

PAPER – 2: CORPORATE AND OTHER LAWS

PART – I: ANNOUNCEMENTS STATING APPLICABILITY FOR NOVEMBER, 2022 EXAMINATIONS

Applicability for November, 2022 examinations

The Study Material (September 2021 edition) is applicable for November, 2022 examinations. This study material is updated for all amendments till 30th April, 2021.

Further, all relevant amendments/ circulars/ notifications etc. in the Company law part for the period 1st May, 2021 to 30th April, 2022 are mentioned below:

THE COMPANIES ACT, 2013

I. Chapter 2: Incorporation of company and matters incidental thereto

Amendments related to - Notification S.O. 2904(E) dated 22nd July, 2021

The Central Government has amended section 16 of the Companies Act, 2013, through the Companies (Amendment) Act, 2020.

Amendment:

In **section 16** of the Companies Act, 2013:

(i) in sub-section (1), in clause (b), for the words "period of six months", the words "period of three months" shall be substituted;

(ii) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) If a company is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the company in such manner as may be prescribed and the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name, which the company shall use thereafter:

Provided that nothing in this sub-section shall prevent a company from subsequently changing its name in accordance with the provisions of section 13."

[Enforcement Date: 1st September, 2021]

For point (i)- Old Law (Pg 2.39)

(b) on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of 6 months from the issue of such direction, after adopting an ordinary resolution for the purpose.

For point (ii)- Old Law (Pg 2.39)

If a company makes default in complying with any direction—

Liable person	Penalty/punishment
Company	Fine of 1,000 rupees for every day during which the default continues
Every Officer who is in default	Fine varying from 5,000 rupees to 1 lakh rupees.

II. Chapter 6: Registration of Charges

Amendments related to - Notification S.O. G.S.R. 320 (E) dated 27th April, 2022

The Central Government has amended the Companies (Registration of Charges) Rules, 2014, through the Companies (Registration of Charges) Amendment Rules, 2022.

Amendment:

In **rule 3**, after sub-rule (4), the following sub-rule shall be inserted, namely:—

"(5) Nothing contained in this rule shall apply to any charge required to be created or modified by a banking company under section 77 in favour of the Reserve Bank of India when any loan or advance has been made to it under sub-clause (d) of clause (4) of section 17 of the Reserve Bank of India Act, 1934 (2 of 1934)."

Old Law (Pg 6.6)

Sub- rule (5) is Newly inserted

III. Chapter 7: Management and Administration

Amendments related to - Notification S.O. G.S.R. 279(E) dated 6th April, 2022

The Central Government has amended the Companies (Management and Administration) Rules, 2014, through the Companies (Management and Administration) Amendment Rules, 2022.

Amendment:

in **rule 14**, after sub-rule (2), the following sub-rule shall be inserted, namely: —

"(3) Notwithstanding anything contained in sub-rules (1) and (2), the following particulars of the register or index or return in respect of the members of a company shall not be made available for any inspection under sub-section (2) or for taking extracts or copies under sub-section (3) of section 94, namely: —

- (i) address or registered address (in case of a body corporate);
- (ii) e-mail ID

(iii) Unique Identification Number

(iv) PAN Number

Old Law (Pg 7.21)

Sub- rule (3) of Rule 14 is Newly inserted

IV. Chapter 8: Declaration and Payment of Dividend

Amendments related to - Notification No. G.S.R. 396(E) dated 9th June, 2021

The Central Government has amended the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, through the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2021.

Amendment:

In **rule 3**, in sub-rule (2), after clause (f), the following shall be inserted, namely:-

“(fa) all shares held by the Authority in accordance with proviso of sub-section (9) of section 90 of the Act and all the resultant benefits arising out of such shares, without any restrictions;”

Old Law (Pg 8.21)

Clause (fa) is Newly inserted

V. Chapter 9: Accounts of companies

A. The Ministry of Corporate Affairs has made clarifications with respect to CSR:

General Circular No. 09/2021 Dated 5th May, 2021

1. 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 'creating health infrastructure for COVID care', 'establishment of medical oxygen generation and storage plants', 'manufacturing and supply of Oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19' or similar such activities are eligible CSR activities 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.

2. Reference is also drawn to item no. (ix) of Schedule VII of the Companies Act, 2013 which permits contribution to specified research and development projects as well as contribution to public funded universities and certain Organisations engaged in conducting research in science, technology, engineering, and medicine as eligible CSR activities.

