

**PAPER – 2: CORPORATE AND OTHER LAWS**

**PART – I: ANNOUNCEMENTS STATING APPLICABILITY FOR NOVEMBER, 2021 EXAMINATIONS**

**Applicability for November, 2021 examinations**

The Study Material (October 2020 edition) is applicable for November, 2021 examinations. This study material is updated for all amendments till 31st October, 2020.

Besides, refer booklet on MCQs and Case scenarios (December 2020 edition) containing Independent MCQs and Case Scenarios on the topics covered under the study material for 30 marks segment of MCQs in the Examination.

Students should first read the study material and then go through the said booklet. It will help them with better understanding and practising of the concepts.

Further, all relevant amendments/ circulars/ notifications etc. in the Company law part and the Other Laws portion, for the period 1st November, 2020 to 30th April, 2021 are mentioned below:

**THE COMPANIES ACT, 2013**

**I. Chapter 1: Preliminary**

1. **Amendments related to - Notification S.O. 325(E) dated 22<sup>nd</sup> January, 2021**

The Central Government has amended section 2(52) of the Companies Act, 2013, through the Companies (Amendment) Act, 2020.

**Amendment:**

In the Companies Act, 2013, in **section 2, in clause (52)**, the following proviso shall be inserted, namely:—

"Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies."

Old Law (Pg 1.13)

The amendment is newly inserted.

[Enforcement Date: 22<sup>nd</sup> January, 2021]

2. **Amendments related to – G.S.R. 92(E) dated 1<sup>st</sup> February, 2021**

The Central Government has amended the Companies (Specification of Definitions Details) Rules, 2014, through the Companies (Specification of Definitions Details) Amendment Rules, 2021.

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Amendment:

In the Companies (Specification of Definitions Details) Rules, 2014, in the rule 2, in sub-rule (1), after clause (s), the following clause shall be inserted, namely:-

“(t) For the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees two crores and rupees twenty crores respectively.”.

Old Law (Pg 1.20)

The amendment is newly inserted.

[Enforcement Date: 1<sup>st</sup> April, 2021]

3. **Amendments related to – G.S.R. 123(E) dated 19th February, 2021**

The Central Government has amended the Companies (Specification of definitions details) Rules, 2014, through the Companies (Specification of definitions details) Second Amendment Rules, 2021.

Amendment:

In the Companies (Specification of definitions details) Rules, 2014, after rule 2, the following rule shall be inserted, namely:-

“2A. **Companies not to be considered as listed companies.**- For the purposes of the proviso to clause (52) of section 2 of the Act, the following classes of companies shall not be considered as listed companies, namely:-

- (a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –
- (i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
  - (ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
  - (iii) both categories of (i) and (ii) above.
- (b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;

(c) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.”

Old Law (Pg 1.13)

The amendment is newly inserted.

[Enforcement Date: 1<sup>st</sup> April, 2021]

**II. Chapter 2: Incorporation of Company and Matters Incidental thereto**

**1. Amendments related to - S.O. 4646(E) dated 21<sup>st</sup> December, 2020**

The Central Government has amended Section 8 of the Companies Act, 2013, through the Companies (Amendment) Act, 2020.

Amendment:

In **section 8** of the principal Act, in sub-section (11),—

- (a) the words "with imprisonment for a term which may extend to three years or" shall be omitted;
- (b) for the words "twenty-five lakh rupees, or with both", the words "twenty-five lakh rupees" shall be substituted.

Old Law (Pg 2.14)

Penalty/ punishment in contravention: If a company makes any default in complying with any of the requirements laid down in this section, ..... every officer of the company who is in default shall be punishable **with imprisonment for a term which may extend to three years or** with fine varying from twenty-five thousand rupees to **twenty-five lakh rupees, or with both.**

[Enforcement Date: 21<sup>st</sup> December, 2020]

**2. Amendments related to - Notification G.S.R. 91(E) dated 1<sup>st</sup> February, 2021**

The Central Government has amended the Companies (Incorporation) Rules, 2014, by the Companies (Incorporation) Second Amendment Rules, 2021.

Amendment:

In **rule 3**,

- (a) in sub-rule (1),-
  - (i) for the words, —'and resident in India' the words —'whether resident in India or otherwise' shall be substituted;

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(ii) in Explanation I, for the words —'one hundred and eighty two days' the words —'one hundred and twenty days' shall be substituted;

(b) sub-rule (7) shall be omitted.

Old Law (Pg 2.10) [for Rule 3(1)]

- ◆ Only a natural person who is an Indian citizen **and resident in India-**
  - (a) shall be eligible to incorporate One Person Company (OPC);
  - (b) shall be a nominee for the sole member of One Person Company (OPC).

Explanation I - For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than **182 days** during the immediately preceding financial year.

Pg 2.11 [for Rule 3(7)]

- ◆ **OPC can not convert voluntarily into any kind of company unless two years have expired from the date of incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.**

[Enforcement Date: 1<sup>st</sup> April, 2021]

**III. Chapter 3: Prospectus and Allotment of Securities**

**Amendments related to - S.O. 4646(E) dated 21<sup>st</sup> December, 2020**

The Central Government has amended the following sections of the Companies Act, 2013, through the Companies (Amendment) Act, 2020, as follows:

**Amendment:**

(i) In **section 26** of the Companies Act, 2013 in sub-section (9),—

(a) the words "with imprisonment for a term which may extend to three years or" shall be omitted;

(b) for the words "three lakh rupees, or with both", the words "three lakh rupees" shall be substituted.

Old Law (Pg 3.9)

If a prospectus is issued in contravention of the provisions of section 26, the company ..... prospectus shall be punishable **with imprisonment for a term which may extend to three years or** with fine which shall not be less than fifty thousand rupees but which may extend to **three lakh rupees, or with both.**

(ii) In **section 40** of the Companies Act, 2013 in sub-section (5),—

(a) the words "with imprisonment for a term which may extend to one year or" shall be omitted;

(b) for the words "three lakh rupees, or with both", the words "three lakh rupees" shall be substituted.

Old Law (Pg 3.23)

Company:

- with minimum fine of five lakh rupees and maximum of fifty lakh rupees

Defaulting officer:

- **with imprisonment upto one year, or**
- with minimum fine of fifty thousand rupees and **maximum of three lakh rupees, or**
- **with both.**

[Enforcement Date: 21<sup>st</sup> December, 2020]

#### IV. Chapter 4: Share Capital and Debentures

##### 1. Amendments related to - S.O. 4646(E) dated 21<sup>st</sup> December, 2020

The Central Government has amended the following sections of the Companies Act, 2013, through the Companies (Amendment) Act, 2020.

Amendment:

(i) In **section 48** of the Companies Act, 2013 sub-section (5) shall be omitted.

Old Law (Pg 4.14)

**(6) Punishment for Default: According to Section 48 (5), where any default is made in complying with the provisions of this section, the punishment shall be as under:**

- **company:** It shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees;
- **every officer of the company who is in default:** He shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

(ii) In **section 56** of the Companies Act, 2013 for sub-section (6), the following sub-section shall be substituted, namely:-

"(6) Where any default is made in complying with the provisions of sub-sections (1) to (5), the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees."

Old Law (Pg 4.28)

Punishment for Default in compliance with the provisions: As per Section 56 (6), **where any default is made in complying with the provisions of sub-sections (1) to (5), the punishment shall be as under:**

- **company:** It shall be punishable with fine varying from 25,000 rupees to 5 lakh rupees
- **every officer of the company who is in default:** He shall be punishable with minimum fine of 10,000 rupees and maximum of one lakh rupees.

(iii) In **section 59** of the Companies Act, 2013 sub-section (5) shall be omitted.

Old Law (Pg 4.33)

(v) **Default in complying with the Order of Tribunal:** As per Section 59 (5), if any default is made in complying with the order of the Tribunal under Section 59, the punishment shall be as under:

- **company:** It shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, and
- **every officer of the company who is in default:** He shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

(iv) In **section 64** of the Companies Act, 2013 in sub-section (2),—

- (a) for the words "one thousand rupees", the words "five hundred rupees" shall be substituted;
- (b) for the words "or five lakh rupees whichever is less", the words "subject to a maximum of five lakh rupees in case of a company and one lakh rupees in case of an officer who is in default" shall be substituted.

Old Law (Pg 4.43)

(2) **Default in Filing of Notice:** Section 64 (2) states that where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a penalty of **one thousand rupees** for each day during which such default continues, **or five lakh rupees whichever is less.**

(v) In **section 66** of the Companies Act, 2013 sub-section (11) shall be omitted.

Old Law (Pg 4.47)

(11) **Failure to Publish the Order of Confirmation of the Reduction of Share Capital:** Section 66 (11) states that if a company fails to comply with the provisions of sub-section (4), it shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.

(vi) In **section 68** of the Companies Act, 2013 in sub-section (1),—

- (a) the words "with imprisonment for a term which may extend to three years or" shall be omitted;
- (b) for the words "three lakh rupees, or with both", the words "three lakh rupees" shall be substituted.

Old Law (Pg 4.52)

(11) Penalty for Default: Section 68 (11) states that if a company makes default in complying with the provisions of this section .....

- Every officer of the company who is in default: He shall be punishable **with imprisonment for a term which may extend to three years or** with fine which shall not be less than one lakh rupees but which may extend to **three lakh rupees, or with both**.

(vii) In **section 71** of the Companies Act, 2013 sub-section (11) shall be omitted.

