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BRANCH - (MULTIPLE)

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Answer-1 (a) :

(i) **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 itssubsidiary 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 offace value not exceeding 1 lakh rupees as prescribed under the Companies(Audit andAuditors) 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 withinthe 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 bedeemed to have vacated his office of auditor. Hence, Naresh & Company can continue to function as auditors of the Company even after 15th October 2014 i.e. after theinvestment made by his wife in the equity shares of EF Limited.

(3 Marks)

(ii) **Removal of first auditor:** Section 140(1) stipulates that any auditor appointed undersection 139 may be removed from office before the expiry of his term by passing specialresolution in general meeting, after obtaining the previous approval of the CentralGovernment in that behalf.

Provided that before taking any action under subsection (1) of Section 140, the auditorconcerned shall be given a reasonable opportunity of being heard.

The first auditors appointed by Board of Directors can be removed in accordance with theprovision of Section 140(1) of the Companies Act, 2013. Hence the removal of the firstauditor appointed by the Board without seeking approval of the Central Government isinvalid. The company contravened the provision of the Act.

(3 Marks)

Answer-1 (b) :

Payment of dividend; delay in payment; adjustment against dues (Section 127 of the Companies Act, 2013):

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 notbeen posted within thirty days from the date of declaration to any shareholder entitledto the payment of the dividend, every director of the company shall, if he is knowingly aparty 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 meetingdeclared a dividend on its paid-up equity share capital which was later on approved bythe company's Annual General Meeting. In the meantime the directors at anothermeeting of the Board decided by passing a resolution to divert the total dividend to bepaid to shareholders for purchase of investment for the company. As a result dividend was paid to shareholders after 45 days.

(2 Marks)

(i) The Board of Directors of XYZ Company Limited is in violation of section 127 of theCompanies 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 forpurchase of investment for the company. Consequences: The following are the consequences for the violation of aboveprovisions:

(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 shallalso be liable for a fine which shall not be less than one thousand rupees forevery 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.

(3 Marks)

(ii) If the amount of dividend to a shareholder is adjusted by the company againstcertain dues to the company from the shareholder, then failure to pay dividendwithin 30 days shall not be deemed to be an offence under Proviso to section 127of the Companies Act, 2013.

(1 Mark)

Answer-1 (c) :

Remedy against order of SEBI:

ABC Limited was penalized by the SEBI. The following remedies are available to the Company:

(1) **Appeal to the Securities Appellate Tribunal**: Section 15T of the SEBI Act, 1992 provides that any person aggrieved by an order of the Board may prefer an appeal to theSecurities Appellate Tribunal. Such appeal shall be filed within 45 days from the date onwhich a copy of the order of the Board was received. However, the Tribunal mayentertain an appeal after the expiry of the said period if it is satisfied that there wassufficient cause for not filing it within the said period of limitation.

(2 Marks)

(2) **Appeal to the Supreme Court:** Section 15Z of the SEBI Act, 1992 provides that anyperson aggrieved by the decision or order of the SAT may file an appeal to the SupremeCourt within 60 days from the date of communication of the decision or order on anyquestion of law arising out of such order. The Supreme Court may entertain such appealeven after the expiry of said period of limitation for a future period not exceeding sixtydays, if there was reasonable cause for such delay.

(2 Marks)

Answer-1 (d) :

Section 7(a) of the Securities (Contracts) Regulation Act, 1956 provides that a recognised stock exchange is empowered to amend rules to provide for all or any of the following matter s:

(a) Restriction of voting right to members only.

(b) Regulation of voting rights by specifying that each member is entitled to one vote only irrespective of number of shares held.

(c) Restriction on right of members to appoint proxy.

As such Koya Stock Exchange can restrict the appointment of MNL Ltd., as proxy, if rules of the exchange so provide. If it is not so provided, rules may be amended and after gettingapproval of the Central Government regarding amendment, it can restrict appointment ofproxies.

Koya Stock Exchange can also restrict the voting rights of PQR Ltd. if rules of the exchangeso provide. If it is not so provided, rules maybe amended and after getting approval of CentralGovernment regarding amendment, it can restrict the voting rights of PQR Ltd. appointment ofproxies.

