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ANSWER-1

ANSWER-A

Shelf prospectus means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus

- (1) According to Section 31 of the Company Act, 2013 any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage—
 - (A) of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and
 - (B) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.
- (2) The other formalities related to such repeated/subsequent issue of shares- A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first or previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

Thus, Prakhar Ltd. can follow the above provisions and can issue a shelf prospectus.

ANSWER-B

Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly law says that:-

Order of demand for poll by the chairman of meeting: Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:-

- (a) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and
- (b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

Withdrawal of the demand: The demand for a poll may be withdrawn at any time by the persons who made the demand.

Hence, on the basis on the above provisions of the Companies Act, 2013:

- (i) The chairman cannot reject the demand for poll as poll can be demanded by the members present in person or by proxy. subject to provision in the articles of company.
- (ii) The chairman cannot reject the request of the members for withdrawing the demand of the Poll.

ANSWER-C

According to Section 46(1) of the Companies Act, 2013, a share certificate once issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary”, specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares. Therefore, in the normal course the person named in the share certificate is for all practical purposes the legal owner of the shares therein and the company cannot deny his title to the shares.

However, a forged transfer is a nullity. It does not give the transferee (Y) any title to the shares. Similarly any transfer made by Y (to Z) will also not give a good title to the shares as the title of the buyer is only as good as that of the seller.

Therefore, if the company acts on a forged transfer and removes the name of the real owner (X) from the Register of Members, then the company is bound to restore the name of X as the holder of the shares and to pay him any dividends which he ought to have received .

In the above case, ‘therefore, X has the right against the company to get the shares recorded in his name. However, neither Y nor Z’ have any rights against the company even though they are bona fide purchasers.

However, since X seems to be the perpetrator of the forgery, he will be liable both criminally and for compensation to Y and Z.

ANSWER-D

(i) According to Section 134 of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

In the given case, B does not supply the necessary material as per the agreement. Hence, C is discharged from his liability.

(ii) According to Section 136 of the Indian Contract Act, 1872, where a contract to give time to the principal debtor is made by the creditor with a third person and not with the principal debtor, the surety is not discharged.

In the given question the contract to give time to the principal debtor is made by the creditor with X who is a third person. X is not the principal debtor. Hence, A is not discharged.

ANSWER-2

ANSWER-A

In terms of section 2 (87) of the Companies Act 2013 "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.—For the purposes of this clause,—

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors.

In the present case, Jeevan Pvt. Ltd. and Sudhir Pvt. Ltd. together hold less than one half of the total share capital. Hence, Piyush Private Ltd. (holding of Jeevan Pvt. Ltd. and Sudhir Pvt) will not be a holding company of Saras Pvt. Ltd.

However, if Piyush Pvt. Ltd. has 8 out of 9 Directors on the Board of Saras Pvt. Ltd. i.e. controls the composition of the Board of Directors; it (Piyush Pvt. Ltd.) will be treated as the holding company of Saras Pvt. Ltd.

ANSWER-B

As per the provisions of 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:

1. properly addressing,
2. pre-paying, and
3. 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.

Therefore, in view of the above provision, since, the statutory rules itself provides about the service of notice that a notice when required under said statutory rules to be sent by 'registered post acknowledgement due', then, if notice was sent by 'registered post' only it will not be the compliance of said rules. However, if such provision was not provided by such statutory rules, then service of notice if by registered post only shall be deemed to be effected.

Furthermore, in similar case of *In United Commercial Bank v. Bhim Sain Makhija*, AIR 1994 Del 181: A notice when required under the statutory rules to be sent by 'registered post acknowledgement due' is instead sent by 'registered post' only, the protection of presumption regarding serving of notice under 'registered post' under this section of the Act neither tenable not based upon sound exposition of law.

ANSWER-C

"Eligible company" means a public company as referred to in sub-section (1) of section 76, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits :

However, an eligible company, which is accepting deposits within the limits specified under clause (c) of sub-section (1) of section 180, may accept deposits by means of an ordinary resolution.

An eligible company shall accept or renew any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds ten per cent. of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.

ABC Limited is having a net worth of 120 crore rupees. Hence, it can fall in the category of eligible company.

Thus, ABC has to ensure that acceptance deposits from members should not exceed 10% of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.

ANSWER-D

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).