3. The companies including Government companies may undertake the activities or projects or programmes using CSR funds, directly by themselves or in collaboration as shared responsibility with other companies, subject to fulfillment of Companies (CSR Policy) Rules, 2014 and the guidelines issued by this Ministry from time to time.

General Circular 13/2021 dated 30th July, 2021

The Ministry of Corporate Affairs vide General Circular 10/2020 dated 23.03.2020 clarified that spending of CSR funds for COVID- 19 is an eligible CSR activity. In continuation to the said circular, it is further clarified that spending of CSR funds of COVID- 19 vaccination for persons other than the employees and their families, is an eligible CSR activity under item no. (i) of Schedule VII of the Companies Act, 2013 relating to promotion of health care including preventive health care and item no. (xii) relating to disaster management.

Old Law (Pg 9.47)

The clarifications are newly inserted

B. Amendments related to – Notification No. G.S.R. 107(E) dated 11th February 2022

The Central Government has amended the Companies (Accounts) Rules, 2014, through the Companies (Accounts) Amendment Rules, 2022.

Amendment:

in **rule 12**, after sub-rule (1A), the following sub-rule shall be inserted, namely: —

"(1B) Every company covered under the provisions of sub-section (1) to section 135 shall furnish a report on Corporate Social Responsibility in Form CSR-2 to the Registrar for the preceding financial year (2020-2021) and onwards as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be:

Provided that for the preceding financial year (2020-2021), Form CSR-2 shall be filed separately on or before 31st March 2022, after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be."

Old Law (Pg 9.54)

Rule (1B) is newly inserted

PART – II : QUESTIONS AND ANSWERS

QUESTIONS

DIVISION A: CASE SCENARIO/ MULTIPLE CHOICE QUESTIONS

1. Shree Tyres Ltd. is an unlisted public limited company. The company's accounts for the financial year ending on 31st March, 2022 were finalised and audited by the Statutory Auditor. The meeting of the Board of Directors was convened and approved the financial accounts of the company and proposed to convene the Annual General Meeting of the shareholders on Thursday, the 25th August, 2022 at 10 am.

The total number of members is 3500. The Article of the company provides that the quorum for the general meeting of the shareholders shall be at least fifty members. On the day of the meeting only 10 members were physically present. Even after waiting of 30 minutes, the quorum was not present. Accordingly, the meeting was adjourned. According to the provisions of the Companies Act, 2013, the meeting shall adjourn to the same day in the next week at the same time and place.

However, on the same day in the next week i.e., on Thursday, the 1st September, 2022, the same venue (which is a Hotel's Conference Hall) was available from 3 pm only. The Board agreed to conduct the meeting from 3 pm and the all the members were informed individually via mail and also published it in the newspapers (one in English and another in vernacular language)

The adjourned meeting started at 3 pm on 1st September, 2022, the quorum required as per the Articles was 50, however 75 members were present. Out of the 75 members attending the meeting 25 persons were having the residence near the venue of Annual General Meeting and rest of the members were staying far away. Due to heavy rainfall and scarce availability of public transportation, 40 persons left the meeting so that they can reach home on time. By that time only the ordinary business resolutions were approved and two special business agendas were pending for approval by the members.

Based on the above facts, answer the following MCQs:

- 1.1 In the light of the given facts, the General Meeting of the shareholders was decided to be scheduled . Determine by which date the notices to the shareholder should have been given to the members:
 - (a) 1st August, 2022
 - (b) 2nd August, 2022
 - (c) 3rd August, 2022
 - (d) 4th August, 2022

- 1.2 Whether adjournment of the general meeting of shareholders of Shree Tyres Ltd. for want of quorum, was justified as per the requirement of the Companies Act, 2013:
- (a) Yes, it was justified, since the quorum was not present within 30 minutes from the time appointed for holding the meeting
 - (b) No, it was not justified since the waiting time for the arrival of the requisite quorum is 30 minutes as per the provisions of the Companies Act, 2013, whereas the decision of the adjournment of the meeting was just taken after 15 minutes.
 - (c) Yes, if the quorum is not present at the given time (sharp) of meeting, the meeting stands to be adjourned, and there is no requirement of waiting time.
 - (d) Yes, it was justified, since the quorum was not present within 45 minutes (as per statutory requirement) from the time appointed for holding the meeting.
- 1.3 What shall be the quorum for the General Meeting of the Shareholders, where the number of members is 3500:
- (a) Five
 - (b) Fifteen
 - (c) Thirty
 - (d) Fifty
- 1.4 As some members left the meeting, the quorum was not present all the time during the Annual General Meeting. The agendas for special business transactions remained un-approved. What is your opinion:
- (a) The quorum once present in the beginning of the meeting is enough.
 - (b) The quorum should be present all the time when the meeting is in progress. Any items which could not approved by members for want of quorum, shall be treated as NIL.
 - (c) When the quorum is present in the beginning of the meeting, it may be assumed that all the resolutions have been approved, until and unless objected later on by the members present therein.
 - (d) The Board may seek special written consent from the all the members later on.
2. Yukti has opened a showroom of electronic goods, viz: Air-Conditioner, Colour TV, Refrigerator, Washing Machines etc. which are commonly used for house- hold purposes. She also has a godown, in which the white goods are stored.

