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SUBJECT- CORPORATE AND OTHER LAW

Test Code – CIM 8663

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Notes :

1. Answer new Question on new page.
2. Part II Comprise descriptive Questions and in which Question No. 1 is Compulsory and answer any 3 out of remaining 4 questions

Part I

ANSWER NO.

1. (D) (1 Mark)
2. (A) (1 Mark)
3. (B) (1 Mark)
4. (A) (1 Mark)
5. (D) (1 Mark)
6. (C) (1 Mark)
7. (B) (1 Mark)
8. (B) (1 Mark)
9. (A) (1 Mark)
10. (C) (1 Mark)
11. (B) (2 Marks)
12. (B) (2 Marks)
13. (B) (2 Marks)
14. (B) (2 Marks)
15. (A) (2 Marks)
16. (B) (2 Marks)
17. (B) (2 Marks)
18. (B) (2 Marks)
19. (A)(b) (1 Mark)
(B)(d) (1 Mark)
(C)(c) (1 Mark)
(D)(a) (1 Mark)

Question No. 1 is Compulsory and answer any 3 out of remaining 4 questions

Part II

ANSWER NO.1

- A. According to section 52 of the Companies Act, 2013, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.

The securities premium account may be applied by the company—

- (a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
- (b) in writing off the preliminary expenses of the company;
- (c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
- (d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
- (e) for the purchase of its own shares or other securities under section 68

(4 Marks)

- B. According to section 100 of the Companies Act, 2013, the Board may, whenever it deems fit, call an extraordinary general meeting of the company.

Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.

In the light of the above provisions:

- (i) The Board of Directors can call the EGM in India.
- (ii) The Board of Directors cannot call the EGM of Primal Limited outside India as it is a company incorporated in India.

(4 Marks)

- C. As per Rule 3 of the Companies (Incorporation) Rules, 2014, One Person Company (OPC) cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees. Besides, Section 18 of the Companies Act, 2013 provides that a company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of the Chapter II of the Act.

According to the above provisions, following are the answers to the given circumstances:

- (i) Where, if the promoters increases the paid up capital of the company by Rs. 10.00 lakh during 2017-2018 i.e., to Rs. 55 lakh (45+10= 55), 'New' (OPC) may convert itself voluntarily into any other kind of company due to increase in the paid up share capital exceeding 50 lakh rupees. This could be done by the 'New' by alteration of memorandum and articles of the company in compliance with the Provisions of the Act.

- (ii) Where if the turnover of the 'New' during 2017-18 was Rs. 3.00 crore, there will be no change in the answer, as it meets up the requirement of minimum turnover i.e., Rs. 2 crore for voluntarily conversion of 'New' (OPC) into any other kind of company.

(2.5*2 = 5 Marks)

- D. According to section 195 of the Contract Act, 1872, in selecting an agent (substituted) for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Thus, while selecting a "substituted agent" the agent is bound to exercise same amount of diligence as a man of ordinary prudence and if he does so he will not be responsible for acts or negligence of the substituted agent. Hence, if Aziz has exercised same amount of diligence as a man of ordinary prudence would, he shall not be responsible to Azar for the proceeds of the auction.

(3 Marks)

- E. Capacity to make, etc., promissory notes, etc. (Section 26 of the Negotiable Instruments Act, 1881): Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque. However, a minor may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself.

As per the facts given in the question, Mr. S Venkatesh draws a cheque in favour of M, a minor. M endorses the same in favour of Mrs. A to settle his rental dues. The cheque was dishonoured when it was presented by Mrs. A to the bank on the ground of inadequacy of funds. Here, in this case, M being a minor may draw, endorse, deliver and negotiate the instrument so as to bind all parties except himself. Therefore, M is not liable. Mrs. A can, thus, proceed against Mr. S Venkatesh to collect her dues.

(3 Marks)

ANSWER NO.2

- A. As per section 91 of the Negotiable Instruments Act, 1881, a bill may be dishonoured either by non-acceptance or by non-payment.