Distinction between Proviso, exception and saving Clause

There is said to exist difference between provisions worded as 'Proviso', 'Exception', or 'Saving Clause'.

Proviso	Exception	Saving Clause
Exception' is intended to restrain the enacting clause to particular cases	'Proviso' is used to remove special cases from general enactment and provide for them specially	'Saving clause' is used to preserve from destruction certain rights, remedies or privileges already existing

ANSWER-3

ANSWER-A

Alteration in Articles of Association: Section 14 of the Companies Act, 2013, vests companies with power to alter or add to its articles. The law with respect to alteration of articles is as follows:

- (1) **Alteration by special resolution:** Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution alter its articles.
- (2) **Filing of alteration with the registrar:** Every alteration of the articles and a copy of the order of the Tribunal approving the alteration, shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same.
- (3) **Any alteration made shall be valid:** Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid as if it were originally contained in the articles.
- (4) **Alteration noted in every copy:** Every alteration made in articles of a company shall be noted in every copy of the articles, as the case may be. If a company makes any default in complying with the stated provisions, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the articles issued without such alteration. **[Section 15]**

ANSWER-B

Registration of charges :

Under section 77 (1) of the Companies Act, 2013 it shall be the duty of every company creating a charge :

- a. within or outside India,
- b. on its property or assets or any of its undertakings,
- c. whether tangible or otherwise, and
- d. situated in or outside India,

to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation.

Provided that the Registrar may, on an application made by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed.

Provided further that if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time in accordance with section 87 which empowers the Central Government to grant extension of time for filing of charges on an application made to it and under specified circumstances.

Provided also that any subsequent registration of a charge shall not prejudice any right acquired in respect of any property before the charge is actually registered.

Section 77 (2) provides that where a charge is registered with the Registrar under sub-section (1) (as explained above), he shall issue a certificate of registration of such charge in such form and in such manner as may be prescribed to the company and, as the case may be, to the person in whose favour the charge is created.

Section 77 (4) further provides that nothing shall prejudice any contract or obligation for the repayment of the money secured by a charge. This means that the obligation of a company to repay the debt is not affected by the non registration of the charge.

Section 78 further provides that if the company fails to register the charge, the same can be done by the person in whose favour the charge is created by following the prescribed conditions.

ANSWER-C

According to Section 139 (2) of the Companies Act, 2013,

- I. Listed companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint an audit firm as auditor for more than two terms of 5 consecutive years.
- II. An audit firm which has completed its term (i.e. two terms of five consecutive years) shall not be eligible for re- appointment as auditor in the same company for five years from the completion of such term.
- III. Further, as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as an auditor of the same company for a period of five years.
- IV. For the purpose of the rotation of auditors, in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of 5 consecutive years or 10 consecutive years, as the case may be.

Applying the above provisions,

- (1) Lemon & Company can continue as statutory auditors of M/s Big Limited for 4 more years from 1.4.2014, i.e. they can continue in office only till 31.3.2018.
- (2) The cooling- off period shall be of 5 years.
- (3) Dew & Company cannot be appointed as a statutory auditor of M/s Big Limited during the cooling – off period of Lemon & Company, as CA. M is the common partner in both Lemon & Company and Dew & Company.

However, Dew & Company can be appointed as a statutory auditor of M/s Dark Limited (a listed subsidiary of M/s Big Limited), during the cooling – off period.

- (4) As per Section 138 (1) of the Companies Act, 2013, every listed company and other prescribed class of companies, shall be required to appoint an internal auditor, who
- (5) shall either be a chartered accountant or a cost accountant, or such other professional (which may be either an individual or a partnership firm or a body corporate) as may be decided by the Board to conduct internal audit of the functions and activities of the company.
- (6) Accordingly, M/s Lemon & Company can be appointed as an internal auditors of M/s Big Limited and in its subsidiary M/S Dark Limited (a listed company). The provision of cooling off period as given under Section 139 of the Companies Act, 2013, shall not be applicable on the Internal auditors.

ANSWER-D

According to section 40 of the Negotiable Instruments Act, 1881, where the holder of a negotiable instrument, without the consent of the endorser, destroys or impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity. Any party liable on the instrument may be discharged by the intentional cancellation of his signature by the holder.