(4 Marks)

Answer-2 (a) :

Rotational Directors and Retirement:

(i) According to section 152(6)(a)(i) of the Companies Act, 2013, unless the articles providefor the retirement of all directors at every annual general meeting, not less than twothirdsof thetotalnumberof directorsofapubliccompanyshallbepersonswhoseperiodofofficeisliabletodeterminationbyretirement ofdirectorsbyrotation.

Further, section 152(6)(c) of the Act states that one-third of such of the directors for thetime being as are liable to retire by rotation, or if their number is neither three nor amultiple of three, then, the number nearest to one-third, shall retire from office.

From the above provisions, it is clear that the directors who are liable for rotation at everyannual general meeting shall be one third of those directors who constitute the two thirdsof the total number of directors and who are liable for rotation at every AGM.

(2 Marks)

(ii) Under section 152(6)(d) the directors to retire by rotation at every annual generalmeeting shall be those who have been longest in office since their last appointment, butas between persons who became directors on the same day, those who are to retireshall, in default of and subject to any agreement among themselves, be determined bylot. Therefore, the directors who will retire by rotation shall be those who have been inoffice for the longest term since their appointment. In case of two or more directors whowere appointed on the same date at the same AGM, the retiring

directors will be mutuallyagreed by them or in the absence of such agreement, will be determined by lots.

(2 Marks)

(iii) Under section 152(6)(e) of the Companies Act, 2013 the Vacancy caused by theretirement of directors at the AGM may be filled in the same annual general meeting byappointing either the retiring directors or some other person. The annual general meetingmay also decide not to fill the vacancy arising from the retirement of one or moredirectors.

Section 152(7) (a) provides that if the vacancy of the director retiring by rotation, is not sofilled-up and the meeting has not expressly resolved not to fill the vacancy, the meetingshall stand adjourned till the same day in the next week, at the same time and place, or ifthat day is a national holiday, till the next succeeding day which is not a holiday, at thesame time and place.

Section 152 (7)(b) further provides that if at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved notto fill the vacancy, the retiring director shall be deemed to have been re-appointed at theadjourned meeting, unless:

(a) at that meeting or at the previous meeting a resolution for the re-appointment ofsuch director has been put to the meeting and lost;
(b) the retiring director has, by a notice in writing addressed to the company or itsBoard of directors, expressed his unwillingness to be so re-appointed;
(c) he is not qualified or is disqualified for appointment;
(d) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or
(e) section 162 (appointment of directors to be voted individually) is applicable to the case.

(4 Marks)

Answer-2 (b) :

Dormant Company: According to section 455 of the Companies Act, 2013, a company formed and registered under this Act for the purpose of a future project or to hold anasset or intellectual property and has no significant accounting transaction and aninactive company may make an application to the Registrar in such manner as may beprescribed for obtaining the status of a dormant company. The Registrar shall allow thestatus of a dormant company to the applicant and issue a certificate after consideringthe application. The Registrar shall maintain a register of dormant companies in suchform as may be prescribed.

In case of a company which has not filed financial statements or annual returns for twofinancial years consecutively, the Register shall issue a notice to that company andenter the name of such company in the register maintained for dormant companies.

A dormant company shall have such minimum number of directors, file such documentsand pay such annual fee as may be prescribed to the Registrar to retain its dormantstatus in the register and may become an active company on an application made inthis behalf accompanied by such documents and fee as may be prescribed. However,the Registrar shall strike off the name of a dormant company from the register ofdormant companies, which has failed to comply with the requirements of this section.

Thus, JKL Research Development Limited may follow the above procedure to obtain thestatus of a 'Dormant Company'. **(4 Marks)**

Answer-2 (c) :

Institutional Placement Programme [SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009]:

According to the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, NCP Limited, a listed company should follow the under mentionedregulations for the issue of equity shares under the "Institutional Placement Programme":

(i) Conditions for institutional placement programme.

1. An institutional placement programme may be made only after a special resolution approving the institutional placement programme has been passed by theshareholders of the issuer in terms of section 81(1A) of the Companies Act, 1956.

2. No party paid – up securities shall be offered.
3. The issuer shall obtain an in-principle approval from the stock exchange(s).