Dishonour by non-acceptance may take place in any one of the following circumstances:

- (i) When the drawee either does not accept the bill within forty-eight hours (exclusive of public holidays) of presentment or refuse to accept it;
- (ii) When one of several drawees, not being partners, makes default in acceptance;
- (iii) When the drawee makes a qualified acceptance;
- (iv) When presentment for acceptance is excused and the bill remains unaccepted; and
- (v) When the drawee is incompetent to contract.

(3 Marks)

- B. (i) The appointment and re-appointment of auditor of a Government Company or a government controlled company is governed by the provisions of section 139 of the Companies Act, 2013 which are summarized as under:

The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days

from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.

In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting.

(ii) In the given case as the total shareholding of the XYZ Bank is just 18% of the subscribed capital of the company it is not a government company. Hence, the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.

The auditor shall be appointed as follows:

- (1) The company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting.
- (2) Before such appointment of auditor is made, the written consent of the auditor to such appointment, and a certificate from him or firm of auditors that the appointment, if made, shall be obtained from the auditor:

Further, the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed.

(2*2 = 4 Marks)

- C. As per section 5 of the Companies Act, 2013 the article may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if more restrictive conditions than a special resolution, are met.

The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in prescribed manner.

In the present case, Yadav Dairy Products Private Limited is a private company and wants to protect provisions of articles regarding forfeiture of shares. It means it wants to make entrenchment of articles, which is allowed. But the company will have to pass a resolution taking permission of all the members and it should also give notice to Register of Companies regarding entrenchment of articles.

(3 Marks)

- D. **Noting:** When a promissory note or bill of exchange has been dishonoured by non- acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonor, the reason if any assigned for such dishonor, or if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured and the notary's charges.

Protest: When a promissory note or bill of exchange has been dishonoured by non- acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

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 with a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

(3 Marks)

E. The problem in this case, is based on the provisions of the Indian Contract Act, 1872 as contained in Section 215 read with Section 216. The two sections provide that where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may:

- (1) repudiate the transaction, if the case shows, either that the agent has dishonestly concealed any material fact from him, or that the dealings of the agent have been disadvantageous to him.
- (2) claim from the agent any benefit, which may have resulted to him from the transaction.

Therefore, based on the above provisions, Mr. Ahuja is entitled to recover Rs. 6 lakhs from Mr. Singh being the amount of profit earned by Mr. Singh out of the transaction.

(4 Marks)

ANSWER NO.3

A.

(i) According to section 123 of the Companies Act, 2013 a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company.

As per the given facts, YZ Medical Instruments Limited has earned a profit of 910 crores for the financial year 2018-19. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of the profits of current year.

As per the provisions stated above, the amount to be transferred to reserves out of profits for any financial year is at the discretion of the company acting through its Board of Directors. Therefore, at its discretion, if YZ Medical Instruments Limited decides not to transfer any profit to reserves before the declaration of dividend at 10%, it is legally allowed to do so.

(ii) As per the proviso to section 127 of the Companies Act, 2013, no offence will be deemed to have been committed by a director for adjusting the calls in arrears remaining unpaid or any other sum

due from a member against the dividend declared by the company Thus, as per the given facts, M/s.Rachit leather Shoes Limited can adjust the unpaid call money of Rs. 50,000 against the declared dividend of 10%, i.e. $5,00,000 \times 10/100 = 50,000$. Hence call money of Rs.50000 not paid by karan can be adjusted fully from the entitled dividend amount Rs.50000 payable to him.

(2.5 * 2 = 5 Marks)

B. This section of the Companies Act, 2013 prohibits the company for buy back in the certain circumstances.

(1)The provision says that no company shall directly or indirectly purchase its own shares or other specified securities-

(a) through any subsidiary company including its own subsidiary companies; or

(b) through any investment company or group of investment companies; or

(c)if a default, is made by the company, in repayment of deposits or interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon to any financial institutions or banking company; But where the default is remedied and a period of three years has lapsed after such default ceased to subsist, there such buy-back is not prohibited.

(2)No company shall directly or indirectly purchase its own shares or other specified securities in case such company has not complied with provisions of Sections 92 (Annual Report), 123 (Declaration of dividend), 127 (Punishment for failure to distribute dividends), and section 129 (Financial Statements).