Old Law (Pg 4.63)

(11) **Default in compliance with Order of the Tribunal: According to Section 71 (11), if any default is made in complying with the order of the Tribunal under this section, every officer of the company who is in default shall be punishable as under:**

- **with imprisonment for a term which may extend to three years or with fine which shall not be less than two lakh rupees but which may extend to five lakh rupees, or with both.**

[Enforcement Date: 21<sup>st</sup> December, 2020]

2. **Amendments related to - S.O. 325(E) dated 22<sup>nd</sup> January, 2021**

The Central Government has amended section 62 of the Companies Act, 2013, through the Companies (Amendment) Act, 2020, as follows:

Amendment:

In **section 62** of the Companies Act, 2013 in sub-section (1), in clause (a), in sub-clause (i), after the words "less than fifteen days", the words "or such lesser number of days as may be prescribed" shall be inserted.

Old Law (Pg 4.36)- [The words are newly inserted]

- (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.

[Enforcement Date: 22<sup>nd</sup> January, 2021]

**V. Chapter 6: Registration of Charges**

**Amendments related to - S.O. 4646(E) dated 21<sup>st</sup> December, 2020**

The Central Government has amended section 86 of the Companies Act, 2013, through the Companies (Amendment) Act, 2020.

**Amendment:**

In **section 86** of the Companies Act, 2013 for sub-section (1), the following sub-section shall be substituted, namely:-

"(1) If any company is in default in complying with any of the provisions of this Chapter, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees."

Old Law (Pg 6.16)

**if a company contravenes any of the provisions relating to the registration of charges or modification or satisfaction of charges, the punishment shall be as under:**

- ◆ **the company shall be punishable with minimum fine of ₹ one lakh and maximum fine of ₹ ten lakhs; and**
- ◆ **every defaulting officer of the company shall be punishable with imprisonment maximum up to six months or with minimum fine of ₹ twenty-five thousand and maximum of ₹ one lakh, or with both.**

[Enforcement Date: 21<sup>st</sup> December, 2020]

**VI. Chapter 7: Management and Administration**

**1. Amendments related to - S.O. 4646(E) dated 21<sup>st</sup> December, 2020**

The Central Government has amended the following sections of the Companies Act, 2013, through the Companies (Amendment) Act, 2020.

**Amendment:**

(i) In **section 88** of the Companies Act, 2013, for sub-section (5), the following sub-section shall be substituted, namely:-

"(5) If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees."



Old Law (Pg 7.7)

**Section 88(5) of the Act provides that company and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 3,00,000 and where the failure is a continuing one, with a further fine which may extend to ₹ 1,000 per day.**

(ii) In **section 89** of the Companies Act, 2013—

(a) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) If any person fails to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), he shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.";

Old Law (Pg 7.10)

◆ Related to persons required to make a declaration [Section 89(5)]- **If any person fails to make a declaration as required under section 89, without any reasonable cause, he shall be punishable with fine which may extend to fifty thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.**

(b) for sub-section (7), the following sub-section shall be substituted, namely:—

"(7) If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified therein, the company and every officer of the company who is in default shall be liable to a penalty of one thousand rupees for each day during which such failure continues, subject to a maximum of five lakh rupees in the case of a company and two lakh rupees in case of an officer who is in default.";

Old Law (Pg 7.10)

◆ Related to company [Section 89(7)]- **If a company, required to file a return u/s 89(6), fails to do so within 30 days of receipt of declaration by it, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.**

(iii) In **section 90** of the Companies Act, 2013—

(a) for sub-section (10), the following sub-section shall be substituted, namely:—

"(10) If any person fails to make a declaration as required under sub-section (1), he shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty

of one thousand rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.";

Old Law (Pg 7.15)

**Where any SBO fails to give required disclosure under the SBO Rules then such individual(s) shall be liable for the following:**

- (i) Imprisonment for a term which may extend to one year or**
- (ii) With fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees or**
- (iii) With both**
- (iv) Where the failure is continuous, with a further fine which may extend to one thousand rupees for every day after the first day during which the failure continues.**

**(b) for sub-section (11), the following sub-section shall be substituted, namely:—**

"(11) If a company, required to maintain register under sub-section (2) and file the information under sub-section (4) or required to take necessary steps under sub-section (4A), fails to do so or denies inspection as provided therein, the company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day, after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day, after the first during which such failure continues, subject to a maximum of one lakh rupees."

Old Law (Pg 7.15)

**Where the Reporting Company fails to maintain register of SBO or file return of SBO with ROC or denies inspection, then**

- (i) Company shall be liable for a fine which shall not be less than INR 10,00,000 but which may extend to INR 50,00,000**
- (ii) Every officer in default shall be liable for a fine which shall not be less than INR 10,00,000 but which may extend to INR 50,00,000**
- (iii) Where the failure is continuous, with a further fine which may extend to one thousand rupees for every day after the first day during which the failure continues.**

**(iv) In section 92 of the Companies Act, 2013—**

**(a) in sub-section (5),—**

**(i) for the words "fifty thousand rupees", the words "ten thousand rupees" shall be substituted;**

(ii) for the words "five lakh rupees", the words "two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default" shall be substituted;

Old Law (Pg 7.18)

Section 92(5) of the Act specifies that if any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of **fifty thousand rupees** and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of **five lakh rupees**.

(b) in sub-section (6), for the words "punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees", the words "liable to a penalty of two lakh rupees" shall be substituted.

Old Law (Pg 7.19)

If a company secretary in practice, certifies the annual return otherwise than in accordance with this section and the rules made thereunder, he shall be **punishable with fine which shall not be less than ₹ 50,000 but which may extend to ₹ 5,00,000**

(v) In **section 105** of the Companies Act, 2013 in sub-section (5),—

(a) for the words "who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to one lakh rupees", the words "who issues the invitation as aforesaid or authorises or permits their issue, shall be liable to a penalty of fifty thousand rupees" shall be substituted;

(b) in the proviso, for the word "punishable", the word "liable" shall be substituted.

Old Law (Pg 7.32)

If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company **who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to one lakh rupees**.

Provided that an officer shall not be **punishable** under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(vi) In **section 117** of the Companies Act, 2013—

for sub-section (2), the following sub-section shall be substituted, namely:-

"(2) If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of fifty thousand rupees.";

Old Law (Pg 7.55)

**If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of twenty-five lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.**

[Enforcement Date: 21<sup>st</sup> December, 2020]

2. **Amendments related to - S.O. 325(E) dated 22<sup>nd</sup> January, 2021**

The Central Government has amended the following sections of the Companies Act, 2013, through the Companies (Amendment) Act, 2020, as follows:

Amendment:

(i) In **section 89** of the Companies Act, 2013, after sub-section (10), the following sub-section shall be inserted, namely:-

"(11) The Central Government may, by notification, exempt any class or classes of persons from complying with any of the requirements of this section, except sub-section (10), if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification."

Old Law (Pg 7.10)

The amendment is newly inserted.

(ii) In **section 117** of the Companies Act, 2013-

In sub-section (3), in clause (g), for the second proviso, the following proviso shall be substituted, namely:-

"Provided further that nothing contained in this clause shall apply in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 in the ordinary course of its business by, -

- (a) a banking company;
- (b) any class of non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934, as may be prescribed in consultation with the Reserve Bank of India;
- (c) any class of housing finance company registered under the National Housing Bank Act, 1987, as may be prescribed in consultation with the National Housing Bank; and".

Old Law (Pg 7.55)

**Provided further that nothing contained in this clause shall apply to a banking company in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 in the ordinary course of its business; and**

[Enforcement Date: 22<sup>nd</sup> January, 2021]

3. **Amendments related to - S.O. 1066(E) dated 5<sup>th</sup> March, 2021**

The Central Government has amended the section 92 of the Companies Act, 2013, through the Companies (Amendment) Act, 2017.

Amendment:

In **section 92** of the Companies Act, 2013-

In sub-section (1),-

- (a) clause (c) shall be omitted;
- (b) in clause (j), the words "indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them" shall be omitted;
- (c) after the proviso, the following proviso shall be inserted, namely:-

'Provided further that the Central Government may prescribe abridged form of annual return for "One Person Company, small company and such other class or classes of companies as may be prescribed".'. .

Old Law for (a): Pg 7.17

**3. its indebtedness** [ in diagram]

Old Law for (b): Pg 7.17

10. Details in respect of shares held by or on behalf of the Foreign Institutional Investors **including their names, addresses, countries of incorporation, registration and percentage of shareholding held by them.** [in diagram]

Old Law for (c): The amendment is newly inserted.

[Enforcement Date: 5<sup>th</sup> March, 2021]

4. **Amendments related to – G.S.R. 159(E) dated 5<sup>th</sup> March, 2021**

The Central Government has amended the Companies (Management and Administration) Rules, 2014 through the Companies (Management and Administration) Amendment Rules, 2021.

Amendment:

In the Companies (Management and Administration) Rules, 2014,

in **rule 11**, for sub-rule (1), the following sub-rule shall be substituted, namely:-

“(1) Every company shall file its annual return in Form No.MGT-7 except One Person Company (OPC) and Small Company. One Person Company and Small Company shall file annual return from the financial year 2020-2021 onwards in Form No.MGT-7A”;

Old Law (Pg 7.17)

**Every company shall prepare an annual return in Form No. MGT 7 as prescribed in Rules.**

[Enforcement Date: 5<sup>th</sup> March, 2021]

**VII. Chapter 8: Declaration and Payment of Dividend**

**Amendments related to - S.O. 1303(E) dated 24<sup>th</sup> March, 2021**

The Central Government has amended section 124 of the Companies Act, 2013, through the Companies (Amendment) Act, 2020.

Amendment:

In **section 124** of the Companies Act, 2013 for sub-section (7), the following sub-section shall be substituted, namely:-

“(7) If a company fails to comply with any of the requirements of this section, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further

penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of ten lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees."