(ii) Minimum number of allottees:

1. The minimum number of allottees for each offer of eligible securities made under institutional placement programme shall not be less than ten. Further, no singleallottee shall be allotted more than 25% of the offer size.
2. The qualified institutional buyers belonging to the same group or who are under same control shall be deemed to be a single allottee.

(iii) Restrictions on size of the offer:

1. The aggregate of all the tranches of institutional placement programme made by theeligible seller shall not result in increase in public shareholding by more than 10% orsuch lesser percent as is required to reach minimum public shareholding.
2. Where the issue has been oversubscribed, an allotment of not more than 10% of theoffer size shall be made by the eligible seller.

(iv) Transferability of eligible securities:

The eligible securities allotted under institutional placement programme shall not be sold by the allottee for a period of one year from the date of allocation/allotment, except on arecognised stock exchange.

(4 x 1 = 4 Marks)

Answer-3 (a) :

(i) The case started in the question relates to the provisions of sections 397 and 398 of the Companies Act, 1956 with regard to remedy available to majority shareholders.

Where the majority is prevented from protecting itself by controlling the di rectors at general body meetings, the majority becomes an artificial minority entitled to claimprotection under section 397 and 398 [V. Sebastean, Dr V City Hospital (Pvt.) ltd. (1985)57 Comp. case 453 (Ker)]. Thus the remedy under section 397 and 398 is confined notto an oppressed minority of the shareholders alone; an oppressed majority may alsoapply to the Company Law Board against their oppression from the side minorityshareholders. In Sindhri Iron Foundry (Pvt.) Ltd. Re (1963) 78 E. to N. 118, issue andallotment of a number of shares in a company whereby an admitted majority ofshareholders was reduced to a minority was struck down. While granting relief to amajority group, Mitra J observed in their case;

"If the Court (now the Company Law Board) finds that the company's interest is beingseriously prejudiced by the activities of one or the other group of shareholders, that twodifferent registered offices at two different addresses have been set up, that two rival boards are holding meetings, that the company's business property and assets havepassed into hands of unauthorized persons who have taken wrongful possession andwho claim to be the shareholders and directors, there is no reason why the Court (nowthe company Law Board) should not make appropriate orders to put an end to suchmatters".

(4 Marks)

(ii) Relief by the Company Law Board: The Company Law Board may give relief if it is ofopinion:

1. that the company's affairs are being conducted (a) in a manner prejudicial to public interest, or (b) in a manner oppressive to any member or members;
2. that the facts justify the compulsory winding up order on the ground that it is justand equitable that the company should be wound up;
3. that to wind up the company would unfairly prejudice the applicants.

On being satisfied about the above requirements, the Company Law Board may pass such order as it thinks fit with a view to bring an end to the matters complained of . Thisprovision would help salvage an otherwise sound concern which would have been, butthis principle, forced to into winding up.

(4 Marks)

Answer-3 (b) :

Service of notice on foreign company (Section 383 of the Companies Act, 2013):

According to section 383 of the Companies Act, 2013, any process, notice, or other document required to be served on a foreign company shall be deemed to besufficiently served, if addressed to any person whose

name and address have beendelivered to the Registrar under section 380 of the Companies Act, 2013, and left at, orsent by post to, the address which has been so delivered to the Registrar or byelectronic mode. Hence, the VAT Officer may serve the show cause notice by followingthe above provisions.

[Assumption: It is assumed that X Inc is a foreign company within the meaning ofsection 379 of the Companies Act, 2013]

(4 Marks)

Answer-3 (c) :

Meaning of Capital Account Transaction: It means a transaction which alters the assets orliabilities including contingent liabilities, outside India of persons resident in India or assets orliabilities in India of a person resident outside India, and includes transactions referred to insub-section (3) of section 6 of FEMA Act, 1999.

The Reserve Bank of India has formed the Foreign Exchange Management (PermissibleCapital Account Transactions) Regulations, 2000. The provisions of these regulations are asunder:

(2 Marks)

Categories of Capital Account Transactions: As per these regulations, capital accounttransactions may be classified under the following heads.

(1) Permissible capital account transaction of persons resident in India (schedule 1)
(2) Permissible Capital transactions of persons resident outside India (schedule II).
(3) Prohibited capital account transactions.

