number as given by Mr. Kumar doesn't tally with the records of the bank. The company, however, did not inform Mr. Kumar about this discrepancy. Comment on this issue with reference to the provisions of the Companies Act, 2013 regarding failure to distribute dividend.

Answer

Please refer answer to question no. 13 from past examination question of Chapter no. 8 – Declaration of Dividend.

Q-1(c) The Government of India is holding 51% of the paid-up equity share capital of Sun Ltd. The Audited financial statements of Sun Ltd. for the financial year2017-2018 were placed at its annual general meeting held on 31st August, 2018. However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the meeting was adjourned without adoption of the accounts. On receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 15th October, 2018 whereat the accounts were adopted. Thereafter, Sun Ltd. filed its financial statements relevant to the financial year 2017-18 with the Registrar of Companies on 12th November, 2018. Examine with reference to the applicable provisions of the Companies Act, 2013,

whether Sun Ltd. has complied with statutory requirement regarding filing of accounts with the Registrar?

Answer

- As per section 137, if Annual General Meeting is not held, the financial statement along with documents duly signed along with statement of facts and reason for not holding the Annual General Meeting should be filed within 30 days from the latest date on or before which that meeting should have been held. If not filed within 30 days, filing may be done within 30 days with additional filing fees.
- Every company shall convey Annual General Meeting within period of 6 months from end of financial year. Adjourned meeting should be held within stipulated time limit of 6 months (i.e. on or before 30th September, 2018).
- If financial statements are placed before Annual General Meeting but not adopted at Annual General Meeting, it should be filed with all specified documents with Registrar within 30 days of Annual General Meeting.
- Registrar should take note of unadopted financial statements on records as provisional until the financial statements are filed with him after their adoption in adjourned Annual General Meeting. If Annual General Meeting is held on 15 October 2018, the financial statements along with attachments specified for financial year of 2018 should be filed with the Registrar of Companies by 13th November 2018. In the given case it has been filed by company on 12th November, 2018. Company has not complied with provisions regarding filing of annual financial statements.

Q-1(d) Manoj guarantees for Ranjan, a retail textile merchant, for an amount of Rs. 1,00,000, for which Sharma, the supplier may from time to time supply goods on credit basis to Ranjan during the next 3 months.
After 1 month, Manoj revokes the guarantee, when Sharma had supplied goods on credit for Rs. 40,000. Referring to the provisions of the Indian Contract Act, 1872 decide whether Manoj is discharged from all the liabilities to Sharma for any subsequent credit supply. What would be your answer in case Ranjan makes default in paying back Sharma for the goods already supplied on credit i.e., Rs. 40,000?
Answer

- As per section 130 of the Indian Contract Act, 1872 a specific guarantee cannot be revoked by the surety if the liability has already accrued.
- The surety, may at any time, revoke a continuing guarantee as to future transactions, by notice to the creditor, but the surety remains liable for transactions already entered into.
- As per the above provisions:
  - (i) Yes, Manoj is discharged from all subsequent credit supply because it is a case of continuing guarantee.
  - (ii) Manoj is liable for payment of Rs. 40,000 to Sharma because the transaction has already completed. Sharma had supplied goods amount of Rs. 40,000 on credit.

Q-1(e) Ram purchases some goods on credit from Singh, payable within 3 months. After 2 months, Ram makes out a blank cheque in favour of Singh, sign and delivers it to Singh with a request to fill up the amount due, as Ram does not know the exact amount payable by him.
Singh fills fraudulently the amount larger than the amount payable by Ram and endorses the cheque to Chandra in full payment of Singh's own due. Ram's cheque is dishonored. Referring to the provisions of the Negotiable Instruments Act, 1881, discuss the rights of Singh and Chandra.

Answer

Please refer answer to question no. 19 from past examination question of Chapter no. 12 – Negotiable Instruments Act, 1881.