(5 Marks)

C. Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the Heydon's case. This rule enables, consideration of four matters in constituting an act :

(1)what was the law before making of the Act,

(2)what was the mischief or defect for which the law did not provide,

(3)what is the remedy that the Act has provided, and

(4)what is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it. If the object of any enactment is public safety, then its working must be interpreted widely to give effect to that object. Thus in the case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions.

However, it has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning [CIT v. Sodra Devi (1957) 32 ITR 615 (SC)]. **(3 Marks)**

- D. Section 84(1) of the Act, provides that cheque should be presented to Bank within reasonable time. If cheque is not presented within reasonable time, meanwhile the drawer suffers actual damage, the drawer is discharged to the extent of such actual damage. This would be so if the cheque would have been passed if it was presented within reasonable time. As per section 84(2), in determining what is a reasonable time, regard shall be had to (a) the nature of the instrument (b) the usage of trade and of bankers, and (c) facts of the particular case. The drawer will get discharge, but the holder of the cheque will be treated as creditor of the bank, in place of drawer. He "Will be entitled to recover the amount from Bank [section 84(3)]. In the above case drawer i.e. C has suffered damage as cheque was not presented by D within reasonable time. Hence, C will get discharged but D will be the creditor of bank for amount of cheque and can recover the amount from bank. **(4 Marks)**

ANSWER NO.4

- A. Under section 35 (1) of the Companies Act 2013, where a person has subscribed for securities of a company acting on any statement included in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person including an expert shall, be liable to pay compensation to the person who has sustained such loss or damage.

In the present case, Mr. Andrew purchased the shares of Green Ltd. on the basis of the expert report published in the prospectus. Mr. Andrew can claim compensation for any loss or damage that he might have sustained from the purchase of shares, which has not been mentioned in the given case.

Hence, Mr. Andrew will have no remedy against the company

Circumstances when an expert is not liable: An expert will not be liable for any mis- statements in the prospectus under the following situations:

(i) Under section 26 (5), that having given his consent, but withdrew it in writing before delivery of the copy of prospectus for registration, or

(ii) Under section 35 (2), that the prospectus was issued without his knowledge / consent and that on becoming aware of it, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent;

(iii) An expert will not be liable in respect of any statement not made by him in the capacity of an expert and included in the prospectus as such;

(iv) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the

prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by section 26(5) to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder.

(4 Marks)

B. It is important to know here that, a member who is voting by way of postal ballot, has votes in proportion to his share in the paid-up share capital of the company. And in this regard, he need not use all his votes not does he need to use all his votes in the same way. Therefore, 4 types of ballots may be received from the shareholders—

- (i) Ballots which contain assents;
- (ii) Ballots which contain dissents;
- (iii) Ballots wherein the member has voted partially assenting, partially dissenting or using not all his shares in any particular way; and
- (iv) Invalid ballots (due to absence/ mismatch of signature, overwriting, etc)

(3 Marks)

C. The charge in the present case was created after 02-11-2018 (i.e. the date of commencement of the Companies (Amendment) Second Ordinance, 2019) to which another set of provisions is applicable. These provisions are different from a case where the charge was created before 02-11-2018. Initially, the prescribed particulars of the charge together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof, duly verified by a certificate, are to be filed with the Registrar within 30 days of its creation. [Section 77 (1)]. In this case particulars of charge were not filed within the prescribed period of 30 days. However, the Registrar is empowered under clause (b) of first proviso to section 77 (1) to extend the period of 30 days by another 30 days (i.e. sixty days from the date of creation) on payment of prescribed additional fee. Taking advantage of this provision, Renuka Soaps and Detergents Limited should immediately file the particulars of charge with the Registrar after satisfying him through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation. If the company realises its mistake of not registering the charge on 7th June, 2019 instead of 2nd May, 2019, it shall be noted that a period of sixty days has already expired from the date of creation of charge. However, Clause (b) of Second Proviso to Section 77 (1) provides another opportunity for registration of charge by granting a further period of sixty days but the company is required to pay advalorem fees. Since first sixty days from creation of charge were expired on 11th May, 2019, Renuka Soaps and Detergents Limited can still get the charge registered within a further period of sixty days from 11th May, 2019 after paying the prescribed advalorem fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge.

