

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) 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. **(1 Mark)**

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*). **(1 Mark)**

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

Question 2

(A) 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 ru les 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.

(B)

Under <u>section 62 (1) (c)</u> of the Companies Act, 2013 where at any time, a <u>company having a share capital</u> proposes to increase its <u>subscribed capital</u> by the <u>issue of further shares</u> , either for cash or for a consideration other than cash, such <u>shares may be offered to any persons</u> , 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> .		3
In the present case, <u>Neptune India Ltd is empowered to allot the shares to Sanjay in settlement of its debt to him</u> . 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> .		1

(4 Marks)

(C)

(a) <u>Promoter's duty to disclose: Until a company is incorporated</u> , a <u>promoter stands in a fiduciary capacity towards the company and its prospective shareholders</u> . Hence, <u>he must not make</u> , either <u>directly or indirectly or through a nominee etc.</u> , <u>any profit out of his trust</u> , <u>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</u> , or <u>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.		3
(c) <u>Promoter's remuneration: A promoter has no right to demand any remuneration</u> from the company, for his <u>promotional services</u> in the <u>absence of an express contract</u> with the company. Indeed, in the <u>absence of such a contract</u> , he <u>cannot even recover from the company payments</u> he has <u>made towards legal fees, stamp duties, registration fees, or other expenses in connection with the formation of the company</u> .		3

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 —

- a. controls the composition of the Board of Directors; or
- b. 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,—

1. 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;
2. 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)

According to <u>section 6</u> 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>		2
<u>Any provision</u> contained in any of the above mentioned document, <u>shall be void</u> , to the extent to which it is <u>inconsistent to the provisions of this Act.</u>		1
Hence in light of the above mentioned, <u>any clause mentioned in the memorandum or articles cannot override the provisions of the Act.</u>		1

(D) Preliminary or pre incorporation Contracts are those contracts which are entered into before the formation of the company by its promoters acting on its behalf. The Companies Act 2013 does not lay down any provisions relating to pre incorporation contracts. Hence, such contracts can be entered into by the promoters in their own names. If entered into in the name of the company, such contracts will be void as on the date of contract, the company not being in existence is not competent to contract and under the Indian Contract Act, 1872 such a contract will be void. Pre incorporation contracts cannot also be ratified when the company is formed as the same are void to begin with. The company not being in existence cannot also appoint promoters as agents to act on its behalf.

Question 4

(A)

<p><u>Agent's duty to disclose all material circumstances & his duty not to deal on his own account without principal's consent.</u> (Sections 215 and 216 of the Indian Contract Act, 1872), The problem is based on Sections 215 & 216 of the Indian Contract Act, 1872. According to <u>Section 215</u>, if an <u>agent deals on his own account</u> in the business of the agency, <u>without obtaining the consent of his principal</u> and without acquainting him with all material circumstances, then the <u>principal may repudiate the transaction</u>. On the other hand, <u>Section 216</u> provides that, if an <u>agent, without the knowledge of his principal, acts on his own account in the business of the agency</u>, then the <u>principal may claim any benefit which may have accrued to the agent from such a transaction</u>. Hence in the first instance, though Jainam had given his consent to Anuj permitting the latter to act on his own account in the business of agency, Jainam may still repudiate the sale as the existence of the mine, a material circumstance, had not been disclosed to him.</p>		4
<p>In the second instance, Jainam had knowledge that Anuj was acting on his own account and also that the mine was in existence; hence Jainam cannot repudiate the transaction under Section 215. Also, under Section 216, he cannot claim any benefit from Anuj as he had knowledge that Anuj was acting on his own account in the business of the agency.</p>		2

(B)

<p>As per the <u>section 62</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 issue of further shares, such <u>shares shall be offered—</u></p>		
<p>(a) <u>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:—</u> (i) <u>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;</u> (ii) <u>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;</u> (iii) <u>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;</u></p>		3
<p>(b) <u>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</u></p>		1

(c) to <u>any persons</u> , if it is <u>authorised by a special resolution</u> , 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
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(c)