Q-2(a) State with reasons, whether the following statements are True or False?

i. **ABC Private Limited may accept the deposits from its members to the extent of Rs. 50 lakh, if the aggregate of its paid-up capital, free reserve and security premium account is Rs. 50 lakh.**
ii. **A government company, which is eligible to accept deposits under section 76 of the Companies Act, 2013 cannot accept deposits from public exceeding 25% of the aggregate of its paid-up capital, free reserve and security premium account.**
iii. **The Registrar of Companies is not bound to issue notice to the holder of charge, if the company give intimation of satisfaction of charge in the specified form and signed by the holder of charge.**
iv. **The Registrar of Companies may allow the company or holder of charge to file intimation within period of 300 days of satisfaction of charge on payment of fee and additional fees as may be prescribed.**

Answer

i. Statement is true. Private company can accept unsecured deposits from its members upto 100% of its paid-up capital and free reserves, without complying requirements relating to:
   - Issue of circular to the members
   - Filing of circular
   - Deposit insurance
   - Providing security

   Accordingly, ABC Pvt. Ltd. may accept deposits upto Rs. 50 Lakh, from its members (upto value of Paid-up capital and free reserve).
ii. Statement is false. Government company can accept deposits public upto 35% of its aggregate paid up capital, free reserve and securities premium account.
iii. Statement is true. Registrar of Companies is required to issue notice to charge holder before granting satisfaction of charge. However, he is not required to give notice to charge holder if company has intimated about satisfaction of charge in specified form which is signed by charge holder.
iv. Statement is true. Satisfaction of charge must be filed with Registrar within 30 days from satisfaction. Registrar may on an application by the company or the charge holder, allow such intimation of payment or satisfaction of charge within a period of three hundred days of such payment or satisfaction on payment on payment of additional fees as may be prescribed – Section 82(1).

Q-2(b)(i) The Income Tax Authorities in the current financial year 2019-20 observed, during the assessment proceedings, a need to re-open the accounts of Chetan Ltd. for the financial year 2008-09 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Chetan Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2008-09. Examine validity of the application filed by the Income Tax Authorities to NCLT.

Answer

- The Tribunal or Court shall order to re-open books of account and recast financial statement of company when:
  - Relevant earlier accounts were prepared in a **fraudulent manner**; or
  - The **affairs of company were mismanaged** during the relevant period, casting a doubt on the reliability of financial statements.

- Application for opening of books of account and recast financial statement can be made by:
  - Central Government; or
  - Income Tax authority; or
  - SEBI; or
  - Any statutory regulatory authority
- In view of the above provisions, Income Tax department can apply to NCLT for re-opening of accounts and recasting of financial statements for financial year 2008-09.

Q-2(b) (ii) The Board of Directors of A Ltd. requested its statutory auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. How will you approach to this proposal, as a statutory auditor of A Ltd., taking into account the consequences, if any, of accepting this proposal?

Answer

- As per section 144 of Companies Act, 2013, statutory auditor can provide to the company only such other services as are approved by Board of Audit Committee.
- However, he cannot provide to the company prohibited services directly or indirectly.
- Design and implementation of any financial system of company is included within prohibited services.
- As per section 141, an auditor who provides directly or indirectly any prohibited services as mentioned under section 144 to company or its holding company or its subsidiary company becomes disqualified.
- If auditor becomes disqualified after his appointment, he shall be deemed to have vacated his office.

Q-2(c) Aarthi is the wife of Naresh. She purchased some sarees on credit from M/s. Rainbow Silks, Jaipur. M/s. Rainbow Silks, Jaipur demanded the amount from Naresh. Naresh refused. M/s. Rainbow Silks, Jaipur filed a suit against Naresh for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether M/s. Rainbow Silks, Jaipur would succeed?

Answer

Please refer answer to question no. 7 from past examination question of Chapter no. 11C – Indian Contract Act, 1872 - Agency.

Q-2(d) Explain the concept of 'Noting', 'Protest' and 'Protest for better security' as per the Negotiable Instruments Act, 1881.

Answer

Noting

- Recording of fact of dishonour of negotiable instrument upon the instrument or on a paper attached to it, is known as noting.
- Noting is a minute recorded by notary public on the dishonoured instrument.

Protest

- On presenting dishonoured instrument to notary public, certificate of dishonour is issued. Such certificate is called a protest. Protest is optional.