A person resident in India may enter into any of the following capital account transactions provided the regulations specified by the Reserve Bank of India in respect of such capitalaccount transactions are complied with.

In view of the above provisions: among five capital account transaction of question first threei.e. (i), (ii) and (iii) are permissible capital account transactions and rest two i.e., (iv) and(v) areprohibited capital transactions.

(2 Marks)

Answer-4 (a) :

Mr. X has to take the following steps to put High Value Builders Ltd. into compulsory winding up:

(i) A petition for winding up of the company is to be filed in the High Court where the registered office of the company is located under Section 439(1) (b) read with Section433(e) and (f) of the Companies Act, 1956. A copy of the petition should also be servedon the company.
(ii) The petition should be filed along with an affidavit showing sufficient ground for theappointment of a provisional liquidator till an order is passed by the High Courtappointing an official liquidator.
(iii) After obtaining the winding up order from the High Court the same should be advertisedwithin 14 days in a newspaper in English language and in the regional language of thestate where the company is registered.
(iv) A Certified copy of the winding up order passed by the court should by filed with theconcerned Registrar of Companies along with the prescribed fees within 30 days from the date of the winding up order.
(v) If the shares of the company are listed in a stock exchange, copy of the petition along with the order may be filed with the stock exchange concerned.
(vi) The winding up proceedings will be carried out by the official liquidator till dissolution of the company.

(1 x 6 = 6 Marks)

Answer-4 (b) :

(i) As per section 15 of Competition Act 2002 any act or proceeding of the Commission shallnot be invalidated merely on the ground of:
   (a) any vacancy in, or any defect in the constitution of the Commission; or
   (b) any defect in the appointment of a person acting as a Chairperson or as a member;

   or

   (c) any irregularity in the procedure of the Commission not affecting the merits of the case.

   Here in this case Mr. ZPM should have professional qualification of not less than 15years as per section 8 of the Act but this disqualification will not invalidate the proceedingof the Commission.

(2 Marks)

(ii) Section 2(i) of Competition Act, 2002 defines 'goods' as follows: 'Goods' means goods as defined the Sale of Goods Act, 1930 and includes –

(a) products manufactured, processed or mined;
(b) debentures, stock and shares after allotment
(c) in relation to goods supplied, distributed or controlled in India, goods imported into India.

Hence, debentures and shares can be considered as 'goods' within the meaning ofsection 2(i) of Competition Act, 2002 only after allotment and not before allotment.

(2 Marks)

Answer-4 (c) :

In terms of section 196 (4) of the Companies Act, 2013, the appointment of a managing director or whole-time director or manager and the terms and conditions of such appointmentand remuneration payable thereon must be first approved by the Board of directors at ameeting and then by an ordinary resolution passed at a general meeting of the company.

(2 Marks)

However, in case such appointment is at variance to the conditions specified in Schedule V,the appointment and the remuneration shall be approved by the Central Government also. It isto be noted that the approval of the Central Government is necessary only if the appointmentis not made in accordance with the conditions specified in Schedule V to the Act.

(1 Mark)

In the given case, the approval of the Central Government is necessary. It means that theterms and conditions are at variance with Schedule V of the Act. In such a situation theappointment of the managing director is void. The central government may on receipt of thenotice refer the matter to the Registrar to take necessary action against the company.

(1 Mark)

However, section 196(5) provides that subject to the provisions of this Act, where anappointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemedto be invalid. The interpretation of this sub section can be drawn even in case the approval ofthe central government is not taken and the acts done by the managing director will bedeemed to be valid.