In terms of the Companies Act, 2013 when <u>any person</u> 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 (a) <u>get himself registered as holder of the securities</u> ; or (b) <u>transfer the securities</u> , in favour of a third person who shall be entitled to get the securities registered in his name with the company.		3
If the person 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.		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> 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.		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> 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. 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."		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		4
(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> , <u>other than an annual general meeting</u> , 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, either on its own motion or on the requisition of</u> : (a) <u>Any director of the company or any member of the company who would be entitled to vote at the meeting</u> : (b) <u>Order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit</u> ; and (c) <u>Give such ancillary or consequential directions as the Tribunal thinks expedient</u> , 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 that one member present in person or by proxy shall be deemed to constitute a meeting with such order shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.</u>		4

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 immediately before the commencement of the Act</u> , alteration of the <u>main objects</u> of the memorandum;
(b) <u>alteration of articles of association</u> 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 constitute it a private company;
(c) <u>change in place of registered office outside the local limits</u> 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 has any <u>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:
Exception: 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) (1 mark for each point)

1. According to this rule, the words of a statute must be construed ' <u>ut res magis valeat quam pareat</u> ' meaning thereby that words of statute must be construed so as to lead to a <u>sensible meaning</u> .
2. Generally the words or phrases of a statute are to be given their ordinary meaning.
3. For example, in the case of Dr. A.L. Mudaliar vs. LIC of India (1963)(SC), it was held that the Memorandum of Association of a company must be read fairly and its import derived from a reasonable interpretation of the language which it employs.
4. Further, in order to determine whether a transaction is intra vires the objects of a company, the objects clause should be reasonably construed: neither with rigidity nor with laxity.
5. Thus, if the Court finds that giving a plain meaning to the words will not be a fair or reasonable construction, it becomes the duty of the court to depart from the dictionary meaning and adopt the construction which will advance the remedy and suppress the mischief provided the Court does not have to resort to conjecture or surmise. A reasonable construction will be adopted in accordance with the policy and object of the statute.

<p>(i) As per the provisions of the Negotiable Instruments Act 1881, <u>acceptance may be either general or qualified</u>. It is <u>qualified when the drawee does not accept the bill according to the apparent tenor of the bill but attaches some condition or qualification</u> which have the effect of either reducing his (acceptor's) liability or acceptance of this liability is subject to certain condition. The <u>holder of the bill is entitled to require an absolute and unconditional acceptance</u>, otherwise he will treat it as dishonoured however, he may agree to qualified acceptance but he does so at his own peril, <u>since he discharges all parties prior to himself, unless he has obtained their consent</u>. Thus in this given case in accordance with the Explanation to <u>Section 86</u> of the Act, when the <u>drawee undertakes the payment of part only of the sum ordered to be paid</u>, it is a <u>qualified acceptance and the drawer may treat it as dishonoured unless agreed by him</u>. If the <u>Drawer (M) agrees to acceptance, the drawee (R) is responsible for a sum of Rs.7000 only</u>.</p>		3
<p>(ii) It is <u>wrong statement</u>. A cheque marked "<u>not negotiable</u>" is a <u>transferable instrument</u>. The <u>inclusion of the words 'not negotiable'</u> however <u>makes a significant difference</u> in the transferability of the cheques. The <u>holder of such a cheque cannot acquire title better than that of the transferor</u>.</p>		1

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)**

(A) difference between 'interpretation' and 'construction'. (4 marks)

Interpretation	Construction
<p>Meaning: it is the art of finding out the true sense of any form of finding out words, that is the sense which the author intended to convey</p>	<p>Construction is the drawing of conclusions respecting subjects that lie beyond the direct expressions of the text from elements known from and given in the text, conclusions which are in the spirit though not within the letter of the text</p>

Courts role : where the court adheres to the plain meaning of the languages used by the legislature, it would be 'interpretation' of the words	Where the meaning is not plain, the court has to decide whether the wordings was meant to cover the situation before the court, the court would be resorting to what is called 'construction'
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(B) Define as per General Clauses Act

- 1. Imprisonment :
It shall mean imprisonment of either description as defined in the Indian penal code. (a) simple imprisonment (b) rigorous imprisonment **(2 marks)**

- 2. Affidavit
It shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing. **(2 marks)**