Since the electric items are costly and require heavy investment, so she availed a working capital finance from OKEY Bank Ltd. (the Bank), by pledging the white goods lying in her godown, with the Bank. The Bank put its lock, on the godown and whole of white goods

were now in possession of the Bank. The Bank granted a working capital finance of ₹ 100 lakhs to Yukti by keeping the pledged goods. The drawing power limit (DP Limit) was kept as 60% of the value of the goods pledged.

As and when, Yukti needs to withdraw some white goods from the godown, she requests the Bank, deposits the value of goods to be withdrawn. A godown keeper of the Bank comes with her, opens the lock of the godown and allows Yukti to draw the specified goods, of which she has made payment to the Bank.

The Bank got the comprehensive insurance policy on the value of the goods pledged to cover it from theft, fire, flood and earthquake etc.

Yukti, after some time, availed another loan of ₹ 20 lakh from the same Bank for her sister's marriage. This was a personal loan and no security was insisted by the Bank.

Yukti hired a locker from the Bank, in which she kept some jewellery, which was to be given to her sister on her marriage.

After a year, Yukti decided to transfer its running business to Shekhar, for which Shekhar paid the amount to Yukti as agreed between them. Yukti thereafter repaid all the outstanding loan amount given by the Bank towards the working capital finance and asked the Bank to open the lock of the godown, to get goods, in order to hand over the same to Shekhar. However, there was some dispute over the insurance charges paid by the Bank. The Bank insisted to first pay the interest amount then only it will allow her to remove the goods.

The Bank also asked Yukti to settle her personal loan account and only thereafter the Bank will allow to take the goods lying in the godown.

Based on the above facts, answer the following MCQs:

- 2.1. In the light of the given facts, state which statement is correct as regards the right of the Bank on retaining of the goods lying in the godown:
 - (a) When the outstanding amount taken for working capital, has been paid, the Bank cannot retain the goods
 - (b) The Bank can retain the goods till all the charges, including the interest, insurance and other charges are paid by Yukti
 - (c) The Bank can retain only a portion of the goods to cover its dues and may release the rest of the goods.
 - (d) The Bank may first release the goods and then for recovery of its dues file suit against Yukti.
- 2.2. If in the given case, Yukti pays all the expenses (including the disputed insurance premium) but the Bank insist to clear the personal loan account also, then only it will release the goods. Determine whether the Bank is entitled to do so:

- (a) Yes, the Bank can do so
 - (b) The Bank can sale the part amount of the goods lying in the godown in order to liquidate the personal loan account of Yukti
 - (c) The Bank can ask the Shekhar to give guarantee for the personal loan taken by the Yukti
 - (d) No, the Bank has no right to retain the goods pledged with it, since the personal loan was not taken on the security of such goods
- 2.3. Yukti disputed the amount demanded by the Bank towards the insurance premium paid by the Bank. Yukti emphasised that there was no need to take the insurance policy on the goods pledged, because it is an extra burden on the part of the borrower. Identify the correct statement:
- (a) Yes, it is an extra financial burden on the part of the borrower and is dependent on the will of the borrower.
 - (b) Every bank has a policy to get the security insured on which it grants loan, so in this case also, the Bank for the purpose of protection of the goods took the insurance policy and paid the premium, so demand of the Bank is justified.
 - (c) The godown is just near by the Police Station, hence there should not be the fear of theft. No need of taking insurance policy.
 - (d) Happening of the Earthquake and Flood are the remote possibility, so the expenses on the insurance premium could have been avoided as it is not a mandatory requirement.
- 2.4. When Yukti is availing the working capital finance from the Bank on the security of the white goods, by submitting these goods in the custody of the Bank, said course of transaction can be termed as:
- (a) Bailment of goods
 - (b) Pledge of goods
 - (c) Safe keeping of goods
 - (d) Lessor and Lessee relationship
3. A clause that begins with the words 'Notwithstanding anything contained' is called:
- (a) An obstacle clause
 - (b) A non- obstante clause
 - (c) An objectionable clause
 - (d) A superior clause

4. Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than ----- of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class:
 - (a) One-fourth
 - (b) 50%
 - (c) Three-fourths
 - (d) 75%
5. A Public company may be formed by:
 - (a) Only two persons
 - (b) Not more than three persons
 - (c) Not more than Seven Persons
 - (d) Seven or more Persons

DIVISION B: DESCRIPTIVE QUESTIONS

PART I: COMPANY LAW

The Companies Act, 2013

1. Geeta Private Limited is a start-up company. Mr. Prabodh has been appointed as Accounts Manager of Geeta Private Limited. The Board meeting for approval of accounts is to be held on 01.08.2022 and he has to prepare the financial statements for approval by the Board. Referring to section 2(40) of the Companies Act, 2013, advise Mr. Prabodh about the statements that are required to be prepared.
2. Mr. Aditya had incorporated a one person company on 07.07.2021. Mr. Yash was named as a nominee in the memorandum of the said one person company. Now, Mr. Aditya, considering the perpetual nature of company form of business, desires to appoint ABC Private Limited as a nominee instead of Mr. Yash. Examine with reference to the Companies Act, 2013, whether the proposal of Mr. Aditya to appoint ABC Private Limited as a nominee is valid?
3. 'A' and his wife 'B' has joint Demat Account in Vrinda Limited. The company's Annual General Meeting is to be held on 28.08.2022. In such a case, who will cast the vote in the Annual General Meeting? Give your answer as per the provisions of the Companies Act, 2013.
4. Prabhas Limited is a company having its shares listed on a recognised stock exchange. The company has 5,000 members. The Annual General Meeting of the company is to be held on 07-09-2022. As per the provisions of the Companies Act, 2013, advise the company, the remote e- voting period and the time of closing of remote e-voting.

5. Dhiman Limited, is a company incorporated in India. Dhiman Limited is a leading manufacturer of sports shoes. It has many subsidiaries, one of them being Best Shoes Limited which is based in Morocco. Dhiman Limited is in the process of finalization of the consolidated financial statements of the company for the year ended 31 March 2022. The accounts section of Dhiman Limited has requested the management of Best Shoes Limited to provide its standalone financial statements to Dhiman Limited. The subsidiary company prepares its financial statements in the local language of the country and the same is provided to the Indian parent company. Further, audit of financial statement is not required by the Best Shoes Limited under the Moroccan laws.
- Advise, how would Dhiman Limited deal with the consolidation of such financial statements.
6. What are provisions of the Companies Act, 2013, relating to the appointment of 'Debenture Trustee' by a company? Whether the following can be appointed as 'Debenture Trustee'?
- (i) A shareholder of the company who has shares of ₹ 10,000.
 - (ii) A creditor whom the company owes ₹ 999 only.
 - (iii) A person who has given a guarantee for repayment of amount of debentures issued by the company.
7. State the persons responsible for complying with the provisions regarding maintenance of Books of Accounts of a company. Support with the help of relevant provisions of the Companies Act, 2013.
8. Mr. Govind Ram is a partner and in-charge (and certifies financial statements) of P & Associates. The firm is appointed as an auditor firm of Kanha Limited (listed company). Mr. Govind Ram retires from P & Associates and after some time join Gupta & Gupta firm as a partner, on 20/05/22. In the general meeting of Kanha Limited held on 15/06/22, the company appointed Gupta & Gupta firm as next auditor of the company. Advise Kanha Limited, whether the company has adhered to the provision of the Company Act, 2013, by appointing Gupta & Gupta as auditor for the company?

PART II: OTHER LAWS

The Indian Contract Act, 1872

9. Vishal bailed 50 kg of high quality sugar to Naresh, who owned a kirana shop, promising to give ₹ 200 at the time of taking back the bailed goods. When Naresh was not at shop, his employee, unaware of bailed sugar of Vishal, mixed the 50 kg of sugar belonging to Vishal with the sugar in the shop and packaged it for sale. This came to light only when Vishal came asking for the sugar he had bailed with Naresh, as the price of the specific quality of sugar had trebled. What is the remedy available to Vishal as per the provisions of the Indian Contract Act, 1872?