Old Law (Pg 8.17)

(viii) Punishment for Contravention- **If a company fails to comply with any of the requirements relating to unpaid dividend account, it shall be punishable with minimum fine of rupees five lakhs which may extend to rupees twenty-five lakhs.**

**Further, every officer of the company who is in default shall be punishable with minimum fine of rupees one lakh which may extend to rupees five lakhs.**

[Enforcement Date: 24<sup>th</sup> March, 2021]

### **VIII. Chapter 9: Accounts of Companies**

#### **1. Amendments related to - S.O. 4646(E) dated 21<sup>st</sup> December, 2020**

The Central Government has amended the following sections of the Companies Act, 2013, through the Companies (Amendment) Act, 2020.

#### **Amendment:**

- (i) In **section 128** of the Companies Act, 2013, in sub-section (6),-
- (a) the words "with imprisonment for a term which may extend to one year or" shall be omitted;
  - (b) the words "or with both" shall be omitted.

Old Law (Pg 9.7 and diagram on 9.3)

In case the aforementioned persons fail to take reasonable steps to secure compliance, they shall in respect of each offence, be punishable **with imprisonment for a term which may extend to one year or** with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees **or both**.

(ii) In **section 134** of the principal Act, for sub-section (8), the following sub-section shall be substituted, namely:—

"(8) If a company is in default in complying with the provisions of this section, the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees."

Old Law (Pg 9.30)

Change the table

(iii) In **section 137** of the principal Act, in sub-section (3),-

(a) for the words "one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees", the words "ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees," shall be substituted;

(b) for the words "one lakh rupees", the words "ten thousand rupees" shall be substituted;

(c) for the words "five lakh rupees", the words "fifty thousand rupees" shall be substituted.

Old Law (Pg 9.51)

(a) The company shall be liable to a penalty of **₹ 1,000 for every day during which the failure continues but which shall not be more than ₹ 10 lacs**; and

(1) liable to a penalty which shall not be less than **₹ 1 lac**, and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of **five lacs rupees**.

And change the content in table also

[Enforcement Date: 21<sup>st</sup> December, 2020]

2. **Amendments related to** - Notification S.O. 324(E) dated 22<sup>nd</sup> January, 2021

The Central Government has amended section 135 of the Companies Act, 2013 through the Companies (Amendment) Act, 2019, as follows:

Amendment:

In **section 135** of the Companies Act, 2013-

(a) in sub-section (5), —

(i) after the words "three immediately preceding financial years," the words "or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years," shall be inserted;

(ii) in the second proviso, after the words "reasons for not spending the amount" occurring at the end, the words, brackets, figure and letters "and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year" shall be inserted;

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<sup>1</sup> For convenience of students, amended section 135 along with relevant Rules, is given as Annexure.



(b) after sub-section (5), the following sub-sections shall be inserted, namely:—

“(6) Any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

(7) If a company contravenes the provisions of sub-section (5) or sub-section (6), the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

(8) The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions.”.

[Enforcement Date: 22<sup>nd</sup> January, 2021]

3. Amendments related to - Notification S.O. 325(E) dated 22<sup>nd</sup> January, 2021

The Central Government has introduced section 129A and amended section 135 of the Companies Act, 2013, through the Companies (Amendment) Act, 2020.

Amendment:

(i) After section 129 of the Companies Act, 2013 the following section shall be inserted, namely:—

“**129A.** The Central Government may, require such class or classes of unlisted companies, as may be prescribed,—

(a) to prepare the financial results of the company on such periodical basis and in such form as may be prescribed;

(b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in such manner as may be prescribed; and

(c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed."

Old Law- The section is newly introduced
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(ii) In **section 135** of the Companies Act, 2013-

(a) in sub-section (5), after the second proviso, the following proviso shall be inserted, namely:—

"Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed.";

(b) for sub-section (7), the following sub-section shall be substituted, namely:-

"(7) If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less.";

(c) after sub-section (8), the following sub-section shall be inserted, namely:—

"(9) Where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company."

[Enforcement Date: 22<sup>nd</sup> January, 2021]

4. **Amendments related to - General Circular No. 01/2021 dated 13<sup>th</sup> January, 2021**

The Ministry of Corporate Affairs have made a clarification on spending of CSR funds for Awareness and public outreach on COVID-19 Vaccination programme.

This Circular is in continuation to this Ministry's General Circular No. 10/2020 dated 23.03.2020 wherein it was clarified that spending of CSR funds for COVID19 is an eligible CSR activity , it is further clarified that spending of CSR funds for carrying out awareness campaigns/ programmes or public outreach campaigns on COVID-19 Vaccination programme is an eligible CSR activity under item no. (i),(ii) and (xii) of Schedule VII of the Companies Act, 2013 relating

to promotion of health care, including preventive health care and sanitization, promoting education, and, disaster management respectively.

The companies may undertake the aforesaid activities subject to fulfillment of Companies (CSR Policy) Rules, 2014 and the circulars related to CSR, issued by this ministry from time to time.

5. **Amendments related to** - Notification G.S.R. 40(E), dated 22nd January, 2021

The Ministry of Corporate Affairs Vide NOTIFICATION G.S.R. 40(E), dated 22nd January, 2021, in exercise of the powers conferred by section 135 and sub-sections (1) and (2) of section 469 of the Companies Act, 2013, the Central Government hereby makes the following rules further to amend the Companies (Corporate Social Responsibility Policy) Rules, 2014, namely: -

1. Short title and commencement. - (1) These rules may be called the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021.

(2) They shall come into force on the date of their publication in the Official Gazette unless explicitly provided elsewhere in this notification.

2. In the Companies (Corporate Social Responsibility Policy) Rules, 2014 (hereinafter referred to as the said rules), for rule 2, the following rule shall be substituted, namely: -

“2. Definitions. - (1) In these rules, unless the context otherwise requires, -

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Administrative overheads" means the expenses incurred by the company for 'general management and administration' of Corporate Social Responsibility functions in the company but shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular Corporate Social Responsibility project or programme;

(c) "Annexure" means the Annexure appended to these rules;

(d) "Corporate Social Responsibility (CSR)" means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Act in accordance with the provisions contained in these rules, but shall not include the following, namely: -

(i) activities undertaken in pursuance of normal course of business of the company;

Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that

(a) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act;

(b) details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report;

(ii) any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level;

(iii) contribution of any amount directly or indirectly to any political party under section 182 of the Act;

(iv) activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019 (29 of 2019);

(v) activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services;

(vi) activities carried out for fulfilment of any other statutory obligations under any law in force in India;

(e) "CSR Committee" means the Corporate Social Responsibility Committee of the Board referred to in section 135 of the Act;

(f) "CSR Policy" means a statement containing the approach and direction given by the board of a company, taking into account the recommendations of its CSR Committee, and includes guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan;

(g) "International Organisation" means an organisation notified by the Central Government as an international organisation under section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply;

(h) "Net profit" means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely:-

(i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and

(ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act:

Provided that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381, read with section 198 of the Act;

(i) "Ongoing Project" means a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which

it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification;

(j) “Public Authority” means ‘Public Authority’ as defined in clause (h) of section 2 of the Right to Information Act, 2005 (22 of 2005);

(k) “section” means a section of the Act.

(2) Words and expressions used and not defined in these rules but defined in the Act shall have the same meanings respectively assigned to them in the Act. ”.

3. In the said rules, in rule 3, in sub-rule (2), in clause (b), for the words, brackets and figure “sub-section (2) to (5)”, the words, brackets and figure “sub-section (2) to (6)” shall be substituted.

4. In the said rules, for rule 4, the following rule shall be substituted, namely: -

“4. CSR Implementation. – (1) The Board shall ensure that the CSR activities are undertaken by the company itself or through -

(a) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or along with any other company, or

(b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or

(c) any entity established under an Act of Parliament or a State legislature; or

(d) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

(2) (a) Every entity, covered under sub-rule (1), who intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the 01<sup>st</sup> day of April 2021:

Provided that the provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to the 01<sup>st</sup> day of April 2021.

(b) Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.

(c) On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.

(3) A company may engage international organisations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.

(4) A company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with these rules.

(5) The Board of a company shall satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management shall certify to the effect.

(6) In case of ongoing project, the Board of a Company shall monitor the implementation of the project with reference to the approved timelines and year-wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.”.

5. In the said rules, in rule 5, for sub-rule (2), the following sub-rule shall be substituted, namely:-

“(2) The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following, namely:-

(a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;

(b) the manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4;

(c) the modalities of utilisation of funds and implementation schedules for the projects or programmes;

(d) monitoring and reporting mechanism for the projects or programmes; and

(e) details of need and impact assessment, if any, for the projects undertaken by the company:

Provided that Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect. ”.

6. In the said rules, rule 6 shall be omitted.

7. In the said rules, for rule 7, the following rule shall be substituted, namely:-

“7.CSR Expenditure. - (1) The board shall ensure that the administrative overheads shall not exceed five percent of total CSR expenditure of the company for the financial year.

(2) Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

(3) Where a company spends an amount in excess of requirement provided under sub-section (5) of section 135, such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding three financial years subject to the conditions that –

(i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule.

(ii) the Board of the company shall pass a resolution to that effect.

(4) The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by -

(a) a company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number under sub-rule (2) of rule 4; or

(b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or

(c) a public authority:

Provided that any capital asset created by a company prior to the commencement of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, shall within a period of one hundred and eighty days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than ninety days with the approval of the Board based on reasonable justification.”

8. In the said rules, for rule 8, the following rule shall be substituted, namely: -

“8. CSR Reporting .- (1) The Board's Report of a company covered under these rules pertaining to any financial year shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.

(2) In case of a foreign company, the balance sheet filed under clause (b) of sub-section (1) of section 381 of the Act, shall contain an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.