(5 Marks)

D. According to Section 63 of the Companies Act, 2013, 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.

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

Conditions for issue of Bonus Shares: No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless— (i) it is authorised by its Articles; (ii) it has, on the recommendation of the Board, been authorised in the general meeting of the company; (iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it; (iv) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus; (v) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up; (vi) it complies with such conditions as may be prescribed. But the company has to ensure that the bonus shares shall not be issued in lieu of dividend. To issue bonus shares company will need reserves of Rs.50,00,000 (half of Rs.1,00,00,000), which is available with the company. Hence, after following the above compliances on issuing bonus shares under the Companies Act, 2013, Shree Ltd. may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

(5 Marks)

ANSWER NO.5

- A. According to section 8(1) of the Companies Act, 2013, where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—
- 1) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
 - 2) intends to apply its profits, if any, or other income in promoting its objects; and
 - 3) intends to prohibit the payment of any dividend to its members;

the Central Government may, by issue of licence, allow that person or association of persons to be registered as a limited liability company.

In the instant case, the decision of the group of individuals to form a limited liability company for charitable purpose under section 8 for a period of ten years and thereafter to dissolve the club and to distribute the surplus of assets over the liabilities, if any, amongst the members will not hold good, since there is a restriction as pointed out in point (b) above regarding application of its profits or other income only in promoting its objects. Further, there is restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in sub-section (9) of Section 8 of the Companies Act, 2013. Therefore, the proposal is not feasible.

(5 Marks)

OR

- A. The Director shall be held liable for the false statements in the prospectus under sections 34 and 35 of the Companies Act, 2013. Section 34 imposes a criminal punishment on every person who authorises the issue of such prospectus, and section 35 more particularly includes a director of the company in the imposition of liability for such mis statements. Therefore, in the present case the director cannot hide behind the excuse that he had relied on the promoters for making correct statements in the prospectus.

(5 Marks)

B.

S.no	Basis of Distinction	Bailment	Pledge
1	Meaning	Transfer of goods by one person to another for some specific purpose is known as bailment	Transfer of goods from one person to another as security for repayment of debt is known as the pledge.
2	Terms Applicable	The person delivering the goods under a contract of bailment is called as "Bailor". The person to whom the goods are delivered under a contract of bailment is called as "Bailee"	The person who delivers the good as security is called the "Pawnor". The person to whom the goods are delivered as security is called the "pawnee"
3	Purpose	Bailment may be made for any purpose (as specified in the contract of bailment, eg: for safe custody, for repairs, for processing of goods)	Pledge is made for the purpose of delivering the goods as security for payment of a debt, or performance of a promise.
4	Consideration	The bailment may be made for consideration or without consideration	Pledge is always made for a consideration.
5	Right to sell the goods	The bailee has no right to sell the goods even if the charges	The pawnee has right to sell the goods if the
		of bailment are not paid to him. The bailee's rights are limited to suing the bailor for his dues or to exercise lien on the goods bailed	pawnor fails to redeem the goods.
6.	Right to use of goods	Bailee can use the goods only for a purpose specified in the contract of bailment and not otherwise.	Pledgee or Pawnee cannot use the goods pledged.

(3 Marks)**C.**

Proviso: The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (*Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765*).

(3 Marks)

D. According to section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- (i) Properly addressing
- (ii) Pre-paying, and
- (iii) Posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

The facts of the question are similar to a decided case law, wherein it was held that where a notice is sent to the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served. Thus, in the given question it can be deemed that the notice was rightfully served on Mr. Vyas.

(3 Marks)

E. Discharge of Surety by Revocation: 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. A continuing guarantee may, at any time, be revoked by the surety, as to future transactions, by notice to the creditor, but the surety remains liable for transactions already entered into. As per the above provisions, liability of Manoj is discharged with relation to all subsequent credit supplies made by Sharma after revocation of guarantee, because it is a case of continuing guarantee. However, liability of Manoj for previous transactions (before revocation) i.e. for Rs. 40,000 remains. He is liable for payment of Rs. 40,000 to Sharma because the transaction was already entered into before revocation of guarantee.

(3 Marks)