(2 Marks)

Answer-5 (a) :

A company can pay compensation to its directors for loss of office as provided in sections 202 of the Companies Act, 2013. Under section 202, such compensation can be paid only tomanaging director, director holding the office of the manager and to a whole time director butnot to others. The compensation payable shall be on the basis of average remunerationactually earned by such director for three years, or such shorter period as the case may be,immediately preceding the ceasing of holding of such office and shall be for the unexpiredportion of his term or for three years whichever is shorter. No such payment can be made, ifwinding up of the company is commenced before or commences within 12 months after heceases to hold office if the assets of the company on the winding up, after deducting expensesthereof, are not sufficient to repay to the shareholders the share capital (including the premium, if any) contributed by them. However, no payment of compensation can be made inthe following cases:

(a) where a director resigns on the ground of amalgamation or reconstruction and isappointed the office of managing director or manager or other officer of suchreconstructed or amalgamated company,
(b) where the director resigns his office otherwise than on the reconstruction of the companyor its amalgamation as aforesaid,
(c) where the director vacates office under section 167 of the Companies Act, 2013,
(d) where the winding up of the company is due to the negligence of the director concerned,
(e) where the director has been guilty of any fraud or breach of trust,
(f) where the director has instigated or has taken part directly or indirectly in bringing about, the termination of his office.

(4 Marks)

Answer-5 (b) :

(i) There is no provision in the Companies Act, 2013 under which the board meetings must be held at any particular place. The Companies Act lays down the provisions for holdingmeetings by video conferencing, sending notices, procedures at the meeting etc.Therefore, there is no difficulty in holding the board meeting at Chennai even if all thedirectors of the company reside at Calcutta and the registered office is situated atCalcutta provided that the requirements regarding the holding of a valid board meetingand the other provisions relating to the signing of register of contracts, taking roll calls,etc. are complied with.

(2 Marks)

(ii) Section 173 (3) of the Companies Act, 2013 provides for the giving of notice of everyboard meeting of not less than seven days to every director of the company. There is noprovision in the Act laying down the contents of the notice. Hence, it may be construedthat notice may be interpreted as intimation of the meeting and does not necessarily include the sending of the Agenda of the meeting. However, considering the importanceof Board Meetings and the responsibilities placed on the directors for decisions taken atthe meetings, it is inevitable for them to be properly prepared and informed about theitems to be discussed at the Board Meetings. As a matter of good secretarial practice,the notice should include full details and particulars of the business to be transacted atthe Board Meetings.

The articles of association of the company may make it mandatory to do so in almost allcases.

(2 Marks)

Answer-5 (c) :

The crux of the matter involved in the above case, is whether under section 463 (1) the words "any proceeding" against an officer of a company, would mean only a proceeding under theCompanies Act or any Criminal proceeding under any other law. The provisions of theCompanies Act, define "officer" and "officer in default" but there is no definition for the word "proceeding". In the present case, the proceeding has not resulted from or has not beenbrought about as a consequence of default, refusal, contravention, non-compliance or failureunder the Companies Act, 2013, but has come about as a result of certain acts and omissionscommitted by the directors of Gulmohar Ltd., under the Employees PF and Misc. ProvisionsAct, 1952.

(2 Marks)

It should be noted that the Court has powers under Section 463 to grant relief only to adirector/officer of a company, and is not applicable to the company. Hence, the companycannot claim relief under section 463 of the Companies Act, 2013 .

The significance of the words "in any proceeding" at the beginning of Section 463(1) require tobe understood.

The facts of the case, bear resemblance to those which came up before their Lordships of theSupreme court in RabindraChamaria and Others Vs Registrar of Companies, West Bengaland others, 1992 (73) Comp. Cas. 257 (SC).

Going by the tenor of section 463 of the Companies Act, 2013 and the Supreme Court rulingthe directors of Gulmohar Ltd., cannot avail of relief under Section 463 of the Companies Act,2013 and their Petition is not likely to succeed. It is liable to be dismissed.

(2 Marks)

Answer-5 (d) :

Power of RBI to remove director: Under section 36AA of the Banking Regulation Act, 1949, RBI can terminate any Chairman, Director, Chief Executive, other officials or any employee ofthe bank where it considers desirable to do so particularly when RBI is of the opinion thatconduct of such persons is detrimental to the interest of the depositors or for securing propermanagement of the banking company. Before such termination concerned person should begiven opportunity to be heard of. Such terminated officials can make appeal to the CentralGovt. within 30 days from the date of communication of such termination order. The decisionof the Central Government cannot be called into question. In case an order is issued pursuant to this section the concerned person shall cease to hold his office for a period of notexceeding 5 years as may be specified in the order. Contravention of the above provision shallbe punishable with a fine, which may extent to Rs.250 per day.