(3) (a) Every company having average CSR obligation of ten crore rupees or more in pursuance of subsection (5) of section 135 of the Act, in the three immediately preceding financial years,



shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.

(b) The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.

(c) A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed five percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is less. ”.

9. In the said rules, for rule 9, the following rules shall be substituted, namely:-

“9. Display of CSR activities on its website. - The Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access.

10. Transfer of unspent CSR amount. - Until a fund is specified in Schedule VII for the purposes of subsection (5) and (6) of section 135 of the Act, the unspent CSR amount, if any, shall be transferred by the company to any fund included in schedule VII of the Act.”.

10. In the said rules,-

(i) The Annexure shall be numbered as “Annexure –I” and in the heading of Annexure I as so numbered, after the words “BOARD’S REPORT”, the words and figures “FOR FINANCIAL YEAR COMMENCED PRIOR TO 1ST DAY OF APRIL, 2020” shall be inserted;

6. **Amendments related to: General Circular No. 05/2021, dated 22nd April, 2021**

A clarification has been issued on spending of CSR funds for setting up makeshift hospitals and temporary COVID Care facilities.

In continuation to this Ministry's General Circular No. 10/2020 dated 23.03.2020 wherein it was clarified that spending of CSR funds for COVID-19 is an eligible CSR activity, it is further clarified that spending of CSR funds for 'setting up makeshift hospitals and temporary COVID Care facilities' is an eligible CSR activity under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively.

7. **Amendments related to - Notification G.S.R 205 (E) dated 24<sup>th</sup> March, 2021**

The Central Government has amended Companies (Accounts) Rules, 2014 through the Companies (Accounts) Amendment Rules, 2021.

Amendment:

In the Companies (Accounts) Rules, 2014,-

(1) in rule 3, in sub-rule (1), the following proviso shall be inserted, namely:-

“Provided that for the financial year commencing on or after the 1st day of April, 2021, every company which uses accounting software for maintaining its books of account, shall use only



such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.”

(2) in rule 8, in sub-rule (5), after clause (x), the following clauses shall be inserted namely: -

“(xi) the details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) during the year alongwith their status as at the end of the financial year.

(xii) the details of difference between amount of the valuation done at the time of one time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof.”

[Enforcement Date: 1<sup>st</sup> April, 2021]

Old Law for (1): Pg 9.5

Newly Inserted

Old Law for (2): Pg 9.29

Newly Inserted

8. **Amendments related to – G.S.R. 247(E) dated 1st April, 2021**

The Ministry of Corporate Affairs has further amended the Companies (Audit and Auditors) Rules, 2014, through the enforcement of the Companies (Accounts) Second Amendment Rules, 2021

Amendment:

In the Companies (Accounts) Rules, 2014, in proviso to sub-rule (1) of rule 3, for the figures, letters and words “1st day of April, 2021”, the figures, letters and words “1st day of April, 2022” shall be substituted.

[Enforcement Date: 1<sup>st</sup> April, 2021]

This amendment is in continuation with the above amendment

X. **Chapter 10: Audit and Auditors**

1. **Amendments related to - S.O. 4646(E) dated 21<sup>st</sup> December, 2020**

The Central Government has amended the following sections of the Companies Act, 2013, through the Companies (Amendment) Act, 2020.

Amendment:

(i) In **section 140** of the Companies Act, 2013, in sub-section (3), for the words "five lakh rupees", the words "two lakh rupees" shall be substituted.

Old Law (Pg 10.19)

(d) **Penalty for contravention:** If the auditor does not comply with aforesaid provision, he or it shall be liable to a penalty of ₹50,000 or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of ₹ 500 for each day after the first during which such failure continues, subject to a maximum of ₹ 5 lacs.

(ii) In **section 143** of the Companies Act, 2013, for sub-section (15), the following sub-section shall be substituted, namely:-

"(15) If any auditor, cost accountant, or company secretary in practice does not comply with the provisions of sub-section (12), he shall-

- (a) in case of a listed company, be liable to a penalty of five lakh rupees; and
- (b) in case of any other company, be liable to a penalty of one lakh rupees."

Old Law (Pg 10.37)

**If any auditor, cost auditor or the Secretarial auditor, as mentioned above, do not comply with the provisions of this section (i.e. section 143(12)), he shall be punishable with fine which shall not be less than ₹1 lac but which may extend to ₹25 lacs.**

(iii) In **section 147** of the Companies Act, 2013—

(a) in sub-section (1),—

- (i) the words "with imprisonment for a term which may extend to one year or" shall be omitted;
- (ii) for the words "one lakh rupees, or with both", the words "one lakh rupees" shall be substituted;

(b) in sub-section (2), the word and figures, "section 143" shall be omitted.

Old Law for (a): Pg 10.44

(ii) Penalty on officers [Section 147(1)]:

If any of the provisions of sections 139 to 146 (both inclusive) is contravened, every officer of the company who is in default shall be punishable with

- (1) **imprisonment for a term which may extend to 1 year or**
- (2) **with fine which shall not be less than ₹10,000 but which may extend to ₹1 lac; or**
- (3) **both with imprisonment and fine.**

Old Law for (b): Pg 10.44

If an auditor of a company contravenes any of the provisions of section 139, **section 143**, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 5 lacs or four times the remuneration of the auditor, whichever is less.

[Enforcement Date: 21<sup>st</sup> December, 2020]

2. **Amendments related to - S.O. 206(E) dated 24<sup>th</sup> March, 2021**

The Ministry of Corporate Affairs has amended the Companies (Audit and Auditors) Rules, 2014, through the Companies (Audit and Auditors) Amendment Rules, 2021.

Amendment:

In the Companies (Audit and Auditors) Rules, 2014, in rule 11,-

(1) clause (d) shall be omitted.

(2) after clause (d), the following clauses shall be inserted, namely:-

“(e) (i) Whether the management has represented that, to the best of it’s knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities (“Intermediaries”), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company (“Ultimate Beneficiaries”) or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;

(ii) Whether the management has represented, that, to the best of it’s knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been received by the company from any person(s) or entity(ies), including foreign entities (“Funding Parties”), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party (“Ultimate Beneficiaries”) or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and

(iii) Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) and (ii) contain any material mis-statement.

(f) Whether the dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013.

(g) Whether the company has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software and the audit trail

feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention.”.

Old Law for (1): (Pg 10.33)

**(4) whether the company had provided requisite disclosures in its financial statements as to holdings as well as dealings in Specified Bank Notes during the period from 8 November 2016 to 30 December 2016 and if so, whether these are in accordance with the books of accounts maintained by the company” (this provision is not relevant now, however, till the time this requirement is not removed from the law, it will continue to be reported as not applicable for any financial year post 31 March 2017).**

Old Law for (2): Pg 10.34

Clauses (e), (f) and (g) are newly inserted.

[Enforcement Date: 1<sup>st</sup> April, 2021]

3. **Amendments related to – G.S.R. 248(E) dated 1st April, 2021**

The Ministry of Corporate Affairs has further to amended the Companies (Audit and Auditors) Rules, 2014, through the Companies (Audit and Auditors) Second Amendment Rules, 2021.

**Amendment:**

In the Companies (Audit and Auditors) Rules, 2014, in rule 11, in clause (g), for the words “Whether the company”, the words, figures and letters “Whether the company, in respect of financial years commencing on or after the 1st April, 2022,” shall be substituted.

[Enforcement Date: 1<sup>st</sup> April, 2021]

[This amendment is in continuation with the above amendment]

**# Here, SM means Study Material (i.e. Page number of the Study material in reference to relevant provisions)**

## PART – II : QUESTIONS AND ANSWERS

## QUESTIONS

## DIVISION A: CASE SCENARIO/ MULTIPLE CHOICE QUESTIONS

1. Ramesh started a new venture of on-line business of supply of grocery items at the door-step of consumers. Initially it was having the area of operations of Jaipur City only. He employed some young boys having their own bikes and allocated the areas which they were accustomed of it, for making delivery of the grocery items as per their orders. He also got developed a website and Mobile App to receive the orders on-line. His friend Sudhanshu who is a Chartered Accountant, suggested him to corporatize this business form, from proprietorship business to a One Person Company (OPC). Ramesh agreed and a OPC was incorporated in the name of “Ask Ramesh4Online Grocery (OPC) Pvt Ltd.” (for short OPC-1). In this OPC Ramesh became the member and director and Sudha (the mother of Ramesh) was made as nominee.

After a year Ramesh got married with Rachna. Since the business of on-line supply of grocery was on rising trend, day by day, he thought to start a new business of supply of Milk and Milk Products and another OPC in the name of “Rachna Milk Products (OPC) Pvt Ltd” (for short OPC-2) was incorporated with the help of his professional friend Sudhanshu. In this OPC-2, Rachna (his wife) became the member and director and Ramesh was named as Nominee.

To summarise the position, the information is tabulated as under:

Name of OPC	Ask Ramesh4Online Grocery (OPC) Pvt Ltd [OPC-1]	Rachna Milk Products (OPC) Pvt Ltd [OPC-2]
Member and Director	Ramesh	Rachna
Nominee	Sudha (Mother of Ramesh)	Ramesh (Husband of Rachna)

After some time, Sudha (the mother of Ramesh) passed away. However, before the death, Sudha had made a WILL, in which she mentioned that after her demise, her another son Suresh be made nominee in the OPC-1. When Suresh came to know this fact, he argued with Ramesh to fulfil the wish of Sudha as per her WILL (Mother of Ramesh and Suresh), but Ramesh denied this and appointed Rachna (his wife) as nominee.

Aggrieved from the decision of Ramesh for not nominating him (Suresh), Suresh threatened Ramesh to take appropriate legal action against him for not honouring the WILL of mother Sudha and consulted his lawyer. Meanwhile due to continuous threatening and hot talks between Suresh and Ramesh, Rachna became mentally upset and became insane, as certified by the medical doctor, so lost her capacity to contract. In this situation, Ramesh being the nominee in OPC-2 became member and director of this OPC-2.