In the given question, E is the holder of a bill of exchange of which F is the payee and it contains the following endorsement in blank:

First endorsement, 'F' Second

endorsement, 'G' Third endorsement, 'H'

Fourth endorsement, 'I'

'E', the holder, may intentionally strike out the endorsement by 'G' and 'H'; in that case the liability of 'G' and 'H' upon the bill will come to an end. But if the endorsements of 'G' and 'H' are struck out without the consent of 'I', 'E' will not be entitled to recover anything from 'I'. The reason being that as between 'H' and 'I', 'H' is the principal debtor and 'I' is surety. If 'H' is released by the holder under Section 39 of the Act, 'I', being surety, will be discharged. Hence, when the holder without the consent of the endorser impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder.

Thus, if 'E' strikes out, without I's consent, the endorsements by 'G' and 'H', 'I' will also be discharged.

ANSWER-4

ANSWER-A

A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of Section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members

have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.

Where two proxy instruments by the same shareholder are lodged in respect of the same votes before the expiry of the time for lodging, there the proxies, the second in time will be counted and where one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted. Thus, in case of Member X, the proxy Z (and not Proxy Y) will be permitted to vote on his behalf. However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

ANSWER-B

In accordance with the provisions of the Companies Act, 2013, as contained under section 134 (1), the financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by at least:

- (1) The Chairperson of the company where he is authorized by the Board; or
- (2) Two directors out of which one shall be the managing director and other the Chief Executive Officer, if he is a director in the company
- (3) The Chief Financial Officer and the Company Secretary of the company, wherever they are appointed.

In case of a One Person Company, the financial statements shall be signed by only one director, for submission to the auditor for his report thereon.

The Board's report and annexures thereto shall be signed by its Chairperson of the company, if he is authorized by the Board and where he is not so authorized, shall be signed by at least two directors one of whom shall be a managing director or by the director where there is one director.

- (i) In the given case, the Balance Sheet and Profit & Loss Account have been signed by Mr. X and Mr. Y, the directors. In view of the provisions of Section 134 (1), the Managing Director Mr. D should be one of the two signatories. Since, the company has also employed a full time Secretary, he should also sign the Balance Sheet and Profit & Loss Account. Therefore, authentication done by two directors is not valid.
- (ii) In case of OPC, the financial statements should be signed by one director and hence, the authentication is in order.

ANSWER-C

According to section 48 of the Companies Act, 2013-

(1) Variation in rights of shareholders with consent: Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class,—

- (a) if provision with respect to such variation is contained in the memorandum or articles of the company; or

(b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class:

Provided that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

(2) No consent for variation: Where the holders of not less than ten per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal:

Provided that an application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

ANSWER-D

(a) An agent has the authority in an emergency to do all such acts as a man of ordinary prudence would do for protecting his principal from losses which the principal would have done under similar circumstances.

A typical case is where the 'agent' handling perishable goods like 'apples' can decide the time, date and place of sale, not necessarily as per instructions of the principal, with the intention of protecting the principal from losses. Here, the agent acts in an emergency and acts as a man of ordinary prudence. In the given case S had acted in an emergency situation and hence, R will not succeed against him.

(b) Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 150. The section provides that if the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed. Accordingly, applying the above provisions in the given case Suresh is responsible to compensate Ramesh for the injuries sustained even if he was not aware of the defect in the carriage.

ANSWER-5

ANSWER-A

Quorum: Quorum means the minimum number of members who must be present in order to constitute a meeting and transact business thereat. Thus, quorum represents the number of members on whose presence the meeting of a company can commence its deliberations.

Section 103 of the Companies Act, 2013 provides the law with respect to the quorum for the meetings. The said section provides that where the Articles of the company do not provide for

a larger number, there the quorum shall depend on number of members as on date of a meeting.

In case of a public company:

- (i) five members personally present if the number of members as on the date of meeting is not more than one hundred;
- (ii) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;
- (iii) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand;

shall be the quorum for a meeting of the company.

Consequences of no Quorum: If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company –

- (a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or
 - (b) to such other date and such other time and place as the Board may determine; or
- the meeting, if called by requisitions (under section 100), shall stand cancelled. In the instant case, KMP Limited is a public company with total number of 2750 members, hence atleast 15 members should have been personally present in order to constitute a valid quorum for the Annual General Meeting.

