

**Note: Question 1 is compulsory. Attempt any five from the rest.**

**Question 1**

**(A)** 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: **(4 Mark)**

- (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. A is entitled to recover ` 30 lakhs from Mr. S being the amount of profit earned by Mr. S out of the transaction. **(1 Mark)**

**(B)** According to Section 130 of the Negotiable Instruments Act, 1881 a person taking cheque crossed generally or specially bearing in either case the words 'Not Negotiable' shall not have or shall not be able to give a better title to the cheque than the title the person from whom he took it had. In consequence, if the title of the transferor is defective, the title of the transferee would be vitiated by the defect. **(1 Mark)**

Thus, based on the above provisions, it can be concluded that if the holder has a good title, he can still transfer it with a good title, but if the transferor has a defective title, the transferee is affected by such defects, and he cannot claim the right of a holder in due course by proving that he purchased the instrument in good faith and for value. **(1 Mark)**

Since 'K' in the given case, had obtained the cheque fraudulently, he had no title to it and cannot give to the bank any title to the cheque or money; and the bank would be liable for the amount of the cheque for encashment. (*Great Western Railway Co. v. London and Country Banking Co.*)

The answer in the second case would not change and shall remain the same for the reasons given above.

Thus, 'Sumit' in both the cases shall be successful in his claim from XYZ Bank. **(3 Mark)**

**(C) Issue of Bonus Shares:** 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 **-(2 Mark)**

- (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—**(3 Mark)**

- (a) it is authorised by its Articles;
- (b) it has, on the recommendation of the Board, been authorised in the general meeting of the company;
- (c) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- (d) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
- (e) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;
- (f) 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. Hence, after following the above compliances on issuing bonus shares under the Companies Act, 2013, MN Ltd. may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

**(D) Guidelines to handle communication ethics dilemmas:**

- (a) **Maintain candour:** Candour refers to truthfulness, honesty, frankness and one should stick to these elements while communicating with others. **(1 mark)**
- (b) **Keep message accurate:** At the time of relaying information from one source to another, communicate the original message as accurately as possible. **(1 mark)**
- (c) **Secrecy:** One has to maintain secrecy and confidence in communication. So one should not divulge such information to others **(1 mark)**
- (d) **Ensure timeliness of communication:** The timing of messages can be critical. Delay in sending messages can be assumed unethical. **(1 mark)**
- (e) **Avoid deception:** Ethical communicators are always vigilant in their quest to avoid deception, fabrication, intentional distortion or withholding of information in their communication. **(1/2 mark)**
- (f) **Confront unethical behaviour:** One must confront an unethical behaviour in order to ensure a consistent ethical view point. **(1/2 mark)**

**Question 2**  
**(A)**

<p>Computation of Salary / Wages: According to Section 2(21) of the Payment of Bonus Act, 1965 salary and <u>wages</u> means all remuneration other than remuneration in respect of overtime work, <u>capable of being expressed in terms of money</u>, which would if the terms of employment, <u>express or implied</u>, were fulfilled, be payable to an employee in respect of his employment, or of work done in such employment and <u>includes dearness allowance</u>, i.e. all cash payment by whatever name called, paid to an employee on <u>account of a rise in the cost of living</u>.</p>		2
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<p>But the term <u>excludes</u>:</p> <p>(i) Any <u>other allowance</u> which the employee is for the time being entitled to;</p> <p>(ii) The <u>value of any house accommodation</u> or of <u>supply of light, water, medical attendance</u> or other amenities of any service or of any concessional supply of food grains or other articles;</p> <p>(iii) Any <u>traveling concession</u>;</p> <p>(iv) Any <u>bonus</u> including incentive, production or attendance bonus;</p> <p>(v) Any <u>contribution</u> paid or payable by the employer to <u>any pension fund</u> or for <u>benefit of the employee</u> under any law for the time being in force.</p> <p>(vi) Any <u>retrenchment compensation</u> or any gratuity or other retirement benefit payable to the employee or any <u>ex-gratia</u> payment made to him; and</p> <p>(vii) Any <u>commission</u> payable to the employee.</p>		3
<p>It has been clarified in the explanation to the section that where an employee is given, in lieu of the whole or part of the salary or wage payable to him, <u>free food allowance or free food</u> by his employer, such food allowance or the value of <u>such food shall be deemed to form part of the salary or wage for such employee.</u></p>		2
<p>In view of the provisions of Section 2(21) explained above, the payment of dearness allowance and value of free food by the employer forms part of salary of Kashmira while remaining three payments i.e. payment for overtime, commission on sales and employer's contribution towards pension funds shall not form part of his salary.</p>		1