One of the friends of Ramesh advised him to do some charitable work of providing free education to the girl children of his native village near by Jaipur. Ramesh thought about this proposal and asked his professional friend Sudhanshu to convert this OPC-2 into Section 8 company.

Based on the above facts, answer the following MCQs:

- 1.1 Since Rachna, being insane, lost the capacity to contract, Ramesh (who was nominee) became the member of OPC-2. Now who will make nomination for this OPC:
  - (a) Ramesh in the capacity of husband of Rachna can nominate any person as Nominee of OPC-2
  - (b) Ramesh (who was nominee) of OPC-2 has now become member of this OPC and now as a member of this OPC he can nominate any person as per his choice as Nominee for this OPC.
  - (c) When no person is nominated, the Central Govt. will make nomination of such OPC-2.
  - (d) When no person is nominated the Registrar shall order the company to be wound up.
- 1.2 Whether conversion of OPC-2 into a company governed by Section 8 is permissible?
  - (a) Yes, OPC can be converted into Section 8 company
  - (b) No, OPC cannot be converted into Section 8 company
  - (c) This OPC-2 can be converted into section 8 company, provided the Central Govt give license
  - (d) Providing of free education to girl child do not come under the specified objects mentioned for eligibility incorporation of section 8 company
- 1.3 Ramesh is a member in OPC-1 and became a member in another OPC-2 (on 2<sup>nd</sup> April, 2020) by virtue of his being a nominee in that OPC-2. Ramesh shall, by what date, meet the eligibility criteria that an individual can be a member in only one OPC:
  - (a) 17<sup>th</sup> May 2020
  - (b) 25<sup>th</sup> August 2020
  - (c) 26<sup>th</sup> August 2020
  - (d) 29<sup>th</sup> September 2020
- 1.4 After the demise of Sudha (the mother of Ramesh), Rachna was nominated by Ramesh for OPC-1 as Nominee. But now Rachna has become insane, so what recourse you will suggest to Ramesh:
  - (a) Ramesh is required to nominate another person as nominee

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- (b) Ramesh should wait till Rachna becomes good of her health and able to have the capacity to contract
- (c) Although Rachna has become insane, but if she is able to sign, her nomination in OPC-1 may continue
- (d) Sudhanshu (the Chartered Accountant) who helped in incorporation of OPC-1, may act as legal consultant on behalf of Rachna
2. Ronak and Bhowmik are brothers and they are engaged in the business of dairy. Ronak is having 10 cows. The monthly revenue and expenses of the cows is tabulated as under:

S. No.	Particulars	(₹)
1.	<b>Revenue:</b> (25 litres per cow per day) *(10 cows) * (Sale Price ₹ 40 per litre) * (30 days in a month) = 3,00,000.	3,00,000
2.	<b>Expenses:</b> i. For feeding: (300 per cow per day) *(10 cows) * (30 days in a month) = 90,000 ii. Medical Expenses (Salary to a Veterinary Doctor per month: 10,000) iii. Labour's Salary: (2 person *10,000) = 20,000 iv. Petrol exp for milk delivery van: Lump sum = 10,000 Total Exp= 90,000+10,000+20,000+10,000 =1,30,000	(1,30,000)
3.	<b>Savings per month</b>	<b>1,70,000</b>
4.	<b>Yearly savings = 1,70,000*12 months</b>	<b>20,40,000</b>
5.	Salary to Bhowmik for looking after Ronak's Dairy business: 10,000*12 = 1,20,000	(1,20,000)
6.	Less: Contingency Expenditure	(20,000)
7.	<b>Net Revenue to be collected (after a year)</b>	<b>19,00,000</b>

Ronak's son Chirag is doing Engineering in Dairy Science from Denmark and is in Final Year. He learnt a lot by his engineering education and want to invite his father to know the technical aspects of dairy business. Chirag insisted his parents to come to Denmark and stay for a year to learn the nitty gritty of the dairy business and also enjoy the life in travelling nearby places.

Ronak, talked to his brother Bhowmik and explained his plan to visit to Denmark for a year and requested to take care of his cows. The labourers are engaged for the maintenance of cows and delivery of the milk, and Bhowmik is just to have a watch over it, collect the revenues etc. and take care of the cows, till he returns back from Denmark. Ronak also

offered Bhowmik that for taking care of his dairy business, he will pay to him Rs 10000 per month. Ronak also told Bhowmik that the cows are covered under the Insurance Policy, for which he has already paid advance premium and also shared the Insurance Policy with Bhowmik. However, Ronak did not disclosed that one cow is under sickness, it very often falls sick and needs to be taken care. Bhowmik agreed and the cows were shifted to Bhowmik's Dairy Farm House.

Ronak and his wife went to Denmark to stay with their son and to understand the dairy business there and to visit the near places.

Bhowmik was now looking after the dairy business of Ronak along with his dairy business. During the year, 2 cows gave the birth to 2 calves. One cow, which often used to fall ill, had also influenced the other cows, as a result, one cow of Bhowmik, and one cow of Ronak which remained in close contact with this sick cow, also fell sick. All the three cows (2 of Ronak and 1 of Bhowmik) died.

When the insurance claim was lodged, the insurance company refused to pass on the claim on the following reasons:

- One cow of Ronak which was running sick was not insured.
- Post mortem Report of another two cows (one of Ronak and another of Bhowmik) revealed that these two cows were in close touch of the sick cow and due to infections, these two cows also died.

When Ronak returned back to India, he demanded his cows back. Bhowmik returned 8 cows (10-2) but did not returned calves. Bhowmik informed Ronak that due to one sick cow (of Ronak) his cow also became sick and died and no insurance claim was admitted.

Based on the above facts, answer the following MCQs:

- 2.1 What was the fault on the part of Ronak (bailor) in this case?
- (a) Ronak has not taken the Insurance Policy of the sick cow.
  - (b) Ronak have not informed the continuous sickness of his cow, to Bhowmik
  - (c) Ronak has left the cows to his brothers and went to Denmark to enjoy the travelling and tourism.
  - (d) Ronak, before going to Denmark, should have sold this sick cow.
- 2.2 Can Bhowmik claim damages for loss of his cow, which died, since this cow, remained in the close contact of the sick cow of Ronak:
- (a) Ronak is not liable for such loss.
  - (b) Bhowmik should himself take care of his cow.
  - (c) Ronak is liable to pay the price of the deceased cow of Bhowmik, since this cow died on account close contact of sick cow of Ronak.
  - (d) Bhowmik should be vigilant in taking care of the cows.



- 2.3 Whether Bhowmik is responsible to give delivery of two calves which took birth during the year, when Ronak was on his tour to Denmark:
- (a) Bhowmik is not bound to give delivery of two calves, since he has already lost his own cow due to mistake of not disclosing the sickness of Ronak's cow by him (Ronak).
  - (b) Bhowmik is duty bound to hand over the delivery of two calves.
  - (c) Ronak should not insist for delivery of the calves.
  - (d) Bhowmik can keep the calves with him as the calves were born when the cows were in Bhowmik's custody.
- 2.4 Bhowmik returns only 8 cows, since 2 cows of Ronak died. Whether Ronak is entitled to claim damages for 2 cows:
- (a) Ronak is not entitled to claim damages.
  - (b) Ronak is entitled to claim damages only, if he can prove that Bhowmik has not taken care of the cows as a prudent person, not taken the medical help of the doctor etc.
  - (c) Bhowmik should morally paid the loss of cows to his brother Ronak
  - (d) Bhowmik should not claim his salary, since Ronak has already suffered the loss of two cows.
3. A Limited made a public issue of Debentures. The articles of the company authorises the payment of underwriting commission at 2 per cent of the issue price. The company has negotiated with the proposed underwriters, Gama Brokers and has finalised the rate at 2.25 per cent. The amount that the company is eligible to pay as underwriting commission is:
- (a) 5%
  - (b) 2%
  - (c) 2.5%
  - (d) 2.25%
4. Krishna Religious Publishers Limited has received application money of ₹ 20,00,000 (2,00,000 equity shares of ₹ 10 each) on 10<sup>th</sup> October, 2019 from the applicants who applied for allotment of shares in response to a private placement offer of securities made by the company to them. Select the latest date by which the company must allot the shares against the application money so received.
- (a) 9<sup>th</sup> November, 2019
  - (b) 24<sup>h</sup> November, 2019
  - (c) 9<sup>th</sup> December, 2019

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- (d) 8<sup>th</sup> January, 2020
5. Such shares which are issued by a company to its directors or employees at a discount or for a consideration other than cash for working extraordinary hard and achieving desired output is honoured with:
- (a) Equity Shares
  - (b) Preference Shares
  - (c) Sweat Equity Shares
  - (d) Redeemable preference shares

**DIVISION B: DESCRIPTIVE QUESTIONS**

**PART I: COMPANY LAW**

**The Companies Act, 2013**

1. The Board of Directors of GEN X Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board passed a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.
- Examining the provisions of the Companies Act, 2013, state whether the act of directors is in violation of the provisions of the Act and if so, state the consequences that shall follow for the above violative act.
2. The Board of Directors of Moon Light Limited, a listed company appointed Mr. Teja, Chartered Accountant as its first auditor within 30 days of the date of registration of the Company to hold office from the date of incorporation to conclusion of the first Annual General Meeting (AGM). At the first AGM, Mr. Teja was re-appointed to hold office from the conclusion of its first AGM till the conclusion of 6<sup>th</sup> AGM. In the light of the provisions of the Companies Act, 2013, examine the validity of appointment/ reappointment in the following cases:
- (i) Appointment of Mr. Teja by the Board of Directors.
  - (ii) Re-appointment of Mr. Teja at the first AGM in the above situation.
3. Kim Private Limited was incorporated on 30<sup>th</sup> September 2016. It has a paid up share capital of ₹ 45 crore. The company had a turnover of 250 crore for the financial year 2019-20. The accounts manager of the company has intimated to the company that they are not required to appoint internal auditor for the financial year 2020-21. The management of the company have approached you to advise them about the appointment of internal auditor.
- Advise them as per the provisions of the Companies Act, 2013.