Protest for better security

- When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Q-3(a) Which fund may be utilized by a public limited company for purchasing (buy back) its own shares? Also, explain the provisions of the Companies Act, 2013 regarding the circumstances in which a company is prohibited to buy-back its own shares.

Answer

Sources of Buyback

- Company to buy its own shares out of:
  - Its free reserves; or
  - The securities premium account; or
  - The proceeds of any other shares or specified securities.
- However, no buy-back of any kind of shares or other specified securities shall be made out of the **proceeds of an earlier issue of the same kind of shares** or same kind of other specified securities.

Restrictions

- Company shall not directly or indirectly, purchase its own shares or other specified securities:
  - Through any **subsidiary company**; or
  - Through any **investment company**; or
  - If a **default, in repayment of deposit or interest thereon, redemption of debentures or preference shares or payment of dividend or repayment of a term loan or interest** thereon to any financial institution or bank is subsisting. This prohibition is not applicable, if default cease to subsist and period of **3 years has elapsed**.
  - If default is made in filing annual return, declaration of dividend or punishment for failure to distribute dividend and financial statement.

Q-3(b)(i) Alex Ltd. is facing loss in business during the financial year 2018-2019. In the immediate preceding three financial years, the company had declared divided at the rate of 7%, 11% and 12% respectively. The Board of Directors has decided to declare 12% interim dividend for the current financial year at least to be in par with immediately preceding year. Is the act of the Board of Directors valid?

(ii) The directors of East West Ltd. proposed divided at 15% on equity shares for the financial year 2017-2018. The same was approved in the annual general body meeting held on 24th October, 2018. The directors declared the approved dividends. Mr. Binoy was the holder of 2000 equity of shares on 31st March, 2018, but he transferred shares to Mr. Mohan, whose name has been registered on 18th June, 2018. Who will be entitled to the above dividend?

Answer

(i) Average rate of dividend declared by Alex Ltd. during the preceding three financial years is 10% (i.e. 7+11+12/3). Accordingly, Board can declare interim dividend of not more than 10%.

Please refer answer to question no. 12 from past examination question of Chapter no. 8 –Declaration and Payment of Dividend.

(ii) As per section 123(5) of Companies Act, 2013, dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. Facts in the given case state that Mr. Binoy has transferred shares to Mr. Mohan and it has been registered on 18th June, 2018 in name of Mr. Mohan. Since, he become the registered shareholder before declaration of dividend in the Annual General Meeting of company held on 24th October, 2018. Therefore, Mr. Mohan will be entitled to the dividend.

Q-3(c) (i) M draws bill on N. N accepts the bill without any consideration. The bill is transferred to O without consideration. O transferred it to P for Rs. 10,000. On dishonor of the bill, P sued O for recovery of the value of Rs. 10,000. Examine whether O has any right to action against M and N?

(ii) A bill of exchange was made without mentioning any time for payment. The holder added the words 'on demand' on the face of the instrument. Does this amount to any material alteration? Explain.

Answer

(i) Please refer answer to question no. 13 from past examination question of Chapter no. 12 – Negotiable Instruments Act, 1881.

(ii) It is not material alteration as bills of exchange where no date of payment is specified will be treated as payable on demand. Hence, adding the words 'on demand' does not alter business effect of instrument.

Q-3(d) 'Preamble does not over-ride the plain provision of the Act'. Comment. Also give suitable example.

Answer

- Preamble of a statute is part of the Act. It can be used for constructing it.
- However, the preamble does not override plain provision of the Act but if the wording of the statute gives rise to doubts as to its proper construction.
- **For example:** Section 5 of Hindu Marriage Act, 1955 read as 'a marriage may be solemnized between two Hindu…' Here, use of word may at the first instance indicate option. But it has been constructed that both parties to marriage should be Hindu. If it is so, marriage will be valid provided other conditions are fulfilled. It was held that marriage between a Christian male and Hindu female solemnized under the Hindu Marriage Act was void. It was decided based on reading of preamble. Preamble of the Act reads as 'An Act to amend and codify the law relating to marriage among Hindus'.