**(B)**

<p>Under <u>section 62 (1) (c)</u> of the Companies Act, 2013 where at any time, a <u>company having a share capital proposes to increase its subscribed capital</u> by the <u>issue of further shares</u>, either for cash or for a consideration other than cash, such shares may be offered to any persons, if it is <u>authorised by a special resolution</u> and if the <u>price of such shares is determined by the valuation report</u> of a registered valuer <u>subject to such conditions as may be prescribed.</u></p>		3
<p>In the present case, <u>Neptune India Ltd</u> is empowered to allot the shares to Sanjay in settlement of its debt to him. The issue will be classified as issue for consideration other than cash must be approved by the members by a special resolution. Further, the <u>valuation of the shares must be done by a registered valuer.</u></p>		1

**(4 Marks)**

**(C)**

<p>Specialists in this field have identified four types of grapevine chains in an informal communication:-</p>		
<p>(1) <u>Single Strand Chain</u>: In this type of chain, 'A' tells something to 'B' who tells it to 'C' and so on. This type of chain is <u>least accurate in passing on the information or message.</u></p>		1
<p>(2) <u>Gossip Chain</u>: In it, a person seeks out and tells everyone the information he has obtained. This chain is <u>often used when information or a message regarding a 'not-on job' nature is being conveyed.</u></p>		1
<p>(3) <u>Probability Chain</u>: In it, <u>individuals are indifferent to the persons, to whom they are passing some information.</u> This chain is found <u>when the information is somewhat interesting but not really significant.</u></p>		2
<p>(4) <u>Cluster Chain</u>: In this type of chain, 'A' tells something to a few selected individuals and then some of these individuals inform a few other selected individuals. In fact, <u>cluster chain is the dominant grapevine pattern</u> in an organisation. <u>Only few persons are 'liaison individuals' who pass on the information they have obtained and then they are likely to share it with the people they trust.</u></p>		2

Most informal communication flows through this chain.

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### Question 3

- (A) 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 **(1 ½ mark)**

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: **(2 ½ mark)**

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.

- (B) 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 —
- controls the composition of the Board of Directors; or
  - 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: **(2 Marks)**

Explanation.—For the purposes of this clause,—

- 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;
- 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. **(2 Marks)**

In the present case, JVN Pvt. Ltd. and SARA Pvt. Ltd. together hold less than one half of the total share capital. Hence, PQR Private Ltd. (holding of JVN Pvt. Ltd. and SARA Pvt. Ltd) will not be a holding company of SAB Pvt. Ltd.

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

(C)

“Employee” means any person-

(i) who is employed for wages in any kind of work, manual or otherwise, in or in connection with work of an establishment, and

(ii) who gets his wages directly or indirectly from the employer.

Whereas term employee includes following person-

(i) Any person employed by or through a contractor in or in connection with the work of the establishment

(ii) Any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment.

Unlike The Payment of Bonus Act, 1965, EPFMP Act does not provide any criterion or limit based on monetary consideration. Thus Salary of the person is not to be considered while deciding on the whether the person is employee or not. Whether a person is an employee or not, it rest on the relationship of master and servant [Mysore State Coop. Printing Works v. R.P.F. Commr. (1976) Lab IC 1307 Ker]. A partner is not considered as an employee of the firm as the partner cannot be an employer and employee at the same time.

Thus in all of the above case except 4th one, all are employees under Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.

(D)

**Paralanguage:** The term “Paralanguage” is used to describe a wide range of vocal characteristics like tone, pitch and speed etc. - vocal cues that accompany spoken language which help to express and reflect the speaker’s attitude. Paralanguage describes a wide range of vocal characteristics, which help to express and reflect the speaker’s attitude. On careful observation, we find that a speaker use a vast range of vocal cues like :

1. **Pitch Variation:** Most of us introduce wide variations in pitch while speaking. These variations are necessary to catch the listener’s attention and to keep him interested in us.
2. **Speaking Speed:** One should not always speak at a high speed. Speaking fast or at a high speed is not fluency. We speak at different speeds on different occasions and while conveying different parts of a message.
3. **Pause:** The speaking speed is also accompanied by pauses, at the right moments. Incorrect use of pauses can create problems. A pause can be highly effective in emphasizing the upcoming subject and in gaining the listener’s attention. Too frequent pauses will, however, spoil the speech.
4. **Volume Variation:** Our speech should be loud enough to be audible to the audience, not too loud to put them off. The larger the audience, the higher the volume. But depending upon the different parts of the message we should monitor the volume of our speech so as to bring about a sense of contrast to generate interest of the audience.
5. **Non-Fluencies:** Utterances like ‘oh’, ‘ah’, ‘um’, ‘you know’, ‘ok’, etc. are known as non-fluencies. Frequent non-fluencies irritate the listener.

