

Note: All questions are compulsory.

Question 1 (4 marks) (1 mark for each point)

Section 123 of the Companies Act, 2013 provides for declaration of dividend. According to the section, Dividend shall be declared or paid by a company for any financial year only—

- (i) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of section 123(2), or
- (ii) 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
- (iii) out of both; or
- (iv) 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.

In the light of the above provisions we can conclude that ABC limited can pay dividends out of the money provided by the Central Government.

Question 2 (8 marks)

The first 3 cases stated in the question are based on the provisions of Section 164 (1) of the Companies Act, 2013 and the fourth case is dealt with in section 164 (2) of the said Act. Based on the provisions of the said sections, each case can be discussed as follows:

- (i) Section 164 (1) (c) states that a person shall not be eligible for appointment as a director of a company if he has applied to be adjudicated as an insolvent and his application is pending. Therefore, in the present case, Mr. A cannot be appointed as a Director of a Company – whether public or private. (2 marks)
- (ii) Section 164 (1) (d) states that a person shall not be eligible for appointment as a director of a company if he has been convicted by a court for any offence involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months, and a period of five years has not elapsed from the date of expiry of the sentence. In the present case, although the sentence was only two years ago, but the period of sentence was only eight weeks, i.e., less than six months. Hence, Mr. B does not come under the purview of this disqualification and can be appointed as a director of a company. (2 marks)
- (iii) The third case also falls within the provisions of section 164 (1) (d). In this case the imprisonment was for a period of one year, i.e., for six or more months, but since more than five years have elapsed from the expiry of the sentence, Mr. C is no longer disqualified and can be appointed as a director of a company. (2 marks)
- (iv) Section 164 (2) states that a person who is or has been a director of a company which has not filed the financial statements or annual returns for any continuous period of three financial years, then such a person shall not be eligible either to be appointed as a director of other company or reappointed as a director in the same company. In the present case, DLT Limited has failed to file annual returns. Hence, the disqualification for Mr. D is attracted and he cannot be appointed as a director in other company nor can he be reappointed in the same company. (2 marks)

Question 3 (4 marks)

"Resolved that pursuant to the Articles of Association of the company and section 161(1) of the Companies Act, 2013, Mr. More is appointed as an Additional Director of the Luxury Limited with effect from 1st October, 2016 to hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier. (2 Marks)

Resolved further that Mr. More will enjoy the same powers and rights as other directors. (1 Mark)

Resolved further that Mr. _____ Secretary of Luxury Limited be and is hereby authorized to electronically file necessary returns with the Registrar of Companies and to do all other necessary things required under the Act." (1 Mark)

Question 4 (8 marks) (2 marks for each point)

Section 135 read with *Companies (Corporate Social Responsibility Policy) Rules, 2014* of the Companies Act, 2013 deals with the provisions related to the Corporate Social Responsibility.

As per the given facts, following are the answers in the given situations-

(i) Amount that Company has to spend towards CSR:

According to section 135 of the Companies Act, 2013, the Board of every company shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy.

Accordingly, net profits of Super Real Estate Ltd. for three immediately preceding financial years is 150 crores (30+70+50) and 2% of the average net profits of the company made during these three immediately preceding financial years will constitute 1 crore, can be spent towards CSR in financial year 2016-2017.

(ii) Composition of CSR Committee:

(a) In the case of listed company, the CSR Committee shall consist of three or more directors, out of which at least one director shall be an independent director.

(b) Whereas in case of an unlisted public company or a private company, is not required to appoint an independent director and shall have its CSR Committee without such director. A private company having only two directors on its Board shall constitute its CSR Committee with two such directors.

(iii) In case of failure to incur expenditure for CSR: If the company fails to provide such amount or incur expenditure for CSR, the Board shall, in its report, under section 134 of the Companies Act, 2013 specify the reasons for not spending the amount.

As no quantum of punishment is given under section 135, section 450 of the Companies Act, 2013 says that, the company and every officer of the company or any other person who is in default or contravenes in compliances with section 135 shall be punishable with fine which may extend to ` 10,000. In case of continuation of contravention with further fine extending to ` 1000 for every day after the first during which the contravention continues.

(iv) Activities not to be considered as CSR Activities: The *Companies (CSR Policy) Rules, 2014* provides for some activities which are not considered as CSR activities:

(1) The CSR projects or programs or activities undertaken outside India.

(2) The CSR projects or programs or activities that benefit only the employees of the company and their families.

- (3) Contribution of any amount directly or indirectly to any political party under section 182 of the Act.
- (4) Expenses incurred by companies for the fulfillment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.

Question 5 (4 marks)

Under Section II of Part II of Schedule V to the Companies Act, 2013, the remuneration payable to a managerial personnel is linked to the effective capital of the company. Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding * ` 120 Lakhs in the year in case the effective capital of the company is between ` 100 crores to 250 crores. The limit will be doubled if approved by the members by special resolution and further if the appointment is for a part of the financial year the remuneration will be pro-rated. (2 marks)

From the foregoing provisions contained in schedule V to the Companies Act, 2013 the payment of ` 50 Lacs in the year as remuneration to Mr. Boss is valid in case he accepts it, as under the said schedule he is entitled to a remuneration of * ` 120 Lakhs in the year and his terms of appointment provide for payment of the remuneration as per schedule V. (2 marks)

[* Note: As per the amendment in Schedule V by the Ministry of Corporate Affairs vide Notification S.O. 2922(E) dated 12th September 2016, part II, for Section II of Schedule V has been revised.]