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4. Define the term “charge” and also explain what is the punishment for default with respect to registration of charge as per the provisions of the Companies Act, 2013.
5. Yellow Pvt Ltd. is an unlisted company incorporated in the year 2012. The company have share capital of rupees fifty crores. The company has decided to issue sweat equity shares to its directors and employees. The company decided to issue 10% sweat equity shares (which in total will add up to 30% of its paid up equity shares), with a locking period of five years, as it is a start-up company. How would you justify these facts in relation to the provision for issue of sweat equity shares by a start-up company, with reference to the provision of the Company Act, 2013. Explain?
6. AB Limited issued equity shares of ₹ 1,00,000 (10000 shares of ₹ 10 each) on 01.04.2020 which have been fully subscribed whereby XY Limited holds 4000 shares and PQ Limited holds 2000 shares in AB Limited. AB Limited is also holding 20% equity shares of RS Limited before the date of issue of equity shares stated above. RS Limited controls the composition of Board of Directors of XY Limited and PQ Limited from 01.08.2020. Examine with relevant provisions of the Companies Act, 2013:
  - (i) Whether AB Limited is a subsidiary of RS Limited?
  - (ii) Whether AB Limited can hold shares of RS Limited?
  - (iii) Whether AB Limited can vote at Annual General Meeting of RS Limited held on 30.09.2020?
7. Nutty Buddy Limited is manufacturing premium quality milk based ice cream in two flavors- first chocolate and second butter scotch. The company called its Annual General Meeting (AGM) in order to lay down the financial statements for Shareholders’ approval. However, due to want of quorum, the meeting was cancelled. Also, the Directors of the company did not file the Annual Return with the Registrar. The directors were of the idea that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened the provisions of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalized?
8. 500 equity shares of ABC Limited were acquired by Mr. Amit, but the signature of Mr. Manoj, the transferor, on the transfer deed was forged. Mr. Amit, after getting the shares registered by the company in his name, sold 250 equity shares to Mr. Abhi on the strength of the share certificate issued by ABC Limited. Mr. Amit and Mr. Abhi were not aware of the forgery. What are the liabilities/rights of Mr. Manoj, Amit and Abhi against the company with reference to the aforesaid shares?

**PART II: OTHER LAWS**

**The Indian Contract Act, 1872**

9. Mr. Yadav, a cargo owner, chartered a vessel to carry a cargo of wheat from a foreign port to Chennai. The vessel got stranded on a reef in the sea 300 miles from the destination.

The ship's managing agents signed a salvage agreement for Mr. Yadav. The goods (wheat) being perishable, the salvors stored it at their own expense. Salvors intimated the whole incident to the cargo owner. Mr. Yadav refused to reimburse the Salvor, as it is the Ship-owner, being the bailee of the cargo, who was liable to reimburse the salvor until the contract remained unexpired. Referring to the provision of The Indian Contract Act 1872, do you acknowledge or decline the act of Salvor, as an agent of necessity, for Mr. Yadav. Explain?

10. Rahul is the owner of electronics shop. Priyanka reached the shop to purchase an air conditioner whose compressor should be of copper. As Priyanka wanted to purchase the air conditioner on credit, Rahul demanded a guarantor for such transaction. Mr. Arvind (a friend of Priyanka) came forward and gave the guarantee for payment of air conditioner. Rahul sold the air conditioner of a particular brand, misrepresenting that it is made of copper while it is made of aluminium. Neither Priyanka nor Mr. Arvind had the knowledge of fact that it is made of aluminium. On being aware of the facts, Priyanka denied for payment of price. Rahul filed the suit against Mr. Arvind. Explain with reference to the Indian Contract Act 1872, whether Mr. Arvind is liable to pay the price of air conditioner?

#### **The Negotiable Instruments Act, 1881**

11. 'Akhil' made a promissory note for ₹4,500 payable to 'Bhuvan', and delivered the same to 'Bhuvan' on the condition that he ('Bhuvan') will demand payment only on the death of 'Chaman'. Before the death of 'Chaman', 'Bhuvan' indorsed and delivered the promissory note to 'Deepak', who received the promissory note in good faith. On the date of maturity, 'Deepak' presented the promissory note for payment but 'Akhil' denied for payment by stating that he issued this promissory note on the condition that it can be paid only on the death of 'Chaman'. Can 'Deepak' recover the amount due on the promissory note from 'Akhil' under the provisions of the Negotiable Instrument Act 1881?

#### **The General Clauses Act, 1897**

12. Mr. Sohan has issued a promissory note of ₹1000 to Mr. Mohan on 17<sup>th</sup> May 2021 payable 3 months after date. After that, a sudden holiday was declared on 20<sup>th</sup> August 2021 due to Moharram. As per the provisions of the General Clauses Act 1897, what should be the date of presentation of promissory note for payment? Whether it should be 19<sup>th</sup> August 2021 or 21<sup>st</sup> August 2021?

#### **Interpretation of Statutes**

13. At the time of interpreting a statute what will be the effect of 'Usage' or 'customs and Practices'?

**SUGGESTED ANSWERS**

**ANSWER TO CASE SCENARIO / MULTIPLE CHOICE QUESTIONS**

- 1.1 (b)
- 1.2 (b)
- 1.3 (d)
- 1.4 (a)
- 2.1 (b)
- 2.2 (c)
- 2.3 (b)
- 2.4 (b)
- 3. (b)
- 4. (c)
- 5. (c)

**ANSWER TO DESCRIPTIVE QUESTIONS**

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

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

In the present case, the Board of Directors of GEN X Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board decided by passing a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

- (i) Since, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total

amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

- (ii) The Board of Directors of GEN X Fashions Limited has violated section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to its decision to divert the total dividend to be paid to shareholders for purchase of certain short-term investments in the name of the company.

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

- (a) Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of two years and shall also be liable for a minimum fine rupees one thousand for every day during which such default continues.
- (b) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.
2. As per section 139(6) of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and such auditor shall hold office till the conclusion of the first annual general meeting.

Whereas Section 139(1) of the Companies Act, 2013 states that every company shall, at the first annual general meeting (AGM), appoint an individual or a firm as an auditor of the company who shall hold office from the conclusion of 1<sup>st</sup> AGM till the conclusion of its 6<sup>th</sup> AGM and thereafter till the conclusion of every sixth AGM.

As per section 139(2), no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint an individual as auditor for more than one term of five consecutive years.

As per the given provisions following are the answers:

- (i) Appointment of Mr. Teja by the Board of Directors is valid as per the provisions of section 139(6).
- (ii) Appointment of Mr. Teja at the first Annual General Meeting is valid due to the fact that the appointment of the first auditor made by the Board of Directors is a separate appointment and the period of such appointment is not to be considered, while Mr. Teja is appointed in the first Annual General Meeting, which is for the period from the conclusion of the first Annual General Meeting to the conclusion of the sixth Annual General Meeting.

3. According to section 138 read along with Rules of the Companies Act, 2013, every private company having—
- (A) turnover of 200 crore rupees or more during the preceding financial year; or
  - (B) outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year.

shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate.

In the given question, the company has a paid up capital of ₹ 45 crore and turnover of ₹ 250 crore for the financial year 2019-20.

Since, the company is fulfilling the criteria of turnover (i.e. more than ₹ 200 crore), hence, it is required to appoint an internal auditor for the financial year 2020-21.

4. The term charge has been defined in section 2 (16) of the Companies Act, 2013 as 'an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage'.

**Punishment for contravention** – According to section 86 of the Companies Act, 2013, if any company is in default in complying with any of the provisions of this Chapter, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

Further, if any person willfully furnishes any false or incorrect information or knowingly suppresses any material information which is required to be registered under section 77, he shall be liable for action under section 447 (punishment for fraud).

5. Sweat Equity Shares is governed by Section 54 of the Companies Act, 2013 and Rule 8 of Companies (Share capital and debentures) Rules, 2014. According to Section 54 the company can issue sweat equity shares to its director and permanent employees of the company.

According to rule 8 (4) proviso, states that a start up company, is defined in a notification number Ministry of Commerce and industry Government of India, may issue sweat equity share not exceeding 50% of its paid up share capital up to 10 years from the date of its incorporation or registration.

According to Rule 8(5), the sweat equity shares issued to directors or employees shall be locked in/ non transferable for a period of three years from the date of allotment and the fact that the share certificates are under lock-in too.

Hence, in the above case the company can issue sweat equity shares by passing special resolution at its general meeting. The company as a startup company is right in issue of 10% sweat equity share as it is overall within the limit of 50% of its paid up share capital. But the lock in period of the shares is limited to maximum three years period from the date of allotment.

6. This given problem is based on sub-clause (87) of Clause 2 read with section 19 of the Companies Act, 2013.

As per sub-clause (87) of Clause 2 of the Companies Act, 2013 "subsidiary company" or "subsidiary", in relation to any other company (i.e., the holding company), means a company in which the holding company—

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

For the purposes of this clause, Explanation is given providing that a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in point (i) or point (ii) above, is of another subsidiary company of the holding company.