6. **Word Stress:** Proper word stress is of crucial importance in communication. By putting stress or emphasis on a word here or a word there in the same sentence we can change the meaning. (4 marks)

**Question 4**

(A)

The above question will be answered in the following way: <u>Gratuity shall be paid within 30 days from the employer, in failure, the employer shall pay the simple interest on the gratuity amount from the date on which the gratuity becomes payable to the date on which it is paid.</u>		1
The gratuity shall be paid either-(i) in cash, or (ii) in demand draft, or (iii) bank cheque to the claimant. If the claimant so desires and the amount of gratuity payable is less than one thousand rupees, payment may be made by postal money order after deducting the commission due to such postal money order from the amount payable. The intimation about the details of payment shall be given to the controlling authority by the employer.		2
Where nominee or a legal heir is a minor- there the controlling authority shall invest the gratuity amount deposited with him for the benefit of such minor in term deposit with the State Bank of India or any of its subsidiaries or any Nationalized Bank. (Rule 9)		1

(A)

As per the section 62 of the Companies Act, 2013, where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—		
(a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:— (i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined; (ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right; (iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not disadvantageous to the shareholders and the company;		3
(b) to employees under a scheme of employees' stock option, subject to special resolution passed by company and subject to the conditions as may be prescribed; or		1
(c) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as prescribed under the Rule 13 of the Companies (Share capital and Debentures) Rules, 2014.		2

(B)

In terms of the Companies Act, 2013 when <u>any person who becomes a nominee or legal representative of a member by virtue of the operation of any law, he may, upon the production of such evidence as may be required by the Board and subject to any other applicable law, either</u> (a) <u>get himself registered as holder of the securities; or</u> (b) <u>transfer the securities, in favour of a third person who shall be entitled to get the securities registered in his name with the company.</u>		3
If the person <u>being a nominee, so becoming entitled, elects to be registered as holder of the securities, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and such notice shall be accompanied with the death certificate of the deceased member.</u>		1

**Question 5**

(A)

A) <u>Negotiation by delivery (Section 47): An instrument payable to bearer is negotiable by delivery thereof. But when such instrument is delivered on condition that it is not to take effect except in certain event, it is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.</u> <u>The distinction between 'delivery' and 'negotiation' should be noticed. An instrument is said to be negotiated, when it is transferred from one person to another in such a manner as to constitute the transferee the holder thereof.</u>		2
B) <u>Negotiation by endorsement: In order to negotiate, that is to transfer title to an instrument payable to order, it is at first to be endorsed and then delivered by the holder.</u> <u>The endorsement consists of the signature of the holder made on the back of the negotiable instrument with the object of transferring the instrument. If there is no space on the instrument, the endorsement may be made on a slip of paper attached to it. This attachment is known as "Allonge" and it then becomes part of the bill.</u> <u>According to Section 15 of the Negotiable Instruments Act, 1881 "when the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as negotiable instrument, he is said to endorse the same, and is called the endorser."</u>		2

(B) Section 40 (6) of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to a number of conditions which are prescribed under *Companies (Prospectus and Allotment of Securities) Rules, 2014*. In relation to the case given, the conditions applicable under the above Rules are as under **(2 MARKS)**

- (a) The payment of such commission shall be authorized in the company's articles of association;
- (b) The commission may be paid out of proceeds of the issue or the profit of the company or both;
- (c) The rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent (2.5 %) of the price at which the debentures are issued, or as specified in the company's articles, whichever is less;

Thus, the Underwriting commission is limited to 5% of issue price in case of shares and 2.5% in case of debentures. The rates of commission given above are maximum rates.

In view of the above, the decision of Kapoor Builders Ltd. to pay underwriting commission exceeding 2% as prescribed in the Articles is invalid.