Q-4(a) Explain various instances which make the allotment of securities as irregular allotment under the Companies Act, 2013.

Answer

Please refer answer to question no. 20 from past examination question of Chapter no. 4A – Share capital, Capital & Alteration of capital.

Q-4(b) Madurai Ltd. issued a notice for holding of its Annual General Meeting on 7th November, 2018. The notice was posted to the members on 16th October, 2018. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was valid. Referring to the provisions of the Act, decide:

i. **Whether the meeting has been validly called?**
ii. **If there is shortfall, state and explain by how many days does the notice fall short of the statutory requirement?**
iii. **Can the delay in giving notice be condoned?**

Answer

- As per section 101, notice of General Meeting should be given 21 clear days in advance. While calculating 21 clear days, the following days are excluded:
  - Day of the meeting
  - Day of dispatch of notice
  - 48 hours (i.e., 2 days) for service of notice.
- In the given case notice was posted on 16th October, 2018 for meeting to be held on 7th November, 2018.

- Based on above provision, it can be said that company has given 19 days clear notice (16 days of October + 7 days of November – one day of posting – day of meeting – 2 day for posting). Notice is invalid.
  - **i.** Valid meeting cannot be said to be held due to improper notice.
  - ii. Notice fall short by two days.
  - **iii.** General Meeting may be called by shorter notice, if consent in writing is given by not less than 95% of the members entitled to vote at meeting.

Q-4(c)(i) The Companies Act, 2013 provides that the amount of dividend remained unpaid/unclaimed on expiry of 30 days from the date of declaration of dividend shall be transferred to unpaid dividend account within 7 days from the date of expiry of such period of 30 days. If the expiry date of such 30 days is 30-10-2018, decide the last date on or before which the unpaid/unclaimed dividend amount shall be required to be transferred to a separate bank account in the light of the relevant provisions of the General Clause Act, 1897?

(ii) Referring to the provisions of the General Clauses Act, 1897, find out the day/date on which the following Act/regulation comes in to force. Give reasons also.

(1) An Act of Parliament which has not specifically mentioned a particular date.

(2) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide notification dated 14th August, 2015 with effect from 1st January, 2016.

Answer

(i)

- As per section 127 of Companies Act, 2013, company shall pay dividend or dispatch dividend warrant within 30 days from its declaration. Amount of unpaid or unclaimed dividend shall be transferred to separate bank account within period of 7 days from expiry of 30 days.
- Expiry of 30 days take place on 30-10-2018. Company is required to transfer amount between period of 31st October, 2018 to 6th November, 2018.
- As per section 9 of General Clause Act, 1897, in computing time, it suggests to exclude first day and to include last day of series of day.
- In this series of 7 days, 30th October, 2018 will be excluded and 6th October, 2018 will be included.

(ii)

- Central Act shall come into force from date expressed in it. If date of enforcement is expressed in official gazette then it shall come into force from date expressed in official gazette.
- When Central Act does not express about when it will come into operation, then it shall come into operation on day on which it receives assent of:
  - Governor-General (in case where Central Act made before commencement of constitution)
  - President

(1) An Act of parliament which has not specifically mentioned date shall come into force when it is published in official gazette.

(2) SEBI (ICDR) (Fifth Amendment) Regulations, 2015 shall come into force from the date expressed in it i.e., with effect from 1st January, 2016.

Q-4(d) How will you understand whether a provision in a statute is 'mandatory' or 'directory'?

Answer

Please refer answer of question no. 4 from past examination questions of Chapter no. 14 – Interpretation of Statutes, Deeds and Documents.

Q-5(a) A group of individuals intend to form a club namely 'Budding Pilots Flying Club' as limited liability company to impart class room teaching and aircraft flight training to trainee pilots. It was decided to form a limited liability company for charitable purpose under section 8 of the Companies Act, 2013 for a period of 10 years and thereafter the club will be dissolved and the surplus of assets over the liabilities, if any, will be distributed amongst the members as a usual procedure allowed under the Companies Act. Examine feasibility of the proposal and advise the promoters considering the provisions of the Companies Act, 2013.