Thus, the meeting shall automatically stand adjourned to the same day in the next week at the same time and place, if the quorum is not present within half –an- hour from the time appointed for holding a meeting of the company. Further, the Board of Directors may decide for such other date and such other time and place, which they may deem fit. Section 103 of the said Act itself provides for automatic adjournment of the meeting to the same day in the next week at the same time and place, rather the Chairman obviating to take a decision on the matter of the meeting. The question of validity of Chairman’s decision does not arise.

ANSWER-B

According to section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.

Further, according to section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, is liable for the punishment under the said section.

In the present case, the Board of Directors of XYZ Company Limited at its meeting declared a dividend on its paid-up equity share capital which was later on approved by the company's Annual General Meeting. In the meantime the directors at another meeting of the Board decided by passing a resolution to divert the total dividend to be paid to shareholders for purchase of investment for the company. As a result dividend was paid to shareholders after 45 days.

1. Since, declared dividend has not been paid or claimed within 30 days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.
2. The Board of Directors of XYZ Company Limited is in violation of section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to their decision to divert the total dividend to be paid to shareholders for purchase of investment for the company.

Consequences: The following are the consequences for the violation of above provisions:

- (a) Every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and shall also be liable for a fine which shall not be less than one thousand rupees for every day during which such default continues.
 - (b) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.
- (iii) If the amount of dividend to a shareholder is adjusted by the company against certain dues to the company from the shareholder, then failure to pay dividend within 30 days shall not be deemed to be an offence under Proviso to section 127 of the Companies Act, 2013.

ANSWER-C

Inspection of Books of Accounts of the Company (Section 128 of the Companies Act, 2013)—

Mr. Bhagvath has no right to carry out an inspection of the books of accounts of the company despite the fact that he holds 76% of the equity shares of M/s Renowned Company Ltd. According to sections 128(3) and 206 of the Companies Act, 2013, following persons have the right to carry out the inspection of the books of accounts of the company.

- (i) Directors of the Company [Section 128(3) of the Companies Act, 2013]
- (ii) Registrar of Companies [Section 206 of the Companies Act, 2013]
- (iii) Such officer of Government as may be authorised by the Central Government in this behalf (Section 206 of the Companies Act, 2013).
- (iv) Such officers of SEBI as may be authorised by SEBI [Section 206 read with Section 24 of the Companies Act, 2013].

Since Mr. Bhagvath does not fall in any of above mentioned categories, he is not eligible to carry out the inspection.

[Note : According to Regulation 89(ii) of the Table F of the Schedule I of the Companies Act, 2013, a member shall have right of inspecting any account or book or document of the company only if conferred by law or authorized by the Board or by the company in general meeting]

ANSWER-6

ANSWER-A

Rights of Indemnity- holder when sued (Section 125):The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—

- (1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;
- (2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit;
- (3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

It may be understood that the rights contemplated under section 125 are not exhaustive. The indemnity holder/ indemnified has other rights besides those mentioned above. If he has incurred a liability and that liability is absolute, he is entitled to call upon his indemnifier to save him from the liability and to pay it off.

ANSWER-B

Disqualification of auditor : According to section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014.

In the case Mr. Naresh, Chartered Accountants, did not hold any such security. But Mrs. Kamala, his wife held equity shares of EF Limited of face value Rs. 1 lakh, which is within the specified limit.

Further Section 141(4) provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 141, he shall be deemed to have vacated his office of auditor. Hence, Naresh & Company can continue to function as

auditors of the Company even after 15th October 2016 i.e. after the investment made by his wife in the equity shares of EF Limited.

ANSWER-C

- (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) The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the AGM in case of a company other government company. Under section 139 (8)(i) any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within thirty days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.
- (iii) The Companies Act, 2013 categorizes companies into government companies and non Government Companies and lists down the provisions relating to appointment, of auditors as per this classification. Hence, in the given case as the total shareholding of the three institutions adds up to 30% 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.

ANSWER-D

The Companies Act, 2013 under section 13 provides for the process of altering the Memorandum of a company. Since the location or Registered Office clause in the Memorandum only names the state in which its registered office is situated, a change in address from Mumbai to Pune, does not result in the alteration of the Memorandum and hence the provisions of section 13 (and its sub sections) do not apply in this case.

However, under section 12 (5) of the Act which deals with the registered office of company, the change in registered office from one town or city to another in the same state, must be approved by a special resolution of the company. Further, presuming that the Registrar will remain the same for the whole state of Maharashtra, there will be no need for the company to seek the confirmation to such change from the Regional Director.