(2 Marks)

Any such order shall be valid for a period not exceeding three years or such further periods ofnot exceeding three years at a time as RBI may specify.

Under section 36AB: RBI is empowered to appoint additional Directors for the bankingcompany with effect from the date to be specified in the order, in the interest of the bank orthat of depositors. Such additional directors shall hold office for a period not exceeding threeyears or such further periods not exceeding three years at a time.

(2 Marks)

Answer-6 (a) :

The Companies Act 2013 vide section 173(3) merely states that a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his addressregistered with the company and such notice shall be sent by hand delivery or by post or byelectronic means. It further provides for the board meeting to be held on shorter notice to transact urgent business subject to the condition that at least one independent director, if any,shall be present at the meeting.

(2 Marks)

Therefore, as far as the holding of a board meeting is concerned, it may be held at any placeon any day including a national holiday if agreed by the directors.

However, when a board meeting is adjourned due to lack of quorum, then under section174(4) the adjourned meeting can be held on the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not anational holiday, at the same time and place, unless the Articles provide otherwise. Therefore, the adjourned meeting cannot be held on a national holiday unless the Articles ofthe company provide that it can. The meeting will have to be held on the next working day tothe national holiday.

(2 Marks)

Answer-6 (b) :

According to section 581P of the Companies Act, 1956 the members who sign the memorandum and the articles may designate (not less than five) as first directors and whoshall govern the affairs of the company until the directors are appointed at the Annual GeneralMeeting.

(1) According to section 581-O every producer company shall have at least five and notmore than fifteen directors.
(2) The period of office of director shall be not less than one year and not exceeding 5 yearsas may be specified in the articles.
(3) The election of directors shall be conducted within 90 days from the date of registrationof the producer company. In the case of Inter-state co-operative society the electionshall be held within a period of 365 days.
(4) The directors are normally elected and appointed by the members in the Annual GeneralMeeting. The Board may also co-opt one or more expert directors as an additionaldirector. Such directors cannot exceed $1/5^{th}$ of the total number of directors.
(5) The expert directors shall not have the right to vote in the election of Chairman but shall be eligible to be elected as Chairman if it is provided by the articles.

Thus Mr. Z can be appointed as expert director but he will not have any voting right in the election of chairman of the Board of directors. His tenure of office can be between one to fiveyears.

(4 Marks)

Answer-6 (c) :

Appointment of Additional Director: Resolution (Section 161 of the Companies Act,2013)

According to section 161(1) of the Companies Act, 2013, the articles of a company mayconfer on its Board of Directors the power to appoint any person as an additionaldirector at any time.

(2 Marks)

Board Resolution

"Resolved that pursuant to the Articles of Association of the company and section 161(1) of the Companies Act, 2013, Mr. N is appointed as an Additional Director of theMNR Company Limited with effect from 1st October, 2014 to hold office up to the date of the next annual general meeting or the last date on which the annual general meetingshould have been held, whichever is earlier.

Resolved further that Mr. N will enjoy the same powers and rights as other directors.

Resolved further that Mr._____ Secretary of MNR Company Limited be and is hereby authorised to electronically file necessary returns with the Registrar ofCompanies and to do all other necessary things required under the Act."

Assumption: As the question is silent about the Articles of Association, it is assumedthat Articles of Association has conferred the power to appoint the additional directoron the Board of Directors of MNR Company Limited.

(2 Marks)

Answer-6 (d) :

Money Laundering: Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with theproceeds of crime and projecting it as untainted property shall be guilty of offence of moneylaundering. [Section 3 of the Prevention of Money Laundering Act, 2002] Paragraph 2 of Part A of the Schedule to the Prevention of Money Laundering Act, 2002,covers Offences under the Narcotic Drugs And Psychotropic Substances Act, 1985. Whereby,illegal import into India, export from India or transshipment of narcotic drugs and psychotropicsubstances (section 23) is covered under paragraph 2 of Part A.

(2 Marks)

Punishment: Section 4 of the said Act provides for the punishment for Money-Laundering.Whoever commits the offence of money-laundering shall be punishable with rigorousimprisonment for a term which shall not be less than 3 years but which may extend to 7 yearsand shall also be liable to fine. But where the proceeds of crime involved in money-launderingrelate to any offence specified under paragraph 2 of Part A of the Schedule, the maximumpunishment may extend to 10 years instead of 7 years.