The company may pay the underwriting commission in the form of flats as both the Companies Act and the Rules do not impose any restriction on the mode of payment though the source has been restricted to either the proceeds of the issue or profits of the company. **(2 marks)**

(C)

According to the Companies Act, 2013 any meeting of members, other than an Annual General Meeting, shall be deemed to be an extraordinary meeting of the members.		
(i) Under <u>section 100 (1)</u> the Board is <u>required to call a general meeting</u> of the members if a <u>requisition is made by the required number of members</u> , which is as under: (a) in the <u>case of a company having a share capital</u> , such number of members who <u>hold</u> at the date of requisition, <u>not less than 1/10th of such of the paid up capital</u> of the company as on that date carries the right of voting; (b) in the case of a <u>company not having a share capital</u> , such number of members who have at the date of deposit of requisition <u>not less than 1/10th of the total voting power</u> of all the members having on the said date a right to vote		<b>4</b>
(ii) Power of Tribunal to order meeting to be called under <u>Section 186</u> : If for any reason it is <u>impractical to call a meeting</u> , other than an annual general meeting, in any manner in which <u>meetings of the company may be called</u> , or <u>hold or conduct the meeting</u> of the company <u>in the manner prescribed</u> by the Act or the articles, the <u>Tribunal may</u> , either on its own motion or on the requisition of: (a) <u>Any director of the company</u> or any member of the company <u>who would be entitled to vote at the meeting</u> ; (b) <u>Order a meeting of the company to be called</u> , held and conducted in such manner as the Tribunal thinks fit; and (c) <u>Give such ancillary or consequential directions</u> as the Tribunal thinks expedient, including directions modifying, or supplementing in relation to the calling holding and conducting of the meeting, the operations of the provisions of the Companies Act, 1956 and of the company's articles. The <u>Company Law Board</u> may <u>give direction</u> that <u>one member present in person or by proxy</u> shall be <u>deemed to constitute a meeting</u> with such order shall, <u>for all purposes, be deemed to be a meeting of the company duly called, held and conducted</u> .		<b>4</b>

### Question 6

**(A) (1 mark for point)**

According to section 110(1)(a), the following items of business shall be transacted only by means of voting through a postal ballot-
(a) <u>alteration of the objects clause of the memorandum</u> and in the case of the <u>company in existence</u> immediately before the commencement of the Act, <u>alteration of the main objects</u> of the memorandum;
(b) <u>alteration of articles</u> of association in relation to <u>insertion or removal of provisions</u> which, under sub-section (68) of section 2, are <u>required to be included in the articles</u> of a company in order to <u>constitute it a private company</u> ;
(c) <u>change in place of registered office</u> outside the local limits of any city, town or village as specified in sub-section (5) of section 12;
(d) <u>change in objects for which a company has raised money from public</u> through prospectus and still <u>has any unutilized amount</u> out of the money so raised under sub-section (8) of section 13;
(e) <u>issue of shares with differential rights</u> as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of section 43;



(f) <u>variation in the rights attached to a class of shares</u> or debentures or other securities as specified under section 48;
(g) <u>buy-back of shares</u> by a company under sub-section (1) of section 68;
(h) <u>election of a director</u> under section 151 of the Act;
(i) <u>sale of the whole or substantially the whole of an undertaking</u> of a company as specified under sub-clause (a) of sub-section (1) of section 180;
(j) <u>giving loans or extending guarantee or providing security in excess of the limit specified</u> under sub-section (3) of section 186:
<b>Exception:</b> Provided that <u>One Person Company</u> and other <u>companies having members up to two hundred</u> are <u>not required</u> to transact any business through postal ballot.

(B)

**a. Managing ethics and preventing whistle-blowing:  
(1/2 mark each point)**

The focus on core values and sound ethics, the hallmark of ethical management, is being recognized as an important way to ensure the long term effectiveness of governance structures and procedures, and avoid the need for whistle-blowing.

Employers who understand the importance of workplace ethics, provide their workforce with an effective framework and guiding principle to identify and address ethical issues as they arise. These guidelines for managing ethics and to avoid the need for whistle-blowing in the work place may be summarized as follows :

1. **Code of Conduct and Ethics:** A code of ethics specifies the ethical rules of operation in an organization. Codes of conduct specify actions in the workplace and codes of ethics are general guides to decisions about those actions. Examples of topics typically addressed by codes of conduct include: preferred style of dress, avoiding illegal drugs, following instructions of superiors, being reliable and prompt, maintaining confidentiality, not accepting personal gifts and so on.
2. **Establish Open Communication:** Instead of just creating and distributing an ethics policy, it is important that take the time to explain the reasons for the policy and review the guidelines and conduct formal or informal training to further sensitise employees to potential ethical issues. Many of the ethical problems arising in a business are not clear-cut, but involve “grey areas”, where the proper course of action may be ambiguous and uncertain.
3. **Ethical Decisions:** Make ethical decisions in groups, and make these decisions public. This usually produces better quality decisions by including diverse interests and perspective and increases the credibility of the decision process and outcome by reducing suspicion of unfair bias.
4. **Integrate Ethics Management with other Management Practices:** When developing the values statement during strategic planning , include ethical values preferred in the workplace.
5. **Use of Cross-Functional Teams:** When developing and implementing ethics management program use cross-functional teams. It’s vital that the organization’s employees feel a sense of participation and ownership in the program if they are to adhere its ethical values.
6. **Appointing an Ombudsperson:** The ombudsperson is responsible to help coordinate development of the policies and procedures to institutionalize moral value in the workplace. This establishes a point of contact where employees can go to ask questions in confidence about the work situations they confront and seek advice.
7. **Atmosphere of Trust:** Creating an atmosphere of trust is also critical in encouraging employees to report ethical violations they observe. The function might best be provided by an outside consultant, e.g., lawyer, clergyperson, counselor etc. Or, provide a “tip” box in which personnel can report suspected unethical activities, and do so safely on an anonymous basis.