The Negotiable Instruments Act, 1881

10. Mr. Zahid accepted a bill of exchange and gave it to Mr. Kamil for the purpose of getting it discounted and handing over the proceeds to Mr. Zahid. Mr. Kamil couldn't get the bill discounted and returned the bill to Mr. Zahid. Mr. Zahid cut the bill in two pieces for the purpose to cancel it and he threw the pieces on the street. Mr. Kamil picked up the pieces and joined those pieces in such manner that the bill seemed to have been folded for safe custody, rather than cancelled. Mr. Kamil put it into circulation and it finally reached to Mr. Salim, who took it in good faith and for value. Explain in the light of the provisions of the Negotiable Instruments Act, 1881, whether Mr. Zahid is liable to pay the bill to Mr. Salim?

The General Clauses Act, 1897

11. Section 2(18)(aa) of the Income Tax Act, 1961, provides that a company is said to be a company in which the public are substantially interested, if it is a company which is registered under section 25 of the Companies Act, 1956. After the advent of Companies Act, 2013, the corresponding change has not been made in section 2(18) of the Income tax Act, 1961. Explain, with reference to the provisions of the General Clauses Act 1897, how will the provisions of section 2(18)(aa) of the Income Tax Act, 1961, will be considered after the enactment of the Companies Act 2013?

Interpretation of Statutes

12. How will you interpret the definitions in a statute, if the following words are used in a statute?
- (i) Means
 - (ii) Includes
- Give one illustration for each of the above from statutes you are familiar with.

SUGGESTED ANSWERS

ANSWER TO CASE SCENARIO / MULTIPLE CHOICE QUESTIONS

- 1.1 (c)
- 1.2 (a)
- 1.3 (d)
- 1.4 (b)
- 2.1 (b)

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2.2 (d)

2.3 (b)

2.4 (b)

3. (b)

4. (c)

5. (d)

ANSWER TO DESCRIPTIVE QUESTIONS

1. As per section 2(40) of the Companies Act, 2013, **Financial Statement** in relation to a company, includes—

- (i) a balance sheet as at the end of the financial year;
- (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- (iii) cash flow statement for the financial year;
- (iv) a statement of changes in equity, if applicable; and
- (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Exemption: As per the proviso to section 2(40), the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement.

In the instant case, Mr. Prabodh has to prepare the above financial statements except Cash Flow Statement; since Geeta Private Limited is a start-up private company

2. As per the provisions of Rule 3(1) of the Companies (Incorporation) Rules, 2014, only a natural person who is an Indian citizen whether resident in India or otherwise-

- (a) shall be eligible to incorporate a One Person Company (OPC);
- (b) shall be a nominee for the sole member of a One Person Company (OPC).

By taking into account the above provisions, ABC Private Ltd. cannot be appointed as nominee in one person company as only natural persons can be appointed as a nominee. Hence, the proposal of Mr. Aditya to appoint ABC Private Ltd. as a nominee is not valid.

3. The voting in case of joint shareholders is done in the order of seniority, which is determined on the basis of the order in which their names appear in the register of members/ shareholders. The joint- holders have a right to instruct the company as to the order in which their names are to appear in the register.

As per Rule 21 of the Companies (Management and Administration) Rules, 2014, the Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio.

Thus, in the given case, 'A' or his wife 'B', whosoever names appears first in chronological order in the register of members/ shareholders shall be entitled to vote.

4. Rule 20 of the Companies (Management & Administration) Rules, 2014, provides that:
 1. Every company which has listed its equity shares on a recognised stock exchange and company having not less than one thousand members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.
 2. The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting.

In the question, Prabhas Limited has its shares listed on recognised stock exchange and has 5,000 members, hence, it has to provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means. Thus, if the Annual General Meeting of Prabhas Limited is going to be held on 7.9.2022, the facility for remote e- voting shall open on 4.9.2022 and close at 5.00 p.m. on 6.9.2022.

5. According to fourth proviso to section 137(1) of the Companies Act, 2013, a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.

Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.

It has also been clarified vide *General Circular no. 11/2015 dated 21 July 2015* that in case of foreign company which is not required to get its accounts audited as per the legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding or parent Indian company may place or file such unaudited accounts to comply with requirements of section 136(1) and 137(1) as applicable. These, however, would need to be translated in English, if the original accounts are not in English. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

Hence, Dhiman Limited. would have to get the standalone financial statements of Best Shoes Limited translated in English language and also get those aligned as per the its accounting policies for the purpose of consolidation.

Further Dhiman Limited would need to file such unaudited financial statement of Best Shoes Limited along with a declaration to this effect along with a translated copy of the financial statement in English.