(2 Marks)

Answer-7 (a) :

Compromise or Arrangement: According to sub-section (2) of the section 391 of the Companies Act, 1956, the scheme of compromise and arrangement must be approved by aresolution passed with a majority in number representing three-fourths in value of thecreditors, or members, or class of members, as the case may be, present and voting either inperson or, by proxy.

(1 Mark)

The majority is dual, in number and in value. A simple majority of those voting is sufficient. Whereas the 'three-fourths' requirement relates to value. The three -fourths value is to becomputed with reference to paid-up capital held by members present and voting at themeeting.

In this case 200 members attended the meeting, but only 190 members voted at the meeting. As 70 members voted in favour of the scheme the requirement relating to majority in number(i.e. 95) is not satisfied.

(1 Mark)

190 members who participated in the meeting held 4,90,000 shares, three-fourth of whichworks out to 3,67,500 while 70 members who voted for the scheme held 4,00,000 shares. Themajority representing three-fourths in value is satisfied.

(1 Mark)

Thus, in the instant case, the scheme of compromise and arrangement of Jaora AgriculturalEquipments Limited is not approved as though the value of shares voting in favour issignificantly more, the number of members voting in favour do not exceed the number ofmembers voting against.

(1 Mark)

Answer-7 (b) :

Under section 134(1) of the Companies Act, 2013 the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors beforethey are signed on behalf of the Board by at least:

(a) The chairperson of the company where he is authorised by the Board; or
(b) Two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, and
(c) the Chief Financial Officer and the company secretary of the company, wherever they areappointed.

(3 Marks)

In the instant case, the Balance Sheet and Profit and Loss Account have been signed by Mr.Ghanshyam and Mr. Hyder, the directors. In view of Section 134(1) of the Companies Act,2013, Mr. Indersen, the Managing Director should be one of the two signing directors. Since the company has also employed a full time Secretary, he should also sign the Balance Sheetand Profit and Loss Account.

(1 Mark)

Answer-7 (c) :

Heading and Marginal Notes: A number of sections in an Act applicable to any particular object are grouped together, sometimes in the form of chapters, pre-fixed by Heading and/or Titles. Marginal notes means titles to the section.

In Uttam Das Chela Sunder Das v. SGPC AIR 1996 SC 2133, it was observed that 'Marginal notes or captions undoubtedly, part and parcel of legislative exercise and the languageemployed therein provides the key to the legislative intent. The words employed are not meresurplusage'. Marginal note is legislative and not editorial exercise C Bhagirath v. Delhi Admn.AIR, 1985 SC 1050. It gives an indication as to what was exactly the mischief that wasintended to be remembered and throws light on the intention of legislature. It is relevant factorto be taken into consideration in construing the ambit of the section. Shree Sajjan Mills Ltd. (v)CIT (1985) 156 ITR 585(SC). Heading, title and marginal notes can be referred to if the words are ambiguous. If there is any doubt in the interpretation of words in a section, the headingshelp to resolve the doubt. But they cannot control the plain words of a statute. To sum up, heading, title and marginal notes can be used to understand the legislative intent,but cannot limit or restrict the clear word used in a section.

(4 Marks)

Answer-7 (d) :

(i) Normally a Proviso is added to a section of an Act to except something or qualify something stated in that particular section to which it is added. A proviso should no t be,ordinarily, interpreted as a general rule. A proviso to a particular section carves out an exception to the main provision to which it has been enacted as a Proviso and to no otherprovision. [Ram Narian Sons Ltd. Vs. Commissioner of Sales Tax AIR (1955) S.C. 765]

(2 Marks)

(ii) Sometimes an explanation is added to a section of an Act for the purpose of explainingthe main provisions contained in that section. If there is some ambiguity in the provisionsof the main section, the explanation is inserted to harmonise and clear up and ambiguityin the main section. Something may added be to or something may be excluded from themain provision by insertion of an explanation. But the explanation should not beconstrued to widen the ambit of the section.

(2 Marks)