Answer

- Promoters' proposal is not completely feasible.
- Section 8 company can be incorporated like any other company.
- Promoters desirous to incorporate section 8 company shall apply to Central Government and obtain license.
- Central Government can issue license if it has objective for promotion of commerce, art, science, education, sports, religion, charity or any other useful social purpose and not to make profit.
- Accordingly, promoters can incorporate section 8 company for imparting training purpose without profit motive.
- However, on winding up or on dissolution of section 8 company after satisfaction of its debts and liabilities, any assets shall be transferred to another company registered as section 8 company. Any surplus of assets cannot be distributed among its member.

OR

Give the points of distinction between ordinary resolution and special resolution.

Answer

Ordinary Resolution	Special Resolution
Resolution shall be an ordinary resolution if: ▪ **Notice** has been duly given; and ▪ passed by a **simple majority**	Resolution shall be special resolution if: ▪ **Notice specify intention** to propose resolution as special resolution. ▪ Notice is duly given, and the number of **votes cast in favour of the resolution is at least three times the number of votes cast against it**, either by a show of hands or on a poll in person or by proxy
Following subject matters shall be passed through ordinary resolution: ▪ Accepting deposits from public ▪ Change of name of company pursuant to order of Central Government ▪ Issue shares with differential voting rights ▪ Issue bonus shares	Following subject matters shall be passed through special resolution: ▪ Alteration of object clause ▪ Change of registered office from one state to another ▪ To issue further shares without offering them to existing members ▪ Appointment of relative of director ▪ Alteration of articles of association

Q-5(b)(i) Explain the provisions of the Companies Act, 2013 relating to quorum for general meeting of a public company having total 30 members, of which, two members are bodies corporate and one member is the President of India. Whether the representative appointed by body corporate and

President of India to participate in the general meeting shall be counted for quorum and can such representatives cast vote at that general meeting?

(ii) If a member of a listed company who has casted his vote through electronic voting can attend general meeting of company and change his vote subsequently and can he appoint a proxy?

Answer

(i) Authorised representative appointed by body corporate and President of India are counted toward quorum. Please refer answer of question no. 13 from past examination questions of Chapter no. 7 – Management and Administration (Registers and Returns).

(ii) As per Rule 20 of the Companies (Management and Administration) Rules, 2014 suggest that member who has casted his vote by electronic method will not be allowed to vote at annual general meeting. At the same time, member cannot change his vote once it is casted. Therefore, a member who has casted his vote through electronic voting cannot be permitted to appoint proxy although the member may personally attend the meeting.

Q-5(c) (i) 'An agent is neither personally liable nor can he personally enforce the contract on behalf of the principle.' Comment.

(ii) What is the liability of a bailee making unauthorized use of goods bailed?

Answer

(i) Statement is correct. An agent does all acts on behalf of the principal but incurs no personal liability. The liability remains that of the principal unless there is contract to the contrary. This is because there is no privity of contract and passing of consideration between agent and third party. An agent also cannot personally enforce contracts entered into by him on behalf of principal.

(ii) The bailee should not use the goods for unauthorized purpose. If the bailee makes any unauthorized use of goods, he shall be liable for any loss or destruction of goods even if he was not negligent – Section 154 of Indian Contract Act, 1872.

Q-5(d) If it is defined as:

- **(i) 'Company means a company incorporated under the Companies Act, 2013 or under any previous company Law.'**
- **(ii) 'Person' includes, __________ under the Consumer Protection Act, 1986.**

How would you interpret/construct the nature and scope of the above definitions?

Answer

(i) When the word 'mean' is used in definition, it has restrictive meaning. Definition of 'company' under Companies Act, 2013 which state that company means a company incorporated under Companies Act, 2013 or under any previous law'.

(ii) Definition of 'person' which used word includes, is extensive definition.

Resources on Youtube:
https://www.youtube.com/watch?v=iesMIvbsdlw&t=25s
https://www.youtube.com/watch?v=g9kfUzqsrjg&t=64s
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