Whereas Section 19 provides that, no company shall, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Provided that nothing in this sub-section shall apply to a case where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

Here in the instant case, AB Ltd. issued 10,000 equity shares on 1.4.2020 whereby XY Ltd. & PQ Ltd. holds 4000 & 2000 shares respectively in AB Ltd., Considering 1 share = 1 vote, XY Ltd. and PQ Ltd. together holds more than one-half (50%) of the total voting power. Therefore, AB Ltd. will be subsidiary to XY Ltd. & PQ Ltd. from 1.4.2020.

Whereas AB Ltd. is already holding 20% equity shares of RS Ltd. before the date of issue of equity shares i.e. 1.4.2020.

Further, RS Ltd. controls the composition of Board of Directors of XY Ltd. and PQ Ltd. from 01.08.2020. In the light of sub-clause (87) of Clause 2, RS Ltd. is a holding company of XY Ltd. and PQ Ltd. (Subsidiary companies).

Following are the answers to the questions:

- (i) Yes. In this case AB Ltd. shall be deemed to be a subsidiary company of the holding company (RS Ltd.) as RS Ltd. controls the composition of subsidiary companies XY Ltd. & PQ Ltd. as per explanation to sub-clause (87) of Clause 2.
- (ii) Yes. In this case AB Limited is a subsidiary of RS Limited as AB Ltd. was holding 20% of equity shares of RS Ltd. even before it became a subsidiary company of the RS Ltd. (i.e. on 01.08.2020), according to the exception to section 19.
- (iii) No. The subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee but not where the subsidiary company is a shareholder even before it became



a subsidiary company of the holding company. Therefore, AB Ltd. cannot vote at AGM of RS Ltd. held on 30.9.2020.

7. According to section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting.

Sub-section (5) of Section 92 also states that if any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default.

In the instant case, the idea of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply, is incorrect.

In the above case, the annual general meeting of Nutty Buddy Limited should have been held within a period of six months, from the date of closing of the financial year but it did not take place. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 for not filing the annual return and shall attract the penal provisions along with every officer of the company who is in default as specified in Section 92(5) of the Act.

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

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

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

In the above case, therefore, Mr. Manoj has the right against the company to get the shares recorded in his name. However, neither Mr. Amit nor Mr. Abhi have any rights against the

company even if they are bona fide purchasers. But as Mr. Abhi acted on the faith of share certificate issued by company, he can demand compensation from Mr. Amit.

9. Section 189 of Indian Contract Act 1872 defines agent's authority in an emergency. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

In certain circumstances, a person who has been entrusted with another's property may have to incur unauthorized expenses to protect or preserve it. This is called an agency of necessity. Hence, in the above case the Salvor had implied authority from the cargo owner to take care of the cargo. They acted as agents of necessity on behalf of the cargo owner. Cargo owner were duty-bound towards salvor. Salvor is entitled to recover the agreed sum from Mr. Yadav and not from the ship owner, as a lien on the goods.

10. As per the provisions of section 142 of the Indian Contract Act 1872, where the guarantee has been obtained by means of misrepresentation made by the creditor concerning a material part of the transaction, the surety will be discharged. Further according to provisions of section 134, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

In the given question, Priyanka wants to purchase air conditioner whose compressor should be of copper, on credit from Rahul. Mr. Arvind has given the guarantee for payment of price. Rahul sold the air conditioner of a particular brand on misrepresenting that it is made of copper while it is made of aluminium of which both Priyanka & Mr. Arvind were unaware. After being aware of the facts, Priyanka denied for payment of price. Rahul filed the suit against Mr. Arvind for payment of price.

On the basis of above provisions and facts of the case, as guarantee was obtained by Rahul by misrepresentation of the facts, Mr. Arvind will not be liable. He will be discharged from liability.

11. By virtue of provisions of section 9 of the Negotiable Instrument Act 1881, any person who for consideration became the possessor of a negotiable instrument in good faith and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. While Sec.47 provides if a negotiable instrument is delivered to a person, upon condition, i.e. it will be effective on the happening of a certain event, such negotiable instrument cannot be further negotiated unless such event happens. However, if it is transferred to a holder in due course, his rights will not be affected by such condition.

'Akhil' issued a promissory note to 'Bhuvan' on the condition that he ('Bhuvan') will demand payment only on the death of 'Chaman'. Before the death of 'Chaman', 'Bhuvan' indorsed and delivered the promissory note to 'Deepak', who receive the promissory note in good

faith. On due date, 'Deepak' presented the promissory note for payment but 'Akhil' denied for payment.

From the above provisions and facts of the case, it can be said that 'Deepak' has received the promissory note in good faith, he is a holder in due course and his rights will not be affected by any condition attached to the instrument by any prior party. Therefore, 'Deepak' can recover the amount due on the promissory note from 'Akhil'.

12. Section 10 of the General Clauses Act 1897 provides where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

A promissory note of ₹1000 was issued by Mr. Sohan to Mr. Mohan on 17<sup>th</sup> May 2021 which was payable 3 months after date. After that, a sudden holiday was declared on 20<sup>th</sup> August 2021 due to Moharram.

In the given case, the period of 3 months ends on 17<sup>th</sup> August 2021. Three days of grace are to be added. It falls due on 20<sup>th</sup> August 2021 which declared to be a public holiday after the issue of Promissory Note. In the light of provisions of Sec. 10 of the General Clauses Act 1897, the due date will be on next day when office is open i.e. 21<sup>st</sup> August 2021.

13. **Effect of usage:** Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion. A uniform notorious practice continued under an old statute and inaction of the Legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law. When the usage or practice receives judicial or legislative approval it gains additional weight.

In this connection, we have to bear in mind two Latin maxims:

- (i) '*Optima Legum interpret est consuetude*' (the custom is the best interpreter of the law); and
- (ii) '*Contemporanea exposito est optima et fortissinia in lege*' (the best way to interpret a document is to read it as it would have been read when made).

Therefore, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority. Simply stated, old statutes and documents should be interpreted as they would have been at the time when they were enacted/written.

Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as *contemporanea expositio* to interpret not only ancient but even recent statutes in India.

**ANNEXURE**

**Section 135 read along with Companies (Social Responsibility Policy) Rules, 2014**

The Companies Act, 2013 lays down the provisions requiring corporates to mandatorily spend a prescribed percentage of their profits on certain specified areas of social upliftment in discharge of their social responsibilities. Broadly, Corporate Social Responsibility (CSR) implies a concept, whereby companies decide to contribute to a better society and a cleaner environment – a concept, whereby the companies integrate social and other useful concerns in their business operations for the betterment of its stakeholders and society in general.

The provisions related with Corporate Social Responsibility has been enshrined under section 135 and Companies (Social Responsibility Policy) Rules, 2014<sup>1</sup>.

**DEFINITIONS**

1. **“Corporate Social Responsibility (CSR)”** means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Act in accordance with the provisions contained in these rules, but shall not include the following, namely:-
  - (i) activities undertaken in pursuance of normal course of business of the company:

Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that

    - (a) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act;
    - (b) details of such activity shall be disclosed separately in the Annual report on CSR included in the Board’s Report;
  - (ii) any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level;
  - (iii) contribution of any amount directly or indirectly to any political party under section 182 of the Act;
  - (iv) activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019;

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<sup>1</sup> These rules have been recently amended by the Companies (CSR Policy) Amendment Rules, 2021 dated 22<sup>nd</sup> January, 2021.

- (v) activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services;
  - (vi) activities carried out for fulfilment of any other statutory obligations under any law in force in India; [Rule 2(d)]
2. **"CSR Committee"** means the Corporate Social Responsibility Committee of the Board referred to in section 135 of the Act; [Rule 2(e)]
  3. **"CSR Policy"** means a statement containing the approach and direction given by the board of a company, taking into account the recommendations of its CSR Committee, and includes guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan; [Rule 2(f)]
  4. **"Administrative overheads"** means the expenses incurred by the company for 'general management and administration' of Corporate Social Responsibility functions in the company but shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular Corporate Social Responsibility project or programme; [Rule 2(b)]
  5. **"International Organisation"** means an organisation notified by the Central Government as an international organisation under section 3 of the United Nations (Privileges and Immunities) Act, 1947, to which the provisions of the Schedule to the said Act apply; [Rule 2(g)]
  6. **"Net profit"** means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely:-
    - (i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and
    - (ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act:

Provided that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381, read with section 198 of the Act; [Rule 2(h)]
  7. **"Ongoing Project"** means a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification; [Rule 2(i)]
  8. **"Public Authority"** means 'Public Authority' as defined in clause (h) of section 2 of the Right to Information Act, 2005; [Rule 2(j)]

### COMPANIES REQUIRED TO CONSTITUTE CSR COMMITTEE

According to section 135(1), every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.

As per Rule 3(1), every company including its holding or subsidiary, and a foreign company defined under clause (42) of section 2 of the Act having its branch office or project office in India, which fulfills the criteria specified in sub-section (1) of section 135 of the Act shall comply with the provisions of section 135 of the Act and these rules:

Provided that net worth, turnover or net profit. of a foreign company of the Act shall be computed in accordance with balance sheet and Profit and loss account of such company prepared in accordance with the provisions of clause (a) of sub-section (1) of section 381 and section 198 of the Act.

**“Net worth”** [As per Section 2(57)] means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of the profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.<sup>2</sup>

**Example 5:** The statutory auditors of a company were required to issue a certificate on the net worth of the company as per the requirement of the management as on 30<sup>th</sup> September 2020 computed as per the provision of section 2(57) of the Companies Act, 2013.

The company had fair valued its property, plant and equipment in the current year which was mistakenly taken into retained earnings of the company in its books of accounts. Please advise whether this fair valuation would be covered in the net worth of the company as per the legal requirements.

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<sup>2</sup> For the purposes of this section (i.e. section 135) "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.