8. **Updating Policies and Procedure:** Regularly update policies and procedure to produce behaviours preferred from the code of conduct, job descriptions, performance appraisal forms, management-by-objectives expectations, standard forms, checklists, budget report formats, and other relevant control instruments to ensure conformance to the code of conduct.
9. **Inclusion of Grievance Policy:** Include a grievance policy for employees to use to resolve disagreements with supervisors and staff.
10. **Set an Example from the Top:** Executives and managers not only need to endorse strict standards of conduct, but should also ensure that they follow it themselves. They must stress to employees that dishonest or unethical conduct will not be tolerated.

**Question 7**

(A) 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 Tirupati 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 2017 -2018. **(4 marks)**

(ii) **Composition of CSR Committee:** The CSR Committee shall be consisting of 3 or more directors, out of which at least one director shall be an independent director.

(a) an unlisted public company or a private company covered under section 135(1) which is not required to appoint an independent director, shall have its CSR Committee without such director;

(b) a private company having only two directors on its Board shall constitute its CSR Committee with two such directors; **(4 marks)**

**(B)**

According to section 6 of the Companies Act, 2013, the provisions of this Act shall have overriding effect on provisions contained in memorandum or articles or in an agreement or in resolution passed by the company in the general meeting or by its board of directors, <u>whether they are registered, executed or passed before or after the commencement of this Act.</u>		<b>2</b>
<u>Any provision contained in any of the above mentioned document, shall be void, to the extent to which it is inconsistent to the provisions of this Act.</u>		<b>1</b>
Hence in light of the above mentioned, <u>any clause mentioned in the memorandum or articles cannot override the provisions of the Act.</u>		<b>1</b>

C)

The reasons which lead to unethical behaviour are as follows:		
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1. <u>Emphasis on short term results.</u> This is one of the primary reasons which has led to the downfall of many companies like Enron and Worldcom.		1
2. <u>Ignoring small unethical issues.</u> It is a known fact that most of the compromises we make are small but however they lead us into committing large infractions. And ignoring minor lapses, lead to bigger and more huge mistakes.		1
3. <u>Economic cycles.</u> In good times, companies are relaxed in their accounting procedures or disclosures, as there is a pervasive feel-good effect. But when times of hardship follow, then the hit taken by them is almost fatal, as was proved in the Enron case. So companies need to watch out for economic cycles and be vigilant in good times as well as bad.		1
4. <u>Accounting rules.</u> In the era of globalization and massive cross border flow of capital, accounting rules are changing faster than ever before. The rules have become more complex and it is difficult to identify deviations from these complex set of requirements. The complexity of these principles and rules and the difficulty associated with identifying abuse are reasons which may promote unethical behaviour.		1

OR

(a) <u>Promoter's duty to disclose: Until a company is incorporated, a promoter stands in a fiduciary capacity towards the company and its prospective shareholders. Hence, he must not make, either directly or indirectly or through a nominee etc., any profit out of his trust, unless the company after full disclosure of the facts, consents.</u> In addition to his duty for declaration of secret profits, he must <u>disclose to the company any interest he has in a transaction entered in to by it.</u> Such <u>disclosure is ineffective if made merely to directors who are nominees of the promoters.</u> Disclosure may be made either to an <u>independent board, or by means of a prospectus to the prospective shareholders.</u> If the <u>promoter makes a secret profit</u> the company can <u>rescind the contract or compel him to account for it.</u> Where all the members of a private company are cognizant of the facts, the rule would not apply.		2
(c) <u>Promoter's remuneration: A promoter has no right to demand any remuneration from the company, for his promotional services in the absence of an express contract with the company. Indeed, in the absence of such a contract, he cannot even recover from the company payments he has made towards legal fees, stamp duties, registration fees, or other expenses in connection with the formation of the company.</u>		2

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