Further the format of accounts of Moroccan subsidiary company should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

- 6. Appointment of Debenture Trustee:** Under section 71 (5) of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

Rule 18 (2) of the Companies (Share Capital and Debentures) Rules, 2014, framed under the Companies Act for the issue of secured debentures provide that before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

Further according to the provided rules *inter-alia*, no person shall be appointed as a debenture trustee, if he-

- (1) beneficially holds shares in the company;
- (2) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
- (3) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;

Thus, based on the above provisions answers to the given questions are as follows:

- (i) A shareholder who has holds shares of ₹ 10,000, cannot be appointed as a debenture trustee.
- (ii) A creditor whom company owes ₹ 999 cannot be appointed as a debenture trustee. The amount owed is immaterial.
- (iii) A person who has given guarantee for repayment of principal and interest thereon in respect of debentures, cannot be appointed as a debenture trustee.

7. **Persons responsible to maintain books:** As per Section 128 (6) of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of account etc. shall be:

- (a) Managing Director,
- (b) Whole-Time Director, in charge of finance
- (c) Chief Financial Officer
- (d) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

8. According to Section 139(2) of the Companies Act, 2013, no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—

- (a) an individual as auditor for more than one term of five consecutive years; and
- (b) an audit firm as auditor for more than two terms of five consecutive years.

Provided that –

- (i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
- (ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.

Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

As per Explanation II in Rule 6(3) of the Companies (Audit and Auditors) Rules, 2014, if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

Here, Mr. Govind Ram has retired from P & Associates and joined Gupta & Gupta Firm. Mr. Govind Ram was a partner, in-charge Associates (and certifies the financial statement of the company) in P & Associates. He retires from P & Associates and joins Gupta & Gupta firm.

As per the facts of the question and provisions of law, Gupta & Gupta Firm will also be ineligible, to be appointed as auditor of Kanha Limited (listed company) for a period of 5 years.

9. According to section 157 of the Indian Contract Act, 1872, if the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

In the given question, Naresh's employee mixed high quality sugar bailed by Vishal and then packaged it for sale. The sugars when mixed cannot be separated. As Naresh's employee has mixed the two kinds of sugar, he (Naresh) must compensate Vishal for the loss of his sugar.

10. According to the section 9 of the Negotiable Instrument Act 1881, "Holder in due course" means 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. Further, section 120 says that no maker of a promissory note and no drawer of a bill or cheque and no acceptor of a bill for the honour of the drawer shall, in a suit thereon by a holder in due course be permitted to deny the validity of the instrument as originally made or drawn. Thus, a holder in due course gets a good title to the bill.

In the given question, since Mr. Salim acquired the bill in good faith and for value, he becomes the holder in due course. Mr. Zahid cannot deny the original validity of the bill towards Mr. Salim (he being holder in due course). Hence, Mr. Salim has right to recover the amount of bill from Mr. Zahid.

11. According to section 8 of the General Clauses Act, 1897, where this Act or Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

Also, in *Gauri Shankar Gaur v. State of U.P.*, AIR 1994 SC 169, it was held that every Act has its own distinction. If a later Act merely makes a reference to a former Act or existing law, it is only by reference and all amendments, repeals new law subsequently made will have effect unless its operation is saved by the relevant provision of the section of the Act.

As per the facts of the question, even after the advent of the Companies Act 2013, no corresponding amendment was done in section 2(18)(aa) of the Income Tax Act, 1961, which provides that a company is said to be a company in which the public are substantially interested, if it is a company which is registered under section 25 of the Companies Act, 1956.

In the given situation, as per section 8 of the General Clauses Act, 1897 and the decision of case of *Gauri Shankar Gaur v. State of U.P.*, for section 2(18)(aa) of the Income Tax Act, 1961, provisions of the Companies Act, 2013 will be applicable in place of the Companies Act, 1956.

- 12. Interpretation of the words “Means” and “Includes” in the definitions-** The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to ‘mean’ such and such, the definition is ‘prima facie’ restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to ‘include’ such and such, the definition is ‘prima facie’ extensive, here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Example—

Definition of Director [Section 2(34) of the Companies Act, 2013] — Director means a director appointed to the board of a company. The word “means” suggests exhaustive definition.

Definition of Whole time director [Section 2(94) of the Companies Act, 2013] — Whole time director includes a director in the whole time employment of the company. The word “includes” suggests extensive definition. Other directors may be included in the category of the whole time director.