Question 6 (4 marks)

Penalty for wrongful withholding of property: Section 452 of the Companies Act, 2013 provides for Penalty for wrongful withholding of property. According to the section:

- a. If any officer or employee of a company -
 - i. Wrongfully obtains possession of any property, including cash of the company; or
 - ii. having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorized by this Act, he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than 1 lakh rupees but which may extend to 5 lakh rupees.
 - iii. The Court trying an offence may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misappropriated, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to 2 years. (3 marks)

Hence as per the provisions of the Companies Act, 2013 and not giving any emphasis on the terms of employment, the manager of the company can recover possession of the room and the cash wrongfully obtained and the benefits that have been derived from such property or cash. (1 mark)

Question 7 (4 marks)

1. Intimation of changes in particulars specified in DIN application (2 marks)

- a. According to Companies (Appointment and Qualification of Directors) Rules, 2014, 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 changes(s) in form DIR – 6 in the following manner, namely:
 - i. The applicant shall download Form DIR – 6 from the portal, fill in the relevant changes, verify the Form (DIR-7) and attach duly scanned copy of the proof of the changed particulars and submit electronically.;
 - ii. The form shall be digitally signed by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice;
 - iii. The applicant shall submit the Form DIR -6.
- b. The Central Government, upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained by the Ministry.
- c. The DIN cell of the Ministry shall also intimate the change(s) in the particular s of the director submitted to it in Form DIR-6 to the concerned Registrar(s) under whose jurisdiction the registered office of the company(s) in which such individual is a director is situated.
- d. The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within 15 days of such change.

2. Resignation of Director (Section 168 of the Companies Act, 2013) (2 marks)

A director may resign from his office by giving a notice in writing to the co mpany. The Board shall on receipt of such notice take note of the same. The company shall within 30 days from the date of receipt of notice of resignation from a director, intimate the Registrar in *Form DIR -12* and post the information on its website, if any.

Such director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30 days from the date of resignation in FORM *DIR-11* along with the prescribed fee. The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

In the present case, Vijay, a director resigns after giving due notice to the company and he forwards a copy of resignation in e-form DIR-11 to the RoC within the prescribed time.

If the company fails to intimate about the resignation of Vijay to RoC, even then the resignation of Vijay shall take effect from the date on which the notice is received by the company or the date, if any, specified by Vijay in the notice, whichever is later.

Question 8 (4 marks)

Display of names etc. of foreign company: Section 382 of the Companies Act, 2013 provides that every foreign company shall—

- (a) conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate; (1 mark)

- (b) cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, bill-heads and letter paper, and in all notices, and other official publications of the company; and (1 mark)
- (c) if the liability of the members of the company is limited, cause notice of that fact—
 - (i) to be stated in every such prospectus issued and in all business letters, bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and
 - (ii) to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situate. (1 mark)

Hence, the person who is to take charge of Mumbai Office of Style Limited may follow the above provisions in respect of displaying of the company's name etc. at its Mumbai office as well as in its business letters and other documents. (1 mark)

Question 9 (5 marks)

Right to apply for oppression and mismanagement: As per the provisions of Section 244 of the Companies Act, 2013, in the case of a company having share capital, members eligible to apply for oppression and mismanagement shall be lowest of the following:

1. 100 members; or
2. 1/10th of the total number of members; or
3. Members holding not less than 1/10th of the issued share capital of the company. (1 mark)

The share holding pattern of MNC Limited is given as follows:

₹ 5,00,00,000 equity share capital held by 500 members

The petition alleging oppression and mismanagement has been made by some members as follows:

- (i) No. of members making the petition – 80
- (ii) Amount of share capital held by members making the petition – ₹ 10,00,000 (1 mark)

The petition shall be valid if it has been made by the lowest of the following :

1. 100 members; or
2. 50 members (being 1/10th of 500); or
3. Members holding ₹ 50,00,000 share capital (being 1/10th of ₹ 5,00,00,000) (1 mark)

As it is evident, the petition made by 80 members meets the eligibility criteria specified under section 244 of the Companies Act, 2013 as it exceeds the minimum requirement of 50 members in this case. Therefore, the petition is maintainable. (1 mark)

The consent to be given by a shareholder is reckoned at the beginning of the proceedings. The withdrawal of consent by any shareholder during the course of proceedings shall not affect the maintainability of the petition [*Rajamundhry Electric Corporation Vs. V. Nageswar Rao A.I.R. (1956) Sc. 2013.*] (1 mark)

Question 10 (5 marks)

Section 439 of the Companies Act, 2013 provides that offences under the Act shall be non- cognizable.

As per this section:

1. Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code. (2 marks)
2. No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorized by the Central Government in that behalf. (2 marks)

Thus, in the given situation, the court shall not initiate any suo moto action against the director Mr. X without receiving any complaint in writing of the Registrar of Companies, a shareholder of the company or of a person authorized by the Central Government in this behalf. (1 mark)
