Answer 1

(i) Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to her.

In the given situation, the company has failed to communicate to the shareholder Mrs. Sheela about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.

(ii) Section 127, inter-alia, provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law. In the present circumstance, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession.
Hence, there will not be any liability on the company and its Directors etc.

Answer 2

The problem given in question is mainly relates to the duties of the auditors. Section 143 of the Companies Act, 2013 provides that the main duty of the auditor is to make a report to the members of the company on the accounts examined by him and the balance sheet and the profit and loss account of the company and on every document which is annexed to the balance sheet or profit and loss account laid before the company in general meeting. The auditor owes a duty to the members to state whether the accounts give a true and fair view of the affairs of the company at the end of the financial year and of the profit and loss account of the year.

The duty of an auditor is to give information in direct and express terms (Crichton's Oil Co. Re (1902) 2ch 86) and not merely to arouse inquiry. If he discovers that any illegal or improper payments or any other papers have been made, his duty will be to make it public by reporting. The auditor occupies a fiduciary position in relation to the shareholders and in auditing the accounts maintained by the directors, he must act in the best interest of the shareholders who are in the position of beneficiaries.

But there is a limitation relating the duties to be performed by the auditor. An auditor is not bound to be a detective and is not expected to approach his work with suspicion or with a foregone conclusion that there is something wrong. He is a watchdog but not bloodhound. He is justified in believing tried servants of the company in whom confidence was placed by the company. He is entitled to assume that they are honest and to rely upon their representations, provided he takes reasonable care. If there is anything calculated to excite suspicion, he should probe it to the bottom, but in the absence of anything of that kind he is only bound to be reasonably cautions and careful.

This question is related to case of Kingston Cotton Mill Co. Re (No. 2) (1896) 2 ch 279. In this case it was held that, the auditors were not liable. It is not auditor's duty to take stock. There are many matters in which he may rely on the honesty and accuracy of others. Further auditors do not guarantee the discovery of all frauds.

However, it is possible to hold a different view by stating that the auditor cannot escape from his responsibility by relying on the stock valuation certified by Mr. Rohan who is the manager. Though, it is not the duty of auditor to examine the books of accounts very minutely, they are supposed to examine the quantity of stock at the beginning of year with the purchases & sales and arriving at the figures of closing stock which would have become clear that there was overvaluation of stock. Thus, the auditor of the company will be responsible for the violations and shall be punishable with fine which shall not be less than ` 25,000 but which may extend up to ` 5 lakhs as per provisions of Section 147(2) of the Act.

Answer 3

(i) According to section 151 of the Companies Act, 2013, a listed company may have one director elected by small shareholders in such manner and on such terms and conditions as may be prescribed.

Here, "Small Shareholders" means a shareholder holding shares of nominal value of not more than ` 20,000 or such other sum as may be prescribed.

A listed company may upon notice of not less than
(a) one thousand small shareholders; or
(b) one- tenth of the total number of such shareholders,

Whichever is lower, have a small shareholders' director elected by the small shareholders.

(ii) The small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall leave a notice of their intention with the company at least fourteen days before the meeting under their signature specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director.

However, if the person being proposed does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice.

Further, the notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders' director stating-
(a) His Director Identification Number;
(b) That he is not disqualified to become a director under the Act; and
(c) His consent to act as a director of the company

(iii) The tenure of small shareholders' director shall not exceed a period of 3 consecutive years and on the expiry of the tenure, such director shall not be eligible for re-appointment.

A small shareholders' director shall not, for a period of 3 years from the date on which he ceases to hold office as a small shareholders' director in a company, be appointed in or be associated with such company in any other capacity, either directly or indirectly.

Answer 4

International Technologies Limited, a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration:

(i) Commission at the rate of 5% of the net profits to its Managing Director, Mr. Kamal: Part (i) of the second proviso to section 197(1), provides that except with the approval of the company in general meeting, the remuneration payable to any one managing director; or whole time director or manager shall not exceed 5 % of the net profits of the company and if there is more than one such director then remuneration shall not exceed 10 % of the net profits to all such directors and manager taken together.

In the present case, since the International Technologies Limited is being managed by a Managing Director, the commission at the rate of 5% of the net profit to Mr. Kamal, the Managing Director is allowed and no approval of company in general meeting is required.

(ii) The directors other than the Managing Director are proposed to be paid monthly remuneration of ` 50,000 and also commission at the rate of 1 % of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed 2 % of the net profits of the company: Part (ii) of the second proviso to section 197(1) provides that except with the approval of the company in general meeting, the remuneration payable to directors who are neither managing directors nor whole time directors shall not exceed -

(A) 1% of the net profits of the company, if there is a managing or whole time director or manager;
(B) 3% of the net profits in any other case.

In the present case, the maximum remuneration allowed for directors other than managing or whole time director is 1% of the net profits of the company because the company is having a managing director also. Hence, if the company wants to fix their remuneration at not more than 2% of the net profits of the company, the approval of the company in general meeting is required.

(iii) The company also proposes to pay suitable additional remuneration to Mr. Bhatt, a director, for professional services rendered as software engineer, whenever such services are utilized:

(1) According to section 197(4), the remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either
   (i) By the articles of the company, or
   (ii) By a resolution or,
   (iii) If the articles so require, by a special resolution, passed by the company in general meeting, and

(2) The remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity.

(3) Any remuneration for services rendered by any such director in other capacity shall not be so included if—
   (i) The services rendered are of a professional nature; and
   (ii) In the opinion of the Nomination and Remuneration Committee, if the company is covered under sub-section (1) of section 178, or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

Hence, in the present case, the additional remuneration to Mr. Bhatt, a director for professional services rendered as software engineer will not be included in the maximum managerial remuneration and is allowed but opinion of Nomination and Remuneration Committee is to be obtained.

Also, the International Technologies Limited (a listed company) shall disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed under the Companies (Appointment and Remuneration of Managerial personnel) Rules, 2014.

Answer 5

Board Resolution

Resolution passed at the meeting of Board of Directors of Target Limited held at its registered office situated at …… on ……(date) at …… (Time).

"Resolved that pursuant to section 128(6) and 129 of the Companies Act, 2013, Mr. Shukla, who is already the General Manager (Finance and Accounts) of the company, be and is hereby entrusted with additional duties of ensuring compliance with the provisions of the Companies Act, 2013 so that the books of accounts, balance sheet, statement of profit and loss and the cash flow statements are maintained in accordance with the provisions of law."

"Further Resolved that the said Mr. Shukla be and is hereby entrusted with the authority to do such acts things or deeds as may be necessary or expedient for the purpose of discharging his above referred duties."

Sd/
Board of Directors
Target Limited

Answer 6

Intimation of changes in particulars specified in DIN application: The Companies (Appointment and Qualification of Directors) Rules, 2014 provides for the procedure for intimation of changes in particulars specified in the DIN application. According to which every individual who has been allotted a DIN under these rules shall, in the event of

any change in his particulars as stated in Form DIR-3, intimate such change(s) to the Central Government within a period of thirty days of such change(s) in Form DIR-6 in the following manner, namely :-

A. the applicant shall download Form DIR-6 from the portal and fill in the relevant changes, attach copy of the proof of the changed particulars and verification in the Form DIR-7 all of which shall be scanned and submitted electronically;
B. the form shall be digitally signed by a chartered accountant in practice or a company secretary in practice or a cost accountant in practice;
C. the applicant shall submit the Form DIR-6.

Answer 7

According to the Companies Act, 2013, the Central Government under section 210 (1) may order an investigation into the affairs of the company, if it is of the opinion that it is necessary to do so:

(a) On the receipt of a report of the Registrar or Inspector under section 208;
(b) On intimation of a special resolution passed by a company that the affairs of the company ought to be investigated;
(c) In public interest.

According to section 210 (3) of the Companies Act, 2013, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.

The shareholders' application will not be accepted as under 210 of the Companies Act, 2013, Central Government may order an investigation into affairs of the company on the intimation of a special resolution passed by a company that the affairs of the company ought to be investigated and then may appoint the inspectors. Here, 101 out of total 500 shareholders of the company have made an application to the Central Government to appoint an inspector to carry out investigation but it is not sufficient as the company has not passed the special resolution.

Answer 8

According to Sections 244 of the Companies Act, 2013, a group of shareholders of Unique Products Limited must hold atleast 10% of the issued share capital of the Company or satisfy other requirements under section 244 of the Companies Act, 2013. Since the group holds 12% of the issue capital they are entitled to file a petition before the Tribunal under 241 of the Companies Act, 2013 by alleging that the affairs of the Company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members of the Company. However, on the basis of Sheth Mohanlal Ganpatram V. Shri Sayaji Jubilee Colton and Jute Mills Company Ltd., mere illegal, invalid or irregular transactions entered into in the name of the company do not constitute a ground for invoking the provisions of section 241 unless it is proved that they are oppressive to any shareholder or prejudicial to the interest of the company or to the public interest.

Thus, in the present case, the petition filed by the group of shareholders will fail unless they can prove to the satisfaction of the Tribunal that the acts complained of in the petition are oppressive and prejudicial to the interest of the company and the public interest. And that to wind up the company would unfairly prejudice such member or members, but that otherwise those facts would justify the making of a winding up order on the ground that it was just and equitable that the Company should be wound up

Answer 9

Amalgamation – Exchange Ratio: In the matter given in the question, the court leaves the aspect of share valuation to expert valuers and shareholders. Unless the person who challenges the valuation satisfies the court that the valuation is grossly unfair, the court will not disturb the scheme of amalgamation. (Piramal Spg. Vs. Weaving Mills Ltd.)

In the case where the exchange ratio was questioned by small group of members- In this case, since the valuation is confirmed to be fair by reputed firm of Chartered Accountants and is also confirmed by majority of members, the objection raised by some shareholders of a small group cannot be sustained. (Hindustan Lever Employees Union Vs. Hindustan Lever Ltd.)

Case where exchange ratio was objected by the Central Government- Section 394A of the Companies Act, 1956 requires the Court to give notice of every application made to it under sections 391 or 394 of the said Act, to the Central Government. The Court should take into consideration the representations, if any, made to it by the government before passing any order. The role played by the Central Government is that of impartial observer who

acts in public interest and advises the court whether it is or it is not feasible for the two companies to amalgamate. Thus, in case of objection by the Central Government, the court will refuse to interfere unless the Government establishes that the exchange ratio was unfair and not in public interest. (M.G. Investment & Industrial Co. Ltd. Vs. New Shorrock Spinning & Mfg. Co. Ltd.)