For details about more about refer later pages- heading 'Calculation of Net Profits'

**Answer:** As per sec 2(57) of the Companies Act 2013, any reserves created out of revaluation of assets doesn't form part of net worth. The company fair valued its property, plant and equipment and took that to retained earnings.

Even if the company has taken the fair valuation to the retained earnings in its books of accounts, the resultant credit in reserves (by whatever name called) would be in the category of 'reserves created out of revaluation of assets' which is specifically excluded in the definition of 'net worth' in section 2 (57) and hence should be excluded by the company.

Further the auditors should also consider the matter related to accounting of this reserve separately at the time of audit of books of accounts of the company.

**Exclusion of Companies** [Rule 3(2) of the Companies (CSR) Rules, 2014]

Every company which ceases to be a company covered under subsection (1) of section 135 of the Act for three consecutive financial years shall not be required to-

- (a) constitute a CSR Committee; and
- (b) comply with the provisions contained in sub-section (2) to (6) of the said section,

till such time it meets the criteria specified in sub-section (1) of section 135.

**COMPOSITION OF CSR COMMITTEE**

Corporate Social Responsibility Committee of the Board shall consist of three or more directors, out of which at least one director shall be an independent director.

Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.

According to Rule 5(1) of the Companies (CSR) Rules, 2014:

The companies mentioned in the rule 3 shall constitute CSR Committee as under. -

- (i) a company covered under subsection (1) of section 135 which is not required to appoint an independent director pursuant to sub-section (4) of section 149 of the Act, shall have its CSR Committee without such director;
- (ii) a private company having only two directors on its Board shall constitute its CSR Committee with two such directors;
- (iii) with respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company.

**Disclosure of composition of CSR Committee**

As per section 135(2), the Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.



### **DUTIES OF CSR COMMITTEE**

According to section 135(3),

The Corporate Social Responsibility Committee shall,—(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII;(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and (c) monitor the Corporate Social Responsibility Policy of the company from time to time.

According to Rule 5(2) of Companies (CSR) Rules, 2014,

The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following, namely:-

- (a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;
- (b) the manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4;
- (c) the modalities of utilisation of funds and implementation schedules for the projects or programmes;
- (d) monitoring and reporting mechanism for the projects or programmes; and
- (e) details of need and impact assessment, if any, for the projects undertaken by the company:

Provided that Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

### **DUTIES OF THE BOARD IN RELATION TO CSR**

According to 135(4), the Board of every company referred to in sub-section (1) shall,—(a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and (b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

#### **Display of CSR activities on its website**

The Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access. [Rule 9 of the Companies (CSR Policy) Rules, 2014]

### **AMOUNT OF CONTRIBUTION TOWARDS CSR**

According to section 135(5),

The Board of every company referred to in sub-section (1), 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 or where the company has not



completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed.

Explanation.—For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.

According to section 135(6), any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

#### **Calculation of Net Profits**

1. For the purposes of this section (i.e. section 135) "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198. [Explanation in section 135(5)]
2. **"Net profit"** means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely:-
  - (i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and
  - (ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act:

Provided that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381, read with section 198 of the Act; [Rule 2(h)]

**CSR Expenditure** [Rule 7 of Companies (CSR) Rules, 2014]

- (1) The board shall ensure that the administrative overheads shall not exceed five percent of total CSR expenditure of the company for the financial year.
- (2) Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.
- (3) Where a company spends an amount in excess of requirement provided under sub-section (5) of section 135, such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding three financial years subject to the conditions that –
  - (i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule.
  - (ii) the Board of the company shall pass a resolution to that effect.
- (4) The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by -
  - (a) a company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number under sub-rule (2) of rule 4; or
  - (b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
  - (c) a public authority:

Provided that any capital asset created by a company prior to the commencement of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, shall within a period of one hundred and eighty days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than ninety days with the approval of the Board based on reasonable justification.

**Transfer of unspent CSR amount** [Rule 10 of Companies (CSR Policy) Rules, 2014]

Until a fund is specified in Schedule VII for the purposes of subsection (5) and (6) of section 135 of the Act, the unspent CSR amount, if any, shall be transferred by the company to any fund included in schedule VII of the Act.

### **PENAL PROVISIONS**

If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less. [Section 135(7)]

### **SPECIAL INSTRUCTIONS OF THE CENTRAL GOVERNMENT**

The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions. [Section 135(8)]

### **WHEN IT IS NOT NECESSARY TO CONSTITUTE A CSR COMMITTEE**

According to section 135(9), where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

### **CSR IMPLEMENTATION [Rule 4 of the Companies (CSR Policy) Rules, 2014]:**

- (1) The Board shall ensure that the CSR activities are undertaken by the company itself or through-
  - (a) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961, established by the company, either singly or along with any other company, or
  - (b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or
  - (c) any entity established under an Act of Parliament or a State legislature; or
  - (d) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.
- (2) (a) Every entity, covered under sub-rule (1), who intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the 01<sup>st</sup> day of April 2021:

Provided that the provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to the 01<sup>st</sup> day of April 2021.

- (b) Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.
  - (c) On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.
- (3) A company may engage international organisations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.
- (4) A company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with these rules.
- (5) The Board of a company shall satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management shall certify to the effect.
- (6) In case of ongoing project, the Board of a Company shall monitor the implementation of the project with reference to the approved timelines and year-wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.

**CSR REPORTING (Rule 8)**

- (1) The Board's Report of a company covered under these rules pertaining to any financial year shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.
- (2) In case of a foreign company, the balance sheet filed under clause (b) of sub-section (1) of section 381 of the Act, shall contain an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.
- (3) (a) Every company having average CSR obligation of ten crore rupees or more in pursuance of subsection (5) of section 135 of the Act, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.
- (b) The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.
- (c) A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed five percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is less.

**ACTIVITIES SPECIFIED UNDER SCHEDULE VII**

Activities which may be included by companies in their CSR Policies (i.e. Activities as specified under Schedule VII) are as follows:

- (1) eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water;
- (2) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;
- (3) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
- (4) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set up by the Central Government for rejuvenation of river Ganga;
- (5) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;
- (6) measures for the benefit of armed forces veterans, war widows and their dependents, Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows;
- (7) training to promote rural sports, nationally recognised sports, paralympic sports and Olympic sports;
- (8) contribution to the Prime Minister's National Relief Fund or Prime Minister's Citizen Assistance and Relief in Emergency situations Fund (PM CARES FUND) any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, Tribes, other backward classes, minorities and women;
- (9) (a) Contribution to incubators or research development projects in the field of science, technology, engineering and medicine, funded by Central Government or State Government or any agency or Public Sector Undertaking of Central Government or State Government, and  
(b) Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and Autonomous Bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga

and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defense Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs);

- (10) rural development projects;
- (11) slum area development. [For the purposes of this item, the term 'slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.
- (12) disaster management, including relief, rehabilitation and reconstruction activities.

#### CLARIFICATIONS

The MCA vide *General Circular No. 21/2014 dated 18 June 2014* has provided many clarifications with regard to provisions of Corporate Social Responsibility under section 135 of the Companies Act, 2013 which are as under:

- (i) The statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013, the entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities as illustratively mentioned in the Annexure.
- (ii) It is further clarified that CSR activities should be undertaken by the companies in project/ programme mode. One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.
- (iii) Expenses incurred by companies for the fulfillment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.
- <sup>3</sup>(v) "Any financial year" referred under sub-section (1) of section 135 of the Act read with the Companies CSR Rule, 2014, implies 'any of the three preceding financial years.
- (vi) Expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so as per section 135 of the Act.
- (vii) 'Registered Trust' would include Trusts registered under Income Tax Act 1956, for those States where registration of Trust is not mandatory.

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<sup>3</sup> Point (iv) has been omitted (Refer clarification dated 17.09.2014)

- (viii) Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

**Clarifications with respect to CSR on COVID**

1. General Circular No. 10/2020 dated 23<sup>rd</sup> March, 2020

The Ministry of Corporate Affairs have clarified that keeping in view of the spread of novel Corona Virus (COVID-19) in India, its declaration as pandemic by the World Health Organisation (WHO), and, decision of Government of India to treat this as a notified disaster, spending of CSR funds for COVID-19 is eligible CSR activity.

Funds may be spent for various activities related to COVID-19 under item nos. (i) and (xii) of Schedule VII relating to promotion of health care, including preventive health care and sanitation, and, disaster management. Further, as per General Circular No. 21/2014 dated 18.06.2014, items in Schedule VII are broad based and may be interpreted liberally for this purpose.

2. General Circular No. 01/2021 dated 13<sup>th</sup> January, 2021

The Ministry of Corporate Affairs, have made a clarification on spending of CSR funds for Awareness and public outreach on COVID-19 Vaccination programme.

This Circular is in continuation to this Ministry's General Circular No. 10/2020 dated 23.03.2020 wherein it was clarified that spending of CSR funds for COVID19 is an eligible CSR activity , it is further clarified that spending of CSR funds for carrying out awareness campaigns/ programmes or public outreach campaigns on COVID-19 Vaccination programme is an eligible CSR activity under item no. (i),(ii) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care and sanitization, promoting education, and, disaster management respectively.

The companies may undertake the aforesaid activities subject to fulfillment of Companies (CSR Policy) Rules, 2014 and the circulars related to CSR, issued by this ministry from time to time.

3. General Circular No. 05/2021, dated 22<sup>nd</sup> April, 2021

A clarification has been issued on spending of CSR funds for setting up makeshift hospitals and temporary COVID Care facilities.

In continuation to this Ministry's General Circular No. 10/2020 dated 23.03.2020 wherein it was clarified that spending of CSR funds for COVID-19 is an eligible CSR activity, it is further clarified that spending of CSR funds for 'setting up makeshift hospitals and temporary COVID Care facilities' is an eligible CSR activity under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively.