CLUSTER 4

1. **The Board of directors of ABC Ltd. incorporated on 2nd April, 2015 decides to pay 10% of the profit of the company earned during the period of 6 months in the financial year 2015-16, towards political contribution to some political parties.**

Ans. As per Section 182 of the Companies Act, 2013, a company shall not make a political contribution if it has been inexistence for less than 3 financial years.
In this case, ABC Ltd cannot make any political contribution because the company is not in existence for a period of 3 financial years.

2. **A Ltd. (not a Government Company) was incorporated on 1st January,2015. Till what date A Ltd. cannot make any political contribution?**

Ans. As per Section 182 of the Companies Act, 2013, the following companies shall not make a political contribution:
(a) A Government company.
(b) A company which has been in existence for less than 3 financial years.
As per Section 2(41) of the Companies Act, 2013, 'financial year' means the period ending on the 31st day of March every year, and where a company is incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year.
In the given case, the first financial year of the company shall end on 31st March, 2016. The second and third financial year shall end on 31st March, 2017 and 31st March, 2018 respectively.
Up to 31st March, 2018, the company shall not be in existence for 3 financial years, and so it can make a political contribution only on or after 1st April, 2018.

3. **B Ltd. (not a government company) was incorporated on 31stDecember, 2014. Till what date B Ltd. cannot make any political contribution?**

Ans. As per Section 182 of the Companies Act, 2013, the following companies shall not make a political contribution:
(a) A Government company.
(b) A company which has been in existence for less than 3 financial years.
As per Section 2(41) of the Companies Act, 2013 'financial year means the period ending on the 31stday of March every year, and where a company is incorporated on or after the 1stday of January of a year, the period ending on the 31stday of March of the following year.
In the given case, the first financial year of the company shall end on 31st March, 2015. The second and third financial years shall end on 31st March, 2016 and 31st March, 2017 respectively.
Up to 31st March 2017, the company shall not be in existence for 3 financial years, and so it can make a political contribution only on or after 1st April, 2017.

4. **Case I. MNC Ltd. constituted an audit committee as required by the said Act. The committee in its report dated 30th April 2012 has pointed out various irregularities in the financial transactions entered into by the company. The management of the company does not agree with the contents of the audit committee report. Explain the action that can be taken in this regard. (CA (Final) May 2012)**
Case II. An Audit Committee of a listed company constituted under Section 177 of the Companies Act, 2013 submitted its report of its recommendation to the Board. The Board, however, did not accept the recommendations. In the light of the situation, analyze whether:
(a) The Board is empowered not to accept the recommendations of the Audit Committee.

(b) If so, what alternative course of action, would be Board resort to? (ICAI, Questions for Practice)

Ans. As per Section 177, if the Board does not accept any recommendation of the Audit Committee, the same shall be disclosed in the Board's report along with the reasons thereof

Case I.

The Audit Committee has pointed out some irregularities in the financial transactions entered into by the company. However, the Board is of the view that there are no such irregularities. Thus, if is evident that the Board does not agree with the recommendations made by the Audit Committee.

The following disclosures are made in the Board's report:

(a) The recommendation made by the Audit Committee which was not accepted by the Board.

(b) Reason for non-acceptance of such recommendation made by the Audit Committee.

Case II.

(i) Section 177 gives discretion to the Board with respect to acceptance or non-acceptance of recommendations made by the Audit Committee. Thus, the Board may decide not to accept the recommendations of the Audit Committee.

(ii) In case the Board does not accept the recommendations made by the Audit Committee, the Board shall ensure that following disclosures are made in the Board's report:

(a) The recommendation made by the Audit Committee Which was not accepted by the Board.

(b) Reason for non-acceptance of such recommendation made by the Audit Committee.

5. M/s Dream works Limited (an unlisted company) without any public deposits as per the audited financial statements of the company as at March, 31st 2018 gives you the following information:

Paid up Share Capital	**Rs. 20 Crores**
Gross Turnover	**Rs. 500 Crores**
Bank Borrowings	**Rs. 40 Crores (from a Nationalized Bank)**
Other Borrowings	**Rs. 40 Crores (from a Public Financial Institution)**

Mr. Gupta, a Chartered Accountant employed in the finance and audit department of the company wants to form a Vigil Mechanism for directors and employees of the company.

(1) Advise whether it is mandatory tor M/s Dream works Limited to formulate a Vigil Mechanism under the provisions of the Companies Act, 2013 and rules framed there under.

(2) Are there any penalties that could be imposed on the company for not formulating the Vigil Mechanism? (CA (Final) May 2018)

Ans. As per Section 177 of the Companies Act, 2013 read with Rule 7 of the Companies (Meetings of Board and its Powers) Rules, 2014,

1. Establishment of vigil mechanism is mandatory for the following companies:

(a) Listed companies.

(b) The companies which have accepted deposits from the public.

(c) The companies which have borrowed money from banks and public financial institutions in excess of Rs. 50 crore.

2. In case a company fails to establish the vigil mechanism, the punishment shall be as follows:

(i)The company shall be punishable with fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 5 lakh.

(ii) Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to1 year or with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1 lakh, or with both.

3. In the given case, M/s Dream works Limited is not a listed company. Also, if has not accepted any deposits from the public. However, M/s Dream works Limited has borrowed Rs. 40 crores from a bank and Rs. 40 crores from a public financial institution. Thus, the aggregate of borrowings of M/s Dream works Limited from banks and public financial institutions is Rs. 80 crores, i.e. exceeding Rs. 50 crores. Since M/s Dream works Limited satisfies one of the three criteria contained in Section 177 read with Rule 7, it is required to establish the vigil
4. In case a company fails to establish the vigil mechanism, the punishment shall be as follows:
(i) The company shall be punishable with fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 5 lakh.
(ii) Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1 lakh, or with both.

6. Advise the Board of directors of a public company about their powers in respect of the following proposals explaining the relevant provisions of the Companies Act, 2013:
Buy-back of shares of the company up to 10% of the paid-up equity share capital. (CA (Final) May 2003 (Modified)

OR

Advise the Board of directors to Spectra Papers Limited regarding validity and extent of their powers, under the provisions of the Companies Act, 2013 in relation to buy-back of the shares of the company up to 10% of the paid-up equity share capital without passing a special resolution. (CA (Final) May 2013 (Modified)

Ans. As per Section 179(1), the Board is entitled to exercise all such powers as the company is authorized to exercise. Similarly, the Board is authorized to do all such acts and things as the company is authorized to do. However, the provisions of Section 179(1) are subject to the other provisions of the Companies Act, 2013 (like Sections 179(3), 180, 181 and 182 of the Companies Act, 2013).
The Board shall exercise the powers mentioned under Section 179(3) only by means of a resolution passed at a meeting of the Board, Among other powers, the power to buy-back as referred to in Section 68 is also included in Section 179(3).
As per Section 68 (2), no company shall buy-back its own shares or other specified securities, unless-
(a) the buy-back is authorized by the articles; and
(b) a special resolution is passed at a general meeting authorizing such buy-back.
However, a company may buy-back its own shares or other specified securities without being authorized by a special resolution, if-
(i) the buy-back is 10% or less of aggregate of paid up equity share capital and free reserves; and
(ii) the buy-back is authorized by a resolution passed in a Board meeting.
Hence, in the present case, the Board is authorized to buy-back the shares of the company up to 10% of the paid-up equity share capital, provided the resolution authorizing the buy-back is passed at a Board meeting and not by circulation.

7. A is the Director of M & Co. Ltd. A has borrowed Rs. 50/- lacs on reasonable terms from X for company's benefit and business. A has no power to borrow. What will be the legal position? Please explain. (CA (Final) Nov. 2010)

Ans. As per Section 179(3), the power to borrow money shall be exercised by the Board at a Board meeting. However, such power may be delegated by the Board, subject to the following:

(a) The power to borrow money may be delegated to a committee of directors, managing director, manager, a principal officer of the company or a principal officer of the branch office.
(b) The delegation of power is made by passing a resolution at a Board meeting.
(c) The Board may delegate such powers subject to such conditions as it may deem fit.
A director is a principal officer of the company. Thus, as per Section 179(3), the power to borrow money may be delegated to any director of the company.
Whether the power to borrow money has been delegated by the Board or not, is a question of fact. However, if a director acting on behalf of the company, borrows money even though he is not authorized to borrow money on behalf of the company, then, any bonafide lender may take the benefit of doctrine of indoor management, and enforce the recovery of such money, because borrowing of money falls within the implied or ostensible authority of a director, and so the outsiders dealing with the company are entitled to assume that every director is authorized to borrow money on behalf of the company.
The company shall be held liable if the money borrowed by the Board is used for the benefit of the company. Even if the director borrowing the money was not so authorized, the company shall be liable to repay, if it is shown that the money has gone into the hands of the company **(Lakshmi Rattan Cotton Mills Co. Ltd. v J. K. Jute Mills Co. Ltd. (1957) 27 Comp Case 660).**

8. Big Benne Masale Ltd, a reputed public company, had advanced certain sum of money to one of its directors, namely Mr. Bakasura on certain terms and conditions and fixing the time limit for repayment thereof. Now, Mr. Bakasura has approached the company with a request to extend the time limit for repayment of balance of loan amounting to Rs. 12 Lakhs by another six months. Who is authorized to grant the extension as requested by Mr. Bakasura?

Ans. Section 180 contains certain powers which the Board may exercise, but only after obtaining the consent of the members in the general meeting. Clause (d) of sub-Section (1) of Section 180 specifies one of such powers, which is as follows:
To remit, or give time for the repayment of any debt due by a director.
Thus, it is evident that if it is desired to remit or give time for the repayment of any debt due by a director, the Board is required to exercise such power, but the Board shall have to obtain the consent of the members by way of a special resolution.
In the given case, the proposal is to extend the time limit for repayment of loan of Rs. 12 lakhs payable by Mr. Bakasura, a director of the company. The unpaid amount of Rs. 12 lakhs amount to a debt payable by the director. So, this case is covered under Section 180(1) (d). Therefore, such extension can be granted by the Board, but with the consent of the members by way of a special resolution passed in general meeting.

9. The paid-up share capital and free reserves of XYZ Co. Ltd., a public company is Rs. 100 crores as on 1st April, 2014. The shares holders of the company at their general meeting held on 4th April, 2014, by a special resolution authorized the Board of directors of the company to borrow money exceeding the paid-up share capital and free reserves of the company, to the extent required by the Board of directors. The Board of directors as a result borrowed money to an extent of Rs. 130 crores, including Rs. 20 crores as short-term loan and Rs. 25 crores as temporary loan for financing the construction of a building of the company. Referring to the provisions of the Companies Act, 2013 examine the validity of the following:
(i) The Board's exercising the powers for borrowing money to an extent of Rs. 130 crores?
(ii) What would be your answer in case the company's paid up share capital and free

reserves increased to Rs. 150 crores and the Board of directors borrow money to an extent of Rs. 140 crores which neither include any short-term loan nor temporary loan for financing of the construction of a building of the company? (CA (Final) May 1998)

Ans. As per Section 180(1)(c). without the prior consent of the members in general meeting by way of a special resolution, the Board of directors of a company shall not borrow moneys where the borrowings (already made plus proposed) exceed the aggregate of the paid-up share capital, free reserves and securities premium account. The total amount up to which moneys may be borrowed by the Board of directors must be specified in the special resolution passed by the company in the general meeting. However, temporary loans obtained from the company's bankers in the ordinary course of business shall not be considered as borrowings.

Temporary loans' means loans repayable on demand or within 6 months from the date of the loan. But loans raised for the purpose of financial expenditure of a capital nature shall not be treated as temporary loans and will be included in borrowings.

The given case may be discussed as follows:

(i) In the first case, the aggregate of paid up share capital, free reserves and securities premium account amounts to Rs. 100crores. The directors have borrowed Rs. 130 crores out of which 20 crores is not to be considered as borrowings since it amounts to temporary loan in terms of Section 180(1)(c), assuming that this amount of Rs. 20 crores has been borrowed from the company's bankers in the ordinary course of business. Also included in Rs. 130 crores, is an amount of Rs. 25 crores which has been borrowed for financing the construction of building (for financing capital expenditure), and so, this amount of Rs. 25 crores does not amount to temporary loan in terms of Section 180(1)(c), and therefore, it shall be included in the borrowings.

The Board could borrow money exceeding Rs. 100 crores only with the consent of the shareholders in general meeting by way of a Special resolution. Moreover, the special resolution passed at the general meeting must specify the total amount up to which moneys could be borrowed by the Board of directors. If is evident that the special resolution passed by the members in the general meeting does not specify the total amount that could be borrowed by the Board and is thus detective. Therefore, the borrowings made by the Board violates the provisions of Section 180(1)(c) of the Companies Act, 2013.

(ii) In the second case, the paid-up share capital, free reserves and securities premium account of the company amount to Rs. 150 crores. As such, Board can borrow money up to Rs. 150 crores without the consent of the members in the general meeting by way of a special resolution.

Since on amount of Rs. 140 crores only has been borrowed by the Board, borrowings are well within the limits specified under Section 180(1)(c) of the Companies Act, 2013 and therefore the exercise of borrowing powers by the Board is in order.

10. The last three years Balance Sheets of RBS Ltd. contains the following information and figures:

	As at 31.03.2002(Rs.)	As at 31.03.2003 (Rs.)	As at 31.03.2004 (Rs.)
Paid up Capital	**50,00,000**	**50,00,000**	**75,00,000**
General Reserve	**45,00,000**	**50,00,000**	**60,00,000**
Debenture Redemption Reserve	**15,00,000**	**20,00,000**	**25,00,000**
Secured Loans	**10,00,000**	**15,00,000**	**30,00,000**
Net Profit for the year	**12,50,000**	**19,00,000**	**34,50,000**

In the ensuing Board Meeting scheduled to be held on 5th November, 2004, among other items of agenda, following item is also appearing:
"To decide about borrowing from financial institutions on long-term basis".
Based on above information, you are required to find out as per the provisions of the Companies Act, 2013 the amount up to which the Board can borrow from financial institutions without seeking the approval in general meeting. (CA (Final) Nov. 2004)

Ans. As per Section 180 (1) (c) of the Companies Act, 2013, without the prior consent of the members in the general meeting by a special resolution, the Board of directors of a company shall not borrow moneys where the borrowings (already made plus proposed) exceed the aggregate of the paid up share capital, free reserves and securities premium account. However, temporary loans obtained from the company's bankers in the ordinary course of business shall not be considered as borrowings.

'Temporary loans' means loans repayable on demand or within 6 months from the date of the loan. But loans raised for the purpose of financial expenditure of a capital nature shall not be treated as temporary loans and will be included in borrowings.

In the given case, the aggregate of paid up share capital, free reserves and securities premium account comes to Rs. 1,35,00,000. It is to be noted that net profit for the year amounting to Rs. 34,50,000 would already have been added while arriving at the figure of General Reserve, and accordingly, it shall not be again added at the time of determining the aggregate of paid up share capital, free reserves and securities premium account. Debenture Redemption Reserve is not free for distribution of dividend and is therefore not considered as free reserves.

The borrowings already made by the company is Rs. 30,00,000. Therefore, without requiring any consent of shareholders, the long-term borrowings from financial institutions shall not exceed a sum of Rs. 1,05,00,000. However, fresh borrowings exceeding Rs. 1,05,00,000 may be made without the consent of the members by a special resolution, provided such borrowings quality as temporary loans obtained from the company bankers in the ordinary course of business. It has been assumed that secured loan of Rs. 30,00,000 (as on 31.3.2004) is not a temporary loan obtained from the company's bankers in the ordinary course of business.

11. **The Board of directors of Stepping Stones Publications Ltd., at a meeting held on 15.1.2001 resolved to borrow a sum of Rs. 15 crores from a nationalized bank. Subsequently the said amount was received by the company. One of the directors, who opposed the said borrowing as not in the interest of the company has raised an issue that the said borrowing is outside the powers of the Board of directors. The company seeks your advice and the following data is given for your information:**
(i) Share capital: Rs. 5 crores
(ii) Reserves and surplus: Rs. 5 crores
(iii) Secured loans: Rs. 15 crores
(iv) Unsecured loans: Rs. 5 crores
Advise the management of the company. (CA (Final) May 2001)

Ans. As per Section 180(1)(c) of the Companies Act, 2013, without the prior consent of the members in general meeting by a special resolution, the Board shall not borrow money if moneys already borrowed, together with moneys to be borrowed will exceed the aggregate of the paid up share capital, free reserves and securities premium account of the company. Any borrowings in contravention of this Section cannot be enforced by the lender unless he proves that he advanced the loan in good faith and without knowledge that the limit imposed under this Section had been exceeded.

In the present case the aggregate of paid up share capital, free reserves and securities premium account amount to Rs. 10 crores. But the company has borrowed Rs. 20 crores (i.e.

exceeding the limit of Rs. 10 crores), without the consent of members by a special resolution. Therefore, the borrowings have been made by the Board without proper authority. However, the members have the power to ratify those acts of the Board which are intra vires the company even though such acts are beyond the powers of the Board. Accordingly, the Board should take steps to convene a general meeting and the members may ratify the excess borrowings by passing a special resolution. On such ratification, the borrowings will become valid and binding on the company.

If the members do not ratify the acts of the Board, the position will be as follows:

The debt incurred by the company in excess of the limits imposed by Section 180(1)(c) of the Companies Act, 2013 shall not be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed had been exceeded (Section 180(5) of the Companies Act, 2013)

The company shall be held liable if the money borrowed by the Board is used for the benefit of the company. Even if the borrowing is unauthorized, the company will be liable to repay. if it is shown that the money has gone into the hands of the company **(Lakshmi Rattan Cotton Mills Co. Ltd. v J.K. Jute Mills Co. Ltd. (1957) 27 Comp Case 660).**

The directors may be held personally liable n he lender, on the ground of breach of implied warranty of authority.

12. The Balance Sheet of International Operators Ltd. as a -05-2014 discloses the following position:

Rs. (in crores)	
Shore Capital	**100**
Reserves & Surplus	**300**
Secured Loans	**150**
Unsecured Loans	**100**
Current Liabilities	**70**

Mr. X the Managing Director of the company approaches the oval Bank for a secured loan of Rs. 600 crores to finance the new projects to be taken up shortly. The Bank seeks your advice whether it can grant the loan of Rs. 600 crores on the application of Mr. X. Advise the Royal Bank having regard to the provisions of the Companies Act, 2013.

Ans. As per Section 179(3) (d) of the Companies Act, 2013, borrowing of money shall be exercised by the Board by passing a resolution at a Board meeting only. However, as per First Proviso to Section 179(3), such power may be delegated by the Board, subject to the following 3 conditions:

(a) Such power may be delegated to a committee or directors, managing director, manager, a principal officer of the company or a principal officer of the branch office.

(b) The delegation of power can be made by the Board by passing a resolution at a Board meeting only.

(c) The Board may delegate such power subject to such conditions as it may deem fit. As per Section 180(1)(c) of the Companies Act, 2013, consent of the company by way of a special resolution shall be required for borrowing of money if moneys already borrowed, together with moneys to be borrowed will exceed the aggregate of paid up share capital, free reserves and securities premium account of the company. However, temporary loans obtained from the company's bankers in the ordinary course of business shall not be considered as borrowings.

In the given case, the aggregate of paid up share capital, free reserves and securities premium account comes to Rs. 400crores (Rs. 100 crores+ Rs. 300 crores). The company has already borrowed Rs. 250 crores (Rs. 150 crores + Rs. 100 crores). It has been assumed that secured loans of Rs. 150 crores and unsecured loans of Rs. 100 crores are not temporary loans. Current liabilities shall not be included in the amount already borrowed. Thus, the Board is

entitled to borrow Rs. 150 crores only without obtaining the consent of the company by way of a special resolution.
The aggregate of the amount already borrowed (Rs. 250 crores) and the amount proposed to be borrowed (Rs. 600 crores) would exceed the aggregate of paid up share capital, free reserves and securities premium account (Rs. 400 crores Therefore, the Board is entitled to borrow Rs. 600 crores only after obtaining the consent of the company by way of a special resolution.
Accordingly, our advice to the Royal Bank is as follows:
(a) The Bank should ensure that the Board has obtained the consent of the company by way of a special resolution. The special resolution must specify the maximum amount up to which moneys may be borrowed by the Board, and the amount so specified must be Rs. 850 crores or more [Section 180(1)(c) of the Companies Act, 2013].
(b) The Bank should ensure that the power to borrow money has been delegated to the managing director by passing such resolution in Board meeting only [First Proviso to Section 179(3) of the Companies Act, 2013].
(c) Since the loan to be made by Royal Bank is a secured loan, a charge shall be created on some asset or property or undertaking of International Operators Ltd. So, Royal Bank should ensure that the particulars of the charge are filed by International Operators Ltd. within 30 days of creation of charge [Section 77 of the Companies Act. 2013.

13. Following is data relating to Prince Company Limited:

Authorized Capital (Equity Shares)	**Rs. 100 crores**
Paid up Share Capital	**Rs. 40 crores**
General Reserves	**Rs. 20 crores**
Debenture Redemption reserve	**Rs. 10 crores**
Provision for Taxation	**Rs. 5 crores**
Loan (Long Term)	**Rs. 10 crores**
Short-Term Creditors	**Rs. 3 crores**

Board of Directors of the company by a resolution passed at its meeting decides to borrow an additional sum of Rs. 90 crores from the company's Bonkers. You being the company's financial advisor, advise the Board of Directors the procedure to be followed as required under the Companies Act, 2013. (CA (Final) Nov. 2014)

Ans. As per Section 180[1)(c) of the Companies Act, 2013, without the prior consent of the members in general meeting by a special resolution, the Board of directors of a company shall not borrow moneys where the borrowings (already made plus proposed exceed the aggregate of the paid up share capital, free reserves and securities premium account. However, temporary loans obtained from the company's bankers in the ordinary course of business shall not be considered as borrowings.
In the given case, paid up share capital of the company is Rs. 40 crores and free reserves are Rs. 20 crores. Debenture Redemption Reserve and Provision for Taxation are not free reserves. The aggregate of paid up share capital, free reserves and securities premium account comes to Rs. 60 crores. The company has already borrowed Rs. 10 crores. The amount payable to creditors (Rs. 3 crores in the given case) does not amount to borrowings. Thus, further borrowings by the Board, without obtaining the consent of the members by way of a special resolution, shall not exceed Rs. 50 crores. Since, the Board intends to borrow Rs. 90 crores, prior approval of the members by way of a special resolution is required. The special resolution passed by the members shall specify the total amount up to which moneys may be borrowed by the Board.

14. M/s ABC Ltd, had power under its memorandum to sell its undertaking to another company having similar objects. The Articles of the company contained a provision by

which directors were empowered to sell or otherwise deal with the property of the company. The Shareholders passed a special resolution for the sale of its assets on certain terms and required the directors to carry out the sale. The Directors refused to comply with the wishes of the shareholders where upon it was contended on behalf of the shareholders that they were the principal and directors being their agents were bound to give effect to their decision. Based on the above facts, decide the following issues, having regard to the provisions of the Companies Act, 2013.

(i) Whether the contention of shareholders against the non-compliance of their wishes by the directors is tenable?

(ii) Can shareholders usurp the powers which by the articles are vested in the directors by passing a special resolution?

OR

One of the Objects Clauses of the Memorandum of Association of Info Company Limited conferred upon the company power to sell its undertaking to another company with identical objects. Company's Articles also conferred upon the directors whereby power was conferred upon them to sell or otherwise deal with the properly of the company. At an Extraordinary General Meeting of the company, members passed a special resolution for the sale of its assets on certain terms and authorized the directors to carry out the sale. Directors refused to comply with the wishes of the members where upon it was contended on behalf of the members that they were the principals and directors being their agents, were bound to give effect to their (members) decisions. Examining the provisions of the Companies Act. 2013, answer the following:

(i)Whether the contention of members against the non-compliance of member' decision by the directors is tenable?

(ii)Whether it is possible for the members to usurp the powers which by the Articles are vested in the directors by passing are solution in the general meeting?

Ans. As per Section 180(1) (a), the Board of directors of a company shall exercise the power to sell, lease or otherwise dispose of the whole, or substantially the whole, of one or more undertakings of the company only with the consent of the company by a special resolution.

Analysis and conclusion

1. The members have passed a special resolution for sole of assets of the company, and require the Board to implement the same. The Board has refused to act on the special resolution passed by the members.
2. Board cannot, on its own, decide to sell the undertaking of the company, since before such sale, the consent of the members must be obtained by passing a special resolution.
3. Approval by the Board of directors, and then the consent of the members by passing a special resolution is needed
4. Where the Board has not approved the decision to sell the undertaking of the company, and the members have passed a special resolution for sale of undertaking of the company, such special resolution does not have any force of law, since the decision to sell the undertaking in such case has not been first approved by the Board of directors. Therefore, such special resolution is not binding on the Board of directors.
5. The members, even if acting unanimously, have no authority to pass a resolution for sale of the undertaking of the company, and require the Board to implement it.
6. The contention of the members that the members are the principal and the directors are the agents, is not correct. The directors are the agent of the company, and not of the members.

15. **ABC Ltd. has 12 directors on its Board and has the following clause in its articles of association:**

"The questions arising at any meeting of the Board of directors or any committee thereof

shall be decided by a majority of votes, except in cases where the Companies Act, 2013 expressly provides otherwise."

In a meeting of the Board of directors of ABC Ltd. 8 directors were present. After completion of discussion on a matter voting was done. 3 directors voted in favour of the motion, 2 directors voted against the motion while 3 directors abstained from voting. You are required to state with reference to the provisions of the Companies Act. 2013 whether the motion was carried or not. (CA (Final) Nov. 2004)

OR

ABC Ltd. has 12 directors on its Board and has the following clause in its article of association:

The question arising at any meeting of the Board of directors or any committee thereof shall be decided by a majority of votes, except in cases where the Companies Act, 2013 expressly provides otherwise".

In one of the meeting of the Board of directors of ABC Ltd 8 directors were present. After completion of discussion of matter, voting was done. 3 directors voted in favour of the motion, 2 directors voted against the motion while 3 directors abstained from voting.

State whether the motion was carried or not. It is clarified that the motion being voted up to was not concerning a matter which requires consent of all the directors present in the meeting. (CA (Final) June 2009)

Ans. As per Regulation 68 of Table F, except where the Act requires a unanimous resolution, questions arising at a Board meeting shall be decided by a majority of votes.

In the given case, the articles of ABC Ltd. contain a Regulation similar to Regulation 68 of Table F. The articles of ABC Ltd. state that a resolution shall be deemed to be passed in a Board meeting if it is approved by a majority of votes. In this regard, following points are worth noting:

(a)In a Board meeting, every director has one vote only.

(b)Only those directors who are present in the meeting and vote on a resolution are considered while determining majority. i.e. following directors are not considered while ascertaining the result of a resolution:

A director who is absent at a Board meeting.

A director who abstains from voting.

In the given case,

Directors present in the Board meeting: 8

Directors present and voting in the Board meeting: 5

Majority of the directors' present and voting: 3

Directors who have actually voted in favour: 3

In other words, since the number of votes cast in favour of the resolution exceeds the number of votes cast against the resolution, the said resolution has been passed, assuming that no director voting in favour of the resolution is interested in the resolution, as per the provisions of Section 184.

16. Y,one of the directors of the company, sends a letter to the company secretary for convening the Board meeting at an early date. Comment. (CA (Final) June 1999)

Ans. Regulation 67 of Table F provides that any director may requisition a Board meeting. On such requisition –

(a) the manager or the secretary shall summon the Board meeting; and

(b) any director may summon the Board meeting.

However, neither the Companies Act, 2013 nor Table F contains any provision regarding postponement of a Board meeting or convening a Board meeting at an early date. Thus, a Board meeting may be convened at an early date it the articles of the company contain a provision in this regard. However, in the absence of any provision in the articles, the secretary

should consult the chairman or the managing director and discuss the suitability of holding the Board meeting at an early date.

17. **Seafood Limited, a public limited company was incorporated on 1st April, 2015. The company has conducted four Board meetings during the financial year 2015-16 i.e. on 6th April, 2015, 28th August, 2015, 30th September, 2015 and 30th March, 2016.**
(i) Has the company contravened the provisions of the Companies Act, 2013 in respect of the conduct of the meetings?
(ii) Wilt your answer differ If the company was incorporated under Section 8 of the Companies Act, 2013? (CA (Final) Nov. 2016)

Ans. As or Section 173(1), the first meeting of the Board of directors shall be held within 30 days of incorporation of the company, and at least four Board meetings shall be held in each calendar year and not more than 120 days shall intervene between two consecutive meetings of the Board.
In the present case, the company was incorporated on 1st April, 2015 and the first meeting of the Board was held on 6th April, 2015. The company has held the first Board meeting within 30 days of its incorporation.
The gap between two consecutive Board meetings held on 6th April, 2015 and 28th August. 2015 exceeds 120 days. Also, the gap between two consecutive Board meetings held on 30thSeptember, 2015 and 30th March, 2016 exceeds 120 days. Therefore, Seafood Limited has contravened the provisions of Section 173.
As per Notification No. G.S.R. 466(E) dated 5th June. 2015, in case of a company licensed under Section 8 which has not committed any default in filing with the Registrar its financial statements under Section 137 or annual return under Section 92, the provisions of Section 173(1) shall apply only to the extent that the Board of Directors of such Companies shall hold at least 1 meeting within every 6 calendar months.
In the given case, if Seafood Limited were a company incorporated under Section 8, there would be no contravention of Section 173(1), since it has held one Board meeting up to 30th June, 2015, two Board meetings during the 6-calendar month period 1st July. 2015 to 31st December, 2015 and one Board meeting during the 6-calendar month period 1st January, 2016 to 30th June, 2016.

18. **During the year 2015, Ltd. held four meetings of the Board on 2nd January 2015, 10th May 2015, 16th October 2015 and 31st December 2015. Examine whether this was in accordance with the provisions of the Companies Act, 2013? (CS (Final) June 1995)**

Ans. As per Section 173(1). at least four Board meetings shall be held in each calendar year and not more than 120 days shall intervene between two consecutive meetings of the Board.
In the present case the gap between the two consecutive Board meetings held on 2nd January 2015 and 10th May 2015 was more than 120 days, and also the gap between the two consecutive Board meetings held on 10thMay, 2015 and 16thOctober, 2015 was more than 120 days. Hence, Section 173 has been contravened.

19. **During the year 2015, B Ltd. held the Board meetings on 15th January 2015, 5th May 2015 and 1st September 2015. In the Board meeting held on 1st September 2015, only 3 matters out of total matters 5 could be discussed and voted upon, and so it was adjourned till 8th September, 2015. In the adjourned Board meeting held on 8th September 2015, the remaining 2 matters were discussed and voted upon. Has the company contravened any of the provisions of the Companies Act, 2013?**

Ans. As per Section 173(1), at least four Board meetings shall be held in each calendar year and not more than 120 days shall intervene between two consecutive meetings of the Board.

In the present case, the Board meeting held on 01-09-2015 was adjourned, and the adjourned Board meeting was held on 08.09.2015. The Board meeting held on 01.09.2015 and the adjourned Board meeting held on 08.09.2015 shall not be deemed to be two separate Board meetings, since on adjourned meeting is a mere continuation of the original meeting. Accordingly, the Board meeting held on 01.09.2015 and the adjourned Board meeting held on 08.09.2015 shall be counted as one Board meeting only.
Thus, the company has held only 3 Board meetings during the calendar year 2015. Therefore, the company has contravened the provisions of Section 173 by not holding the minimum number of 4 Board meetings during the calendar year 2015.

20. **Three Board meetings of C Ltd. were held on 01.01.2014, 01.04.2014 and 01.07.2014. In the fourth Board meeting schedule for 27.10.2014, no matter could be discussed since the required quorum was not present, and so it was adjourned till 03.11.2014. In the adjourned Board meeting held on 03.11.2014, 5 matters were discussed and voted upon. Has the company contravened any of the provisions of the Companies Act, 2013?**

Ans. As per Section 173(1), at least four Board meetings shall be held in each calendar year and not more than 120 days shall intervene between two consecutive meetings of the Board.
In the present case, the Board meeting held on 27.10.2014 was adjourned, and the adjourned Board meeting was held on03.11.2O14. The Board meeting held on 27.10.2014 and the adjourned Board meeting held on 03.11.2014 shall not be deemed to be two separate Board meetings, since an adjourned meeting is a mere continuation of the original meeting. Accordingly, the Board meeting held on 27.10.2014 and the adjourned Board meeting held on 03.11.2014 shall be counted as one Board meeting only. Thus, the company has held 4 Board meetings during the calendar year 2014.
The gap between first and second Board meeting was not more than 120 days. Similarly, the gap between the second and third Board meeting was also not more than 120 days. Regarding the gap between the third and fourth Board meeting, the date of third Board meeting and fourth original Board meeting should be considered. This is so because the Board meeting held on 27.10.2014 and the adjourned Board meeting held on 03.11.2014 shall be counted as one Board meeting only, viz. it shall be deemed that only one Board meeting was held on 27.10.2014. As is evident, the gap between the third Board meeting (viz.01.07.2014) and fourth Board meeting (viz. 27.10.2014) is not more than 120 days. Since C Ltd. has held four Board meetings during the calendar year 2014, and the gap between no two consecutive Board meetings is more than 120 days, C Ltd. has complied with Section 173.

21. **Moonlight Limited, held its Board meeting through video conferencing. Due to technical problems, the video recording which was done, could not be retrieved. The company seeks your advice for the preparation and recording of the minutes of the Board meeting in the above situation, under the provisions of the Companies Act, 2013 and Rules made thereunder. (CA (Final) May 2018)**

Ans. Provisions
The relevant provisions with respect to preparation and recording of minutes of a Board meeting held through videoconferencing, as contained in Rule 3, are as follows:
1. The Chairperson of the meeting and the company secretary, if any, shall take due and reasonable care —
(a) to ensure availability of proper video conferencing or other audio-visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorized participants at the Board meeting;
(b) to record proceedings and prepare the minutes of the meeting;
(c) to store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company at least before the time of completion of

audit of that particular year.
2. After the roll call, the Chairperson or the Company Secretary shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairperson and confirm that the required quorum is complete.
3. At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority and the draft minutes so recorded shall be preserved by the company till the confirmation of the draft minutes.
4. The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio-visual means.
5. The draft minutes of the meeting shall be circulated among all the directors within 15 days of the meeting either in writing or in electronic mode as may be decided by the Board.
6. Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within 7 days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.
7. After completion of the meeting, the minutes shall be entered in the minute book as specified under Section 118 of the Act and signed by the Chairperson.

Analysis and conclusion

1. Moonlight Limited held a Board meeting through video conferencing. However, due to technical problems, the video recording of such Board meeting could not be retrieved.
2. Neither Section 173(2) nor Rule 3 contains any express provision with respect to preparation and recording of minutes of a Board meeting, in case the video recording of a Board meeting held through video conferencing is not retrieved.
3. Assuming that the Chairperson and the company secretary have taken due and reasonable care to ensure availability of proper video conferencing or other audio-visual equipment of facilities and for recording, storing and safekeeping the proceedings of the Board meeting, there is no contravention of Section 173(2) or Rule 3.
4. After conclusion of the meeting held through video conferencing, the Company Secretary should, in consultation with the Chairman of the Board meeting, prepare the 'draft minutes' by referring to the 'draft minutes' prepared during the conduct of the Board meeting held through video conferencing.
5. The 'draft minutes' prepared by the Company Secretary should be circulated to all the directors within 15 days of the meeting, with a request to the directors to confirm the accuracy of such 'draft minutes '.
6. On receipt of comments or confirmation from the directors, the minutes shall be entered in the minutes book within 30 days of conclusion of the Board meeting.

22. M/s OBC Limited at its forthcoming Board meeting decided that it will not provide the directors with the facility of participation in the said meeting through electronic mode: can the directors insist on attending the meeting through such mode? Decide as per the provision of the Companies Act, 2013. Will your answer differ, if a director participates in a Board meeting through electronic mode from his end? Even if the company does not provide such facility? (CA (Final) Nov. 2018)

Ans. Provisions

1. As per Section 173(2), a director may attend a Board meeting -
(i) in person (viz. being personally present); or
(ii) Through video conferencing, as may be prescribed; or
(iii) Through other audio-visual means, as may be prescribed.

2. Further, Section 173(2) requires that the system of video conferencing or other audio-visual means must be capable of —
(i) recognizing and recording the presence of directors; and
(ii) recording and storing the proceedings of the Board meeting along with date and time.
3. Also, Section 173(2) states that only such video conferencing or other audio-visual means can be used as may be prescribed, i.e. the video conferencing or other audio-visual means which satisfy the manner, conditions and other legal requirements contained in Rule 3 can only be used.
4. The relevant provisions of Rule 3 are as under:
(a) Every Company shall make necessary arrangements to avoid failure of video or audio-visual connection.
(b) The Chairperson of the meeting and the company secretary, if any, shall take due and reasonable care
(i) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;
(ii) To ensure availability of proper video conferencing or other audio-visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorized participants at the Board meeting.
(iii) To record proceedings and prepare the minutes of the meeting;
(iv) to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio-visual means; and
(v) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting:
Analysis and Conclusion
1. M/s OBC Limited has decided not to provide the facility to participate in Board meeting through video conferencing or other audio-visual means.
2. The issue raised in the problem is as to whether the directors can insist the company to provide to the directors the facility to attend the Board meetings through video conferencing or other audio-visual means.
3. The same issue was raised before the Appellate Tribunal in **Achintya Kumar Barua v Ranjit Barthkur (2018) 207 Comp Case47**. The detailed facts and decision of this case are as under:
(a) The company referred to clause (e) of sub-rule (2) of Rule 3 to submit that a responsibility has been put on the Chairperson to ensure that no person other than the concerned director is attending or having access to the proceedings of the meeting through video-conferencing. So, the company raised an apprehension that if a director attends a Board meeting through video conferencing, it would not be possible for the Chairperson to ensure that the director is alone when participating from wherever the video call is made as the Chairperson would have no means to know as to who else is sitting in the room or place concerned.
The Appellate Tribunal held that inclusion of the facility to attend the Board meetings through video conferencing is a progressive step taken by the legislature. So, it would not be appropriate to shut-out the provisions contained in Section 173(2) read with Rule 3 on mere apprehensions.
(b) The company referred to the word **'may'** used in Section 173(2). Section 173(2) reads as under:
"The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio-visual means, as may be prescribed,"
The company was of the view that use of the word 'may' in Section 173(2) implies that the provisions contained in Section 173(2) read with Rule 3 are directory in nature.
The Appellate Tribunal held that the word 'may' used in Section 173(2) only gives an option

to the director to choose-whether he would participate in the Board meeting in person or through video conferencing. The word 'may' does not give an option to the company to deny the right given to the directors for participation through video conferencing, if they so desire. Thus, the Appellate Tribunal concluded that the provisions contained in Section 173(2) read with Rule 3 are mandatory, and the companies shall not be permitted to make any deviations therefrom.

(c) The company was also of the view that as per the Secretarial Standards issued by the institute of Company Secretaries of India, it is optional for the company to provide the facility of video conferencing and that the provisions contained in Rule 3 are applicable only where a company opts to provide the facility of video conferencing.

The Appellate Tribunal held that the provisions contained in the Secretarial Standards are mere guidelines which contained in Section 173(2) and Rule 3. So, the mandate of Section 173(2) read with Rule 3 cannot be avoided by the companies.

Thus, it was held that it was mandatory for the company to provide the facilities to the directors to attend the Board meetings through video conferencing by fulfilling the requirements contained in Section 173(2) and Rule 3.

Hence,

1. It is mandatory for M/s OBC Limited to provide the facility to its directors to attend the Board meetings through video conferencing other audio-visual means. If the company refuse to provide such facility, any director can insist the company to provide such facility, and in case the company refuses to do so, any director can seek legal action against the company.

2.

(a) As per Section 173 (2), a director may attend a Board meeting-

(i) in person (viz. being personally present); or

(ii) through video conferencing, as may be prescribed; or

(iii) through other audio-visual means, as may be prescribed.

(b) It is evident that only such video conferencing or other audio-visual means can be used which have been prescribed by the Central Government under Rule 3. Rule 3 requires the companies to make necessary arrangements for conducting the Board meetings through video conferencing or other audio-visual means. Rule 3 does not permit any director of the company to make his own arrangements for participating in a Board meeting.

Thus, no director can participate in a Board meeting through video conferencing from his own end.

23. Mr. Rohit, a director, states that he will not be able to attend the next Board meeting. Advise whether notice is required to be sent to him. (CA (Final) May 2003, May 1999)
OR
Examine with reference to the provisions of the Companies Act, 2013 whether notice of a board Meeting is required to be sent to a Director who has expressed his inability to attend a particular Board meeting. (CA (Final) May 2013)

Ans. As per Section 173(3), a meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

Notice is to be sent to a director even if he waives his right to receive the notice **[Re, Portuguese Consolidated Copper Mines Ltd. 1889) 42 Ch D 160 (CA)]**. Thus, waiver of right to receive notice by a director does not exempt the company from its duty of serving notice to every director. Accordingly, the notice of Board meeting must be sent to Mr. Rohit.

24. Mr. Bipin Ram goes abroad for four months from 4.1.199 and an alternate director has been appointed in his place. Advice as to sending of notice as required under Section 173 of the Companies Act, 2013. (CA (Final) May 2003)

OR

Examine with reference to the provisions of the Companies Act, 2013 whether notice of a board Meeting is required to be sent to Alternative Director. (CA (Final) May 2013)

OR

A director goes abroad for a period of more than 3 months and an alternate director has been appointed in his place under Section 161(2). During the period of absence of the original director, a Board meeting was called. In this connection, with reference to the provisions of the Companies Act 2013, advise whom should the notice of Board meeting be given to the 'original director or to the 'alternate director'? (CA (Final) May 1999)

Ans. As per Section 173(3), a meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means. Section 173(3) clearly says that notice shall be sent to 'every director'. Since an alternate director is also a director, he is covered in the term 'every director', and so notice of Board meeting must be sent to alternate director, Also, an alternate director is a director in his own right. He is not a proxy or representative of the original director. The grounds of vacation of office also apply to him as these apply to the original director, i.e. an alternate director shall vacate his office if he does not attend all the Board meetings during a period of 12 months as per the provisions of Section 167(1)(b). Therefore, notice must be given to an alternate director.

Thus, notice shall be served to both, the alternate director as well as the original director at their addresses registered with the company.

The notice to Mr. Bipin Ram, viz. the original director shall be sent at his address registered with the company. Same way, the notice to the alternate director shall be sent to him at his address registered with the company.

25. **Mr. James is a director residing abroad representing the foreign collaborator. The foreign collaborator holds 49% shareholding in the company. The articles of association of the company provides for sending notice to directors by e-mail. Is it permissible to send notice by e-mail? Can the Board meeting be called at shorter notice? (CA (Final) May 2003, May 1999 (Modified)**

Ans. As per Section 173(3), a meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means. Thus, notice may be sent to the directors by e-mail since it is permitted by the Act, viz. Section 173(3).

Notice sent by e-mail is valid irrespective of any provisions contained in the articles of the company.

Generally, a Board meeting may be called by giving at least 7 days' notice. However, a Board meeting may be called at a shorter notice so as to transact some urgent business provided at least one independent director is present at such Board meeting, or if no independent director is present of such Board meeting, then, the decisions taken at such Board meeting shall be circulated to all the directors, and such decisions shall be final only on ratification thereof by at least one independent director. However, if the company has not appointed any independent director, the shorter notice shall be valid without complying with any other condition.

The provisions with respect to notice of Board meetings apply to companies having foreign collaborator in the same manner as they apply to any other company.

26. **Examine with reference to the provisions of the Companies Act, 2013 whether notice of a Board Meeting is required to be sent to an interested Director. (CA (Final) May 2013)**

Ans. As per Section 173/3), a meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such

notice shall be sent by hand delivery or by post or by electronic means.
Section 173(3) clearly says that notice shall be sent to 'every director. Since an interested director is also a director, he is covered in the term 'every director, and so notice of Board meeting must be sent to interested director.
As per Section 184, a director shall disclose concern or interest in the contract or arrangement in which he is interested, and he shall not participate at the time of discussion and voting on such contract or arrangement, However, an interested director is entitled to participate at time of discussion and voting on any other contract or arrangement, viz. any contract or arrangement in which he is not concerned or interested. Thus, an interested director has a right to attend every Board meeting. Therefore, notice must be given to a director even if he is precluded from voting on a proposed business **[Re, Homer District Consolidated Gold Mines (1888) 39 Ch D 546].**

27. **Examine with reference to the provisions of the Companies Act, 2013 whether notice of a Board Meeting is required to be sent to a director who has gone abroad. (CA (Final) May 2013)**

Ans. As per Section 173(3), a meeting of the board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.
Section 173(3) clearly says that notice shall be sent to 'every director'. Since a director who has gone abroad is also a director, he is covered in the term 'every director', and so notice of board meeting must be sent to a director who has gone abroad (irrespective of the period of his stay outside India and irrespective of the fact that an alternate director has been appointed in his place or not). Notice shall be served on him at his address registered with the company. Notice may be sent to him by hand delivery or by post or by e-mail.

28. **Mr. P and Mr. Q who are the directors of the company informed the company their inability to attend the meeting because the notice of the meeting was not served on them. Discuss whether there is any default on the part of the company and the consequences thereof. [CA (Final) Nov. 2009]**

Ans. As per Section 173(3), a meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.
As per Section 173(4), every officer of the company whose duty is to give notice of Board meeting and who fails to do so shall be liable to a penalty of Rs. 25,000. However, the Companies Act, 2013 does not contain any provision with respect to validity of resolution passed in a Board meeting of which notice is not sent to one or more directors of the company.
If the notice was improper, the meeting shall be void, and consequently, all the resolutions passed at such meeting such be invalid **[Parmeshwari Prasad Gupta v Union of India (1974) 44 Comp Case 1]**. Even an accidental omission to give notice to a single director would render the resolution passed at that meeting void.
By not sending the notice to the directors Mr. P and Mr. Q, the company has defaulted in compliance of Section 173. Accordingly, every officer of the company whose duty was to give notice of Board meeting and who has failed to do so shall be liable to a penalty of Rs. 25,000. Further, the Board meeting as well as the resolutions passed in such Board shall be of no effect.

29. **Examine the following with reference to the provisions of the Companies Act, 2013: The Chairman of Evergreen Limited convened a Board meeting and two weeks' notice was served on all directors of the company. Two of the independent directors on the**

Board objected on the grounds that no proper agenda for the meeting was circulated. [CA (Final) May, 2017]

Ans.

1. Section 173(3) reads as under:
"A meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means."
2. It is evident that Section 173(3) does not require agenda to be given along with the notice of Board meeting. In other words, it is not mandatory to circulate agenda along with the notice of Board meeting.
3. In the given case, two weeks' notice was served on all the directors. Since the period of notice is not less than 7 days, this notice is in compliance of the requirements of Section 173(3), though it is not accompanied by agenda.
4. There is no contravention of Section 173(3), and so the notice of the Board meeting is valid.

30. **Examine the following with reference to the provisions of the Companies Act, 2013: Sunshine Limited proposes to hold its Board meeting at a shorter notice through video conferencing. [CA (Final) May, 2017]**

Ans.

1. As per Section 173(2), a director may attend a Board meeting in person (viz. being personally present) or through video conferencing or other audio-visual means, as may be prescribed. The system of video conferencing or other audio-visual means must be capable of –
(i) recognizing and recording the presence of directors, and
(ii) recording and storing the proceedings of the Board meeting along with date and time.
2. As per Section 173(3), not less than 7 days' notice is required for holding a Board meeting. However, a Board meeting may be called at a shorter notice subject to the following provisions:
Case 1. If the company has appointed one or more independent directors, the shorter notice shall be valid, if-
(i)The Board meeting is called at a shorter notice so as to transact some urgent business; and
(ii) at least one independent director is present at such Board meeting, or if no independent director is present at such Board meeting, then, the decision taken at such Board meeting, then, the decisions taken at such Board meeting shall be circulated to all the directors.
Case II. If the company is not required to appoint an independent director, the shorter notice shall be valid if it is ratified by majority of the directors of the company and not just the majority of directors present at the meeting [SS-1]
3. Thus, it is possible to hold the Board meeting at a shorter notice by complying with the provisions contained in Section 173 (2) and 173(3). It is immaterial that the Board meeting called by serving shorter notice is held by video conferencing or otherwise.
4. For holding the Board meeting by video conferencing or other audio-visual means, the company shall have to comply with the provisions contained in Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014.

31. **What are the conditions to be fulfilled for calling meetings at shorter notice than is prescribed by Companies Act, 2013? One of the directors, a senior professional, objected to receiving the notice by e-mail. Advise him. (CA (Final) May 2016)**

Ans. 1. As per Section 173(3), not less than 7 days' notice is required for holding a Board meeting. However, a Board meeting may be called at a shorter notice subject to the following provisions:
Case I. If the company has appointed one or more independent directors, the shorter notice

shall be valid, if-
(i) the Board meeting is called at a shorter notice so as to transact some urgent business; and
(ii) at least one independent director is present at such Board meeting, or if no independent director is present at such Board meeting. then, the decisions taken at such Board meeting shall be circulated to all the directors, and such decisions shall be final only on ratification thereof by at least one independent director.
Case II. If the company is not required to appoint an independent director, the shorter notice shall be valid if it is ratified by majority of the directors of the company and not just the majority of directors present at the meeting [SS-1]
2. Thus, it is possible to hold the Board meeting at a shorter notice by complying with the above provisions.
3. As per Section 173(3), the notice of every meeting of the Board shall be sent by hand delivery or by post or by electronic means.
4. In the given Case, one of the directors has raised an objection that the notice sent by e-mail is not valid. Such objection is not tenable since Section 173(3) permits the company to send the notice of Board meeting by e-mail. Even where the articles of a company are silent, or expressly prohibit sending of notice by e-mail, a notice sent by e-mail shall be valid.

32. **Woodworth Realtors Ltd. is a foreign collaborator in Jai Shri Realtors Limited. M/s. Jai Shri Realtors Ltd. was incorporated in India under the Companies Act, 2013. The foreign collaborator holds 49% of the shareholding. The Board meetings of Jai Shri Realtors Limited are usually held in India and sometimes meetings of the Board are called at a very short notice for which there is a provision in the Articles of Association that during such situations notices of the meetings of the Board can be sent by email.**
State in this connection whether such a provision in the articles of association of a foreign collaborated company is valid within the purview of the provisions of the Companies Act. 2013? (ICAI, Revision Test Paper, Nov. 2018)

Ans. Provisions
1. As per Section 173(3), not less than 7 days' notice is required for holding a Board meeting. However, a Board meeting maybe called at a shorter notice subject to the following provisions:
Case I. If the company has appointed one or more independent directors, the shorter notice shall be valid, if-
(i) the Board meeting is called at a shorter notice so as to transact some urgent business; and
(ii) at least one independent director is present of such Board meeting, or if no independent director is present at such Board meeting. then, the decisions taken at such Board meeting shall be circulated to all the directors, and such decisions shall be final only on ratification thereof by at least one independent director.
Case II. If the company is not required to appoint an independent director, the shorter notice shall be valid if it is ratified by majority of the directors of the company and not just the majority of directors present at the meeting [SS-1]
Thus, it is possible to hold the Board meeting at a shorter notice by complying with the above provisions.
2. As per Section 173(3), the notice of every meeting of the Board shall be sent by hand delivery or by post or by electronic means.

Analysis and Conclusion
1. M/s. Jai Shri Realtors Ltd. is a company incorporated in India. The Board meetings of Jai Shri Realtors Limited are usually held in India and sometimes meetings of the Board are called at a very short notice.
2. If the period of notice is 7 days or more, such notice is valid, and no presence of, or

ratification by, any independent director is required. However, if the period of notice is less than 7 days, then presence of, or ratification by, at least one independent director shall be required; subject to the condition that such Board meeting was called to transact some urgent business.
3. Notice of a Board meeting may be sent by e-mail since Section 173(3) expressly permits sending of notice of Board meeting by e-mail.
4. The provisions of Section 173(3), with respect to length of notice of Board meeting, manner of sending notice, shorter notice, etc., apply to all companies, i.e. no exemption or exception has been provided for any company or class of companies.
5.Thus, it is immaterial that Woodworth Realtors Ltd., i.e., foreign collaborator, holds 49% of the shareholding of M/s Jai Shri Realtors Ltd., and so all the provisions with respect to notice of Board meeting shall apply to Jai Shri Realtors Ltd.,
6. Where a Board meeting is called at a shorter notice, the requirements to be fulfilled in such a case are contained in Section 173(3) itself. Similarly, the notice of Board meeting can be sent by e-mail, has been expressly provided under Section 173(3). Thus, with respect to these matters, it is immaterial that articles contain any provision or not.
7. The provisions contained in the articles of association of M/s Jai Shri Realtors Ltd. shall not have any relevance since Section173(3) contains express provisions with respect to shorter notice and sending of notice to directors by e-mail.

33. Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:

The articles of association of Big Limited provide that a meeting of the Board of directors of the company shall be held at 11.00 a.m. on the last day of every quarter ending 31st March, 30th June, 30th September, and 31st December. Relying on such a clause in the articles, the company did not send notices to the directors in respect of the Board meeting held on 30th September, 2015. Some of the directors have questioned the validity of the Board meeting on the ground that individual notices have not been sent to the directors. (CA (Final) Nov. 2005, June 2009)

OR

The articles of association of M/s ABC Ltd, provide that a meeting of the Board of directors shall be held at 11.00 A.M. on the last day of every quarter ending on 31st March, 30th June, 30th September and 31st December. Relying on the said provision, the company has not sent notices to the directors in respect of a Board meeting held on 31.3.2016. Some of the directors have questioned the validity of the Board meeting on the ground that individual notices have not been sent to the directors. (CA (Final) May 2002)

OR

The articles of association of a company provide that the meeting of the Board of directors of the company will be held on the last Friday of every month. The secretary of the company as a result does not serve the notice to the individual directors of the company. Consequently, a meeting of the Board of directors was held on 23rd February, 2016. The meeting was attended by all the directors with the exception of two directors out of a total of 10 directors and certain resolutions were passed. The two absentee directors object to the meeting and the proceedings of the meeting for want of notice. Referring to the provisions of the Companies Act, 2013 decide:

(i) Whether the objection raised by the two absentee directors is valid?

(ii) Would your answer be the same in case the secretary of the company, instead of sending notice on a usual format to the individual directors, sent a copy of the articles of association to each one of the directors? (CA (Final) May 1996)

Ans.

1. As per Section 173(3), notice of every Board meeting shall be sent in writing to every director

of the company.
2. Section 173(3) does not contain any exception or relaxation with respect to serving of notice of Board meeting, i.e. no Board meeting can be validly called or held unless notice of such meeting has been served on all the directors.
3. Any provision contained in the articles of a company cannot override any provision contained in the Companies Act, 2013 (Section 6).
4. In the given case, the company has not sent the notice of the Board meeting held on 30th September, 2015. Such non-service of notice amounts to contravention of Section 173(3).
5. The consequences of contravention shall be as follows:
(a) The Board meeting and the resolutions passed thereat shall be invalid **(Parmeshwari Prasad Gupta v Union of India (1974) 44 Comp Case 1)**. Even an accidental omission to give notice to a single director would render the resolutions passed at that meeting void.
(b) Every officer of the company whose duly is to give notice of Board meeting and who fails to do so shall be liable to a fine of Rs. 25,000.

34. XY7 Company Limited calls a meeting of the Board of directors without giving notice to directors as required under the Companies Act, 2013. The meeting is attended by all the directors. None of the directors of the company objected to the absence of notice. The proceedings of the meeting are ratified later by the Board of directors at a regularly constituted meeting. Decide giving reasons for your answer whether:
(i) The meeting and the proceedings are valid?
(ii) The Board of directors is competent to ratify at a later meeting the above proceedings? (CA (Final) Nov. 1997: CS (Final) June 2000)

Ans.
1. As per Section 173(3), notice of every Board meeting shall be sent in writing to every director of the company.
2. Section 173(3) does not expressly state the consequences where a Board meeting is held without giving any notice. However, in such cases, the Courts have held that such Board meeting and the resolutions passed thereat shall be invalid **(Parmeshwari Prasad Gupta v Union of India (1974) 44 Comp Case 1)**
3. However, where a Board meeting is held without giving any notice, but is attended by all the directors, or where the absentee directors do not complain of want of notice, the proceedings at the meeting will not be invalid, especially if the proceedings are ratified at a subsequent meeting in which the absentee directors are present. The ratification shall relate back to the date of the act ratified **(Parmeshwari Prasad Gupta v Union of India (1974) 44 Comp Case 1)**
4. Therefore, -
(i) the Board meeting and the proceedings of the Board meeting shall be valid;
(ii) the Board of directors are competent to ratify the proceedings of such Board meeting in a subsequently held Board meeting.

35. The Board meeting of MNO Ltd. was held on 10th May, 2014 at Chennai at 11 a.m. At the time of starting the Board meeting the number of directors present were 7. The total number of directors were 10. The Board had to transact ten items in the Board meeting, At 12 noon after the completion of tour items in the agenda 4 directors left the meeting. Examine the validity of these transactions explaining the relevant provisions of the Companies Act, 2013. (CA (Final) Nov. 2008)

Ans. As per Section 174(1), the quorum for a Board meeting shall be higher of-
(a) 1/3rdof total strength (any fraction contained in that one-third shall be rounded off as one); or
(b) 2 directors.

'Total strength' shall not include directors whose places are vacant.
Quorum has to be present at the time of transacting each and every business. It is not enough that a quorum was present at the commencement of the meeting. Therefore, where quorum is present at the beginning of the meeting, but some of the directors leave the meeting, so that remaining directors do not constitute quorum, any subsequent resolutions will be invalid.
In the given case, total strength is 10. Quorum for the Board meeting held on 10thMay, 2014 shall be 1/3rdof 10 directors, ie.3.33, rounded off to 4. Since 7 directors were present at the time of commencement of the Board meeting, the Board meeting has been validly held.
However, after transacting 4 items on agenda, 4 directors left, because of which the number of directors present has fallen below the quorum required. Since, quorum is required at the time of transacting each and every business, the remaining 6 agenda items cannot be validly discussed and voted upon. Therefore, resolutions passed in respect of these 6 agenda items are void, and have no legal effect.

36. Analyze and advise with reference to the provisions of the Companies Act, 2013, the following situations:
(i) There are 9 directors in a Mona Ltd. and out of which 2 offices of the directors have fallen vacant. What will be the quorum for the Board meeting?
(ii) If Mona Ltd. is a company formed for the promotion of the sports in a remote area of the Jharkhand State, what will be the quorum for the Board meeting?

Ans.
Provisions
1. As per Section 174(1), the quorum for a Board meeting shall be higher of -
(a) 1/3rd of total strength (any fraction contained in that one-third shall be rounded off as one): or
(b) 2 directors.
Total strength' shall not include directors whose places are vacant.
2. As per Notification No. G.S.R. 466(E) dated 5th June, 2015, in case of a company licensed under Section 8 which has not committed any default in filing with the Registrar its financial statements under Section 137 or annual return under Section92. the provisions of Section 174(1) shall apply as follows:
The quorum required for a Board meeting shall be lesser of-
(a) 8 members; or
(b) 25 % of its total strength.
Provided that the quorum shall not be less than 2 members
Analysis and conclusion
(i) Mona Ltd. had appointed 9 directors. However, the offices of 2 directors have fallen vacant. So, now there are 7 directors in Mona Ltd., and therefore, the total strength for the purpose of Section 174(1) shall be 7.
One-third of 7 is 2.33. The fraction 0.33 shall be rounded of as 1, and so the quorum required shall be 3 (being higher of 2 and 3). Thus, the quorum for Board meetings of Mona Ltd. shall be 3 directors.
(ii) If Mona Ltd. is a company formed for the purpose of promotion of sports, it can be fairly assumed that Mona Ltd. would have been incorporated as 'not for profit company' under Section 8 of the Companies Act, 2013, and so the quorum required shall be lesser Of -
(a) 8 directors; or
(b) 2 directors (being 25% of 7).
Thus, the quorum for Board meetings of Mona Ltd, shall be 2 directors, If Mona Ltd. is a company formed for the purpose of promotion of sports.

37. What is the required quorum for holding a Board meeting? Examine the following cases:
(a) In a Board meeting, only 3 directors were present out of the total of 11 directors. None of the 3 directors was interested in any of the items of the agenda. Examine the validity of meeting. (CA (Final) June 1995)
(b) In a meeting of the Board, out of the total of directors, 7 directors were present of which only 2 directors were not interested in one of the transactions. How should the meeting deal with the matter? (CS (Final) June 1995)

Ans. The provisions relating to quorum for a Board meeting are contained in Section 174. Unless the articles provide for a higher quorum, the quorum shall be 1/3rd of the total strength (any fraction contained in that 1/3rd shall be rounded off to one) or two directors whichever is higher [Section 174(1)]. However, Section 174(3) states that where at any time the number interested directors (present in the Board meeting) exceeds or is equal to 2/3rd of the 'total strength (any fraction contained in that 2/3rd shall be rounded off as one), the number of disinterested directors present at the meeting, being not less than two shall be the quorum.
(a) In the instant case. 1/3rd of 11 comes to 3.67; the fraction 0.67 shall be rounded off to 1. Thus, at least 4 disinterested directors must be present in the Board meeting. However, only 3 directors are present in the Board meeting.
Moreover, there is no interested director present in the meeting and so Section 174(3) will not apply. Therefore, the quorum was not present and so the meeting has not been validly held.
(b) In the given case, the required quorum comes to 4 directors, but only 2 disinterested directors are present. So, the quorum is not present as per Section 174(1).
2/3rdof the 'total strength' comes to 8 (Being 2/3rd of 11 is 7.33; the fraction 0.33 shall be rounded off to 1). Since the number of interested directors (present in the Board meeting) is only 5, Section 174(3) is not attracted. Thus, the remaining 2 directors who are not interested do not constitute a quorum, and hence the such transaction cannot be discussed and voted upon.

38. The Board of directors of ABC Ltd. met thrice in the year 2015 and the 4th meeting, though called, could not be held for want of quorum.
Examine with reference to the relevant provisions of the Companies Act, 2013, the following:
(i) Whether any provisions of the Companies Act, 2013 have been contravened?
(ii) Is a director bound to attend the Board meetings and when his frequent absence from the Board meetings may be excused? (CA (Final) Nov. 2005)

OR

Urja Pvt. Limited, a recently emerged company for conducting business of providing solar panels, held 3 Board meetings till 31st October, 2017 during the year 2017. The next Board meeting was due to be held on 27th December, 2017 but for want of quorum the meeting could not be held. A group of shareholders complained that the company has violated the provisions of Section 173 of the Companies Act, 2013 in not holding the required number of Board meetings, and Section 137 for default in filing of its financial statement. Company contended that they fall under the purview of Section 173(5) of the Companies Act, 2013. State as to the validity of the contention of Urja Pvt. Limited in the given above situations. (ICAI, Mock Test Paper, March 2018)

Ans.
1. As per Section 173, at least four Board meetings shall be held in each calendar year and not more than 120 days shall intervene between two consecutive meetings of the Board.
2. As per Section 174(4), if a Board meeting could not be held for want of quorum, then, unless the articles of the company otherwise provide, the meeting shall automatically stand adjourned-
(a) to the same day in the next week, or if that day is a national holiday, till the next

succeeding day, which is not a national holiday;
(b) at the same time;
(c) at the same place.
3. An adjourned Board meeting cannot be held if the quorum is not present. However, if the required quorum is present in the adjourned Board meeting, the adjourned Board meeting shall be held, and in such a case, it shall be deemed that Board meeting was held on the date on which the original Board meeting was called since an adjourned meeting is a mere continuation of the original meeting.
4. The issues raised in the given problem are answered as under:
(i) In the present case, the 4th Board meeting shall be adjourned as per the provisions contained in Section 174(4).
If the required quorum is present in such adjourned Board meeting, the adjourned meeting shall be held. In such a case, it shall be deemed that the 4th Board meeting was held since an adjourned meeting is a mere continuation of the original meeting. Thus, there will be no contravention of the provisions of Section 173.
However, if the required quorum is not present in such adjourned Board meeting, the adjourned Board meeting cannot be held, and it shall stand cancelled. In such a case it would mean that the company has held only three Board meetings during the calendar year 2015, and so it would amount to contravention of the provisions of Section173. Under the Companies Act, 1956. if a Board meeting was duly called but it could not be held for want of quorum, it was not deemed to be a contravention [Sub-Section (2) of Section 288 of the Companies Act, 1956].
However, no such provision has been made under Section 174(4) or any other provision of the Companies Act. 2013.
Therefore, under the Companies Act, 2013, if a Board meeting is duly called but it is not held for want of quorum, and as a consequence the minimum number of 4 Board meetings in a calendar year as required under Section 173 is not held, it would amount to a contravention of Section 173.
(i) A director should endeavor to attend the maximum number of Board meetings. But he is not duty bound to attend all the Board meetings.
However, if loss is caused to the company because of continuous absence of a director from the meetings of the Board, it would amount to negligence and breach of duty. Moreover, a director shall vacate his office if he absents himself, with or without obtaining leave of absence from the Board, from all the Board meetings held during a period of12 months [Section 167(1)(6)].

39. A meeting of the Board of directors of OPQ Co. Ltd. due to be held on 30.9.2014 did not take place for want of quorum. As a result, the company did not hold any Board meeting for the quarter ended 30.9.2014 and there is a complaint that the company has violated the provisions of the Act in this regard. Advise. (CA (Final) Nov. 2001)

Ans. As per Section 173(1), at least four Board meetings shall be held in each calendar year and not more than 120 days shall intervene between two consecutive meetings of the Board. As per Section 174(4). if a Board meeting could not be held for want of quorum, then, unless the articles of the company otherwise provide, the meeting shall automatically stand adjourned-
(a)to the same day in the next week, or if that day is a national holiday, till the next succeeding day, which is nota national holiday:
(b)at the same time:
(c) at the same place.
In the present case, the Board meeting scheduled for 3.09.2014 shall be adjourned till 07.10.2014, and if the required quorum is present, the adjourned meeting shall be held. In

such a case, it shall be deemed that Board meeting was held on 30.09.2014since an adjourned meeting is a mere continuation of the original meeting.
Thus, there is no contravention of the provisions of Section 173 merely because of the reason that quorum was not present in the Board meeting scheduled for 30.09.2014.
Even if quorum was not present in the adjourned Board meeting, it does not necessarily mean that Section 173 has been contravened, since Section 1/3 does not require that at least one Board meeting must be held in each quarter of year. Whether there is a contravention of Section 173 or not in the given case, depends upon the other facts and circumstances, viz. how many Board meetings were held during the calendar year 2014 and what was the time gap between two consecutive Board meetings. Assumingly, the company held 4 Board meetings during the calendar year 2014, and the gap between any two consecutive Board meetings was not more than 120 days, the company has not contravened the provisions of Section173.

40. PQR Limited held three Board meetings fill 30th September, 2015. The next board meeting was due to be held on 27th December, 2015 Section 173 of the Companies Act, 2013 in not holding the required board meetings. (CA (Final) Nov. 2009)

Ans. An As per Section 173(1), at least four Board meetings shall be held in each calendar year and not more than 120 days shall intervene between two consecutive meetings of the Board.
As per Section 174(4), if a Board meeting could not be held for want of quorum, then, unless the articles of the company otherwise provide, the meeting shall automatically stand adjourned –
(a) to the same day in the next week, or if that day is a national holiday, till the next succeeding day, which is not a national holiday;
(b) at the same time;
(c) at the same place.
In the present case, the Board meeting scheduled for 27.12.2015 shall be adjourned till 03.01.2016, and if the required quorum is present, the adjourned meeting shall be held. In such a case, it shall be deemed that Board meeting was held on 27-12-2015 since an adjourned meeting is a mere continuation of the original meeting. Thus, there will be no contravention of the provisions of Section 173.
However, if the quorum is not present in the adjourned Board meeting on 03.01.2016, the adjourned Board meeting cannot be held, and it shall stand cancelled. In such a case, it means that the company has held only three Board meetings during the calendar year 2015, and so it would amount to contravention of the provisions of Section 173. Under the Companies Act, 1956, If a Board meeting was duly called but it could not be held for want of quorum, it was not deemed to be a contravention (Sub-Section (2) of Section 288 of the Companies Act, 1956). However, no such provision has been made under Section 174(4) or any other provision of the Companies Act, 2013. Therefore, under the Companies Act, 2013, if a Board meeting is duly called but it is not held for want of quorum, and as a consequence the minimum number of 4 Board meetings in a calendar year as required under Section 173 are not held, it would amount to a contravention of Section 173.

41. The Articles of Association of Amriz Limited provides for a maximum of 15 directors. But the company has only 10 directors and for two of them representing foreign collaborators, alternate directors have been appointed. Board meeting held on 1st August, 2018 was attended by four directors including two alternate directors. Examine with reference to the relevant provisions of the Companies Act, 2013 whether quorum was present at the Board meeting held on 1st August, 2018. Will your answer, be different, if the articles

provide for a quorum of six directors? (CA (Final) Nov. 2018)

OR

The articles of association of XYZ Computers Limited provide for a maximum of 15 directors. But the company has only 10 directors and for two of them representing foreign collaborator, alternate directors have been appointed. Board meeting held on 1st August, 2016 was attended by 4 directors including 2 alternate directors.
Examine with reference to the relevant provisions of the Companies Act, 2013 whether quorum was present at the Board meeting held on 1st August, 2016. Will your answer be different, if the articles provide for a quorum of 6 directors? (CA (Final) May 2004)

Ans.

Provisions

1. The quorum for a Board meeting shall be higher of-
(a) 1/3rdof total strength (any fraction contained in that one-third shall be rounded off as one): or
(b) 2 directors.
2. Total strength' shall not include directors whose places are vacant.
3. The articles of a company may provide for a larger quorum than specified under Section 174 (Amrit Kaur Puri v Kapurthala Flour Oil & General Mills Co. P. Ltd., (1984) 56 Comp Case 194).

Analysis and conclusion

1. Total strength is 10. Quorum for the Board meeting held on 1st August, 2016 shall be 1/3rdof 10 directors, i.e. 3.33, rounded off as 4 directors.
2. In the Board meeting of Amriz Limited, 4 directors (including 2 alternate directors) are present.
3. The two alternate directors shall also be included while determining as to whether quorum is present or not.
4. Since the directors present in the Board meeting (1.e. 4 directors) are not less than the required quorum (1.e. 4 directors), the required quorum is present in the Board meeting held on 1stAugust, 2018.
5. However, if the articles provide for a quorum of 6 directors, the required quorum shall be 6, and not 4. In such a case, the required quorum is not present in the Board meeting held on 1stAugust, 2018.

42. As on 01.01.2015, a company has 9 directors. On 02.01.2015, the offices of directors have fallen vacant. What is the quorum required for conducting a Board meeting?

Ans. The provisions relating to quorum for a Board meeting are contained in Section 174. As per Section 174, the quorum shall be 1/3rd of the 'total strength' (any fraction contained in that 1/3rd shall be rounded off to one) or two directors whichever is higher [Section 174(1)]. As per Clause (ii) of Explanation to Sec. 174(4), total strength' shall not include directors whose places are vacant.
In the present case, the total strength shall be 9 - 2 7 directors. Quorum shall be higher of 2 or 1/3rd of 7. 1/3rd of 7 comes to 2.33. As per Clause (i) of Explanation to Sec. 174 | 4), any fraction of a number shall be rounded off as one, Accordingly, the quorum shall be 3 directors (being higher of 2 or 3).

43. A company has 15 directors. At the time of discussion on a particular business, 13 directors are interested as per the provisions of Section 184(2). Is the quorum present? What would be your answer, in case 14 directors were interested?

Ans. As per Section 174, the quorum shall be 1/3rdof the 'total strength' (any fraction contained in that 1/3rdshall be rounded off to one) or two directors whichever is higher [Section 174(1)]. As per Clause (i) of Explanation to Sec 174(4). 'total strength' shall not include directors whose

places are vacant.
As per Clause (i) of Explanation to Sec. 174(4), any fraction of a number shall be rounded off as one.
As per Section 174(3), where at any time the number of interested directors (present in the Board meeting) exceeds or is equal to 2/3rd of the 'total strength', the number of disinterested directors present at the meeting, being not less than two, shall be the quorum.
In the instant case, 1/3rd of 15 comes to 5. Thus, a Board meeting can commence only if at least 5 directors are present. Since all the 15 directors are present, the Board meeting has validly commenced. During discussion on a particular item of business.13 directors are interested. 2/3rd of the total strength' comes to 10. Since the number of interested directors (present in the Board meeting) is 13, which is more than 2/3rd of total strength (viz. 10). Section 174(3) has become applicable. Thus, the remaining 2 directors who are not interested shall constitute the quorum and hence such item of business can be validly transacted (i.e. discussed and voted upon).
However, if during discussion on a particular item of business, 14 directors were interested, then there would have been only 1 director remaining. viz. only 1 disinterested director. As per Section 174/3), quorum is the remaining disinterested directors, but not being less than 2, and. so the requirements of Section 174(3) are not satisfied. Accordingly, the remaining one director shall not constitute the quorum in respect of such item of business, and so, such item of business cannot be transacted.

44. Case I. Proximo Limited has 9 Directors out of whom 3 Directors have gone abroad. The Chairman had an urgent matter to be approved by the Board of Directors which could not be postponed till the next Board meeting. The Company, therefore, circulated the resolution for approval of the Directors. 4 out of 6 Directors in India approved the resolution. The Company claimed that the resolution was passed. Examine with reference to the provisions of Section 175 of the Companies Act, 2013 the validity of the resolution. (CA (Final) Nov. 2009)
Case II. A company has 8 directors, out of whom 5 directors went abroad. A resolution by circulation approved by the remaining 3 directors is passed and forwarded to the concerned authority. On their return, the directors who were then abroad objected to the resolution. Is the resolution validly passed? (CS (Inter) Dec. 1998)

Ans. As per Section 175 read with Rule 5 of the Companies (Meetings of Board and its Powers) Rules, 2014), a resolution may be passed by the Board by circulation if the following conditions are satisfied:
(a) The resolution has been circulated in draft, together with necessary papers, to all the directors at their addresses in India registered with the company, by hand delivery or by post or by courier, or through electronic means.
(b) The resolution has been approved by a majority of all the directors as are entitled to vote on such resolution.
(c) No demand has been made by 1/3rd of total number of directors that such resolution shall be decided at a Board meeting.
For passing any resolution by circulation, there is no requirement of quorum.
Case I.
Proximo Limited has 9 directors. So, a resolution shall be passed by circulation if any of the 5 directors (whether in India or outside India) vote in favour of the resolution.
However, the resolution has been approved by only 4 directors. Since approval by majority of all the directors has not been obtained, the resolution has not been passed by circulation.
Case II.
The company has 8 directors. So, a resolution shall be passed by circulation if any of the 5 directors (whether in India or outside India) vote in favour of the resolution.

However, the resolution has been approved by only 3 directors. Since approval by majority of all the directors has not been obtained, the resolution has not been passed by circulation.

45. **M/s Hurybury Builders Limited is contemplating to enter into a joint venture agreement with another construction company for the development of landed properties located at Bangalore. Since it is not possible to convene the Board meeting immediately, as the directors are at different places in connection with various works, the managing director seeks your advice as to whether the resolution pertaining to the joint venture agreement is required to be passed at the Board meeting convened for the purpose or whether it can be passed by means of a circular resolution. What steps are required to be taken to pass a Board resolution by circulation? (CA (Final) May 2002)**

OR

M/s Multiplex Builders Limited is contemplating to enter into a joint venture agreement with another construction company for the development of landed properties located at Delhi. Since it is not possible to convene the Board meeting immediately as the directors are at different place in connection with various works, the managing director seeks your advice on the following matters:

(i) Whether the resolution pertaining to the Joint venture agreement is required to be passed at the Board meeting convened for this purpose or whether It can be passed by means of a circular resolution?

(ii) The steps that are required to be taken to pass the Board resolution by circulation.

Advise the managing director in the light of the provisions of the Companies Act, 2013. (ICAI, RTP, Nov. 2018)

Ans. As per Section 175 read with Rule 5 of the Companies (Meetings of Board and its Powers) Rules, 2014), a resolution may be passed by the Board by circulation if the following conditions are satisfied:

(a) The resolution has been circulated in draft, together with necessary papers, to all the directors at their addresses in India registered with the company, by hand delivery or by post or by courier, or through electronic means.

(b) The resolution has been approved by a majority of all the directors as are entitled to vote on such resolution.

(c) No demand has been made by 1/3rd of total number of directors that such resolution shall be decided at a Board meeting.

For passing any resolution by circulation, there is no requirement of quorum. The Board can pass any resolution by circulation except those resolutions which are required by the Act to be passed only at a Board meeting. For example. powers specified under Sections 161(4), 179 (3), 182 and 186 can be exercised only by passing are solution at a duly convened Board meeting.

The Act does not require holding of a Board meeting for entering into a joint venture agreement. Thus, the Board can enter into a joint venture by passing a resolution by circulation provided the joint venture does not contain any matter which is to be Compulsorily exercised in a Board meeting. For example, if the terms and conditions contained in the joint venture agreement requires investment in shares of a company, the provisions of Section 186 shall get attracted, according to which investment in shares of any body corporate shall require unanimous resolution to be passed at a Board meeting, and so the decision to make such investment cannot be taken by passing a resolution by circulation.

Also, for passing the resolution by circulation, the Board shall ensure the compliance of all the conditions contained in Section 175, as discussed above.

46. The Board of directors of M/s. Infotech Consultants Limited, registered in Calcutta, proposes to hold the next Board meeting in the month of December, 2014. They seek your advice in respect of the following matters:
(i) Can the Board meeting be held in Chennai, when all the directors of the company reside at Calcutta?
(ii) Whether the Board meeting can be called on a national holiday and that too after business hours as the majority of the directors of the company have gone to Chennai on vacation.
(iii) Is it necessary that the notice of the Board meeting should specify the nature of business to be transacted?
Advise with reference to the relevant provisions of the Companies Act, 2013. (CA (Final) May 2000)

Ans. There is no provision in the Companies Act, 2013 which requires that a Board meeting shall be held-
(a) only on a day that is not a national holiday;
(b) only at the registered office of the company or at any other place within the city, town or village in which the registered office of the company is situated;
(c) only during business hours.
The answer to the given problem is as under:
(i) Section 96 requires that an annual general meeting shall be held only at the registered office of the company or at any other place within the city, town or village in which the registered office of the company is situated. However, there is no similar provision in respect of holding of a Board meeting. As such, a Board meeting can be held anywhere in India or even outside India.
However, the company shall ensure that holding a Board meeting at a place other than the registered office of the company does not result in contravention of Section 189. Section 189 requires that after entering the prescribed particulars in the registers of contracts or arrangements in which directors are interested, such registers shall be placed before the next Board meeting, and shall be signed by al the directors present at the Board meeting.
Thus, a company may decide to hold a Board meeting at any place other than the registered office of the company provided the registers of contracts or arrangement maintained under Section 189 is moved from the registered office of the company to the venue of the Board meeting, the register is placed before the Board meeting, and is signed by all the directors present at the Board meeting.
(ii) As per Section 174, if a Board meeting could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned to the same day, time and place in the next week, or if that day is a national holiday, then to next succeeding day, which is not a national holiday. If means that a Board meeting adjourned for want of quorum can be held only on a day which is not a national holiday. However, there is nothing in the Act which prohibits the holding of an original Board meeting on a national holiday. Further, there is no provision in the Companies Act. 2013 which requires that an original Board meeting shall be held only during business hours.
In the instant case. the directors intend to hold a Board meeting on a national holiday and after business hours, which is permissible. However, SS-1 specifies certain guidelines which say that it is advisable to hold the meeting during working hours and not on a national holiday, for the benefit of the employee's present
(iii) No form or contents of notice has been specified by the Act. Agenda of a Board meeting is not required to be sent along with the notice of a Board meeting unless there is some express provision of the Act which requires a specific notice to move a resolution at a Board meeting. However, as a matter of good secretarial practice, the agenda and all the relevant documents and information should also be given along with the notice so that the directors

can prepare beforehand the subject matter of the proposed business.
Therefore, it is not mandatory for the company to specify the nature of business (i.e. agenda) in the notice of Board meeting. However, if the articles of the company require that the notice of Board meeting shall contain the business to be transacted thereat, such a provision is valid and binding and so the agenda must be included in notice or given along with notice.

47. A Board meeting of PQR Limited was called to be held on 19.01.2019 at 3 pm at Chinnaswamy Auditorium, Bengaluru. However, due to lack of quorum, the meeting could not be held. Discuss the consequences.

Ans. As per Section 174(4), if a Board meeting could not be held for want of quorum, then, unless the articles of the company otherwise provide. the meeting shall automatically stand adjourned-
(a) to the same day in the next week, or if that day is a national holiday, till the next succeeding day, which is not G national holiday:
(b) at the same time;
(c) at the same place.
In the instant case, the Board meeting could not be held for want of quorum, and so the provisions of Section74(4) shall become applicable. In the next week, same day happens to be a national holiday (viz. 26.01.2019), and so, the adjourned board meeting cannot be held on 26.01.2019. The next succeeding day which is not a national holiday is 27.01.2019. Therefore, the adjourned Board meeting shall be held on 27.01.2019 at 3 pm at Chinnaswamy Auditorium.
In the absence of any information in the question, it has been assumed that the articles of the company do not contain any provision with respect to the consequences where a Board meeting is not held for want of quorum.

48. A Board meeting of ABC Limited was called to be held on Thursday, 1st January 2015 at 3 pm at Jaquar Auditorium, Bengaluru. However, due to lack of quorum, the meeting could not be held. The articles of the company are silent with respect to the consequences where a Board meeting is not held for want of quorum. The Chairman decided with the consent of the directors present that the Board meeting shall be adjourned to next Monday. Discuss the validity of decision of the Chairman.

Ans. As per Section 174(4), if a Board meeting could not be held for want of quorum., then, unless the articles of the company otherwise provide, the meeting shall automatically stand adjourned –
(a)to the same day in the next week, or if that day is a national holiday, till the next succeeding day, which is not a national holiday:
(b)at the same time;
(c) at the same place.
in the instant case, the Board meeting could not be held for want of quorum, and so the provisions of Section 174(4) shall become applicable. As per Section 174(4), the adjourned Board meeting shall be held on Thursday, 8th January 2015 at 3 pm at Jaquar Auditorium (since the articles of the company do not otherwise provide).
Neither Section 174(4) nor any other Section of the Companies Act, 2013 empowers the Chairman to decide the day of the adjourned Board meeting. Even with the consent of the directors present, the Chairman is not empowered to decide that the adjourned Board meeting shall be held on next Monday, Accordingly, the decision of the Chairman to adjourn the Board meeting till next Monday is not valid. The Board meeting shall be adjourned till Thursday, 8th January 2015.

49. Accurate Arcs Ltd. maintains the minutes book of the Board meetings in loose-leaf system and get them bound once in three months. Can it do so? (CA (Final) Nov. 2000)

Ans. As per Section 118, every company shall cause to be prepared, signed and kept minutes of proceedings of Board meetings. The minutes shall be maintained in the books kept for that purpose. Further, the minutes shall be prepared and signed in such manner as may be prescribed.

As per Rule 25 of the Companies (Meetings of Board and its Powers) Rules, 2014, the minutes of proceedings of each meeting shall be entered in the books and each page of every such book shall be initialed or signed and the last page containing the record of proceedings of each meeting in such book shall be dated and signed.

The use of the word 'book' in Section 118 and Rule 25 makes it clear that the minutes have to be maintained in the 'book', and so maintenance of minutes in loose leaf form is not permitted. Further, each page of the minutes books shall be Consecutively numbered.

50. Board meetings were held on 24th November, 2014 and 15th December, 2014. Mr. Rameshwar, who was the chairman of these two Board meetings died on 20th December, 2014, without signing the minutes. How should the minutes be signed and by whom? (CA (Final) May 2017)

Ans. As per Section 118, the minutes of a Board meeting may be signed by the chairman of the said meeting or the chairman of the next succeeding meeting. The minutes shall be prepared and signed within 30 days of the conclusion of the Board meeting.

In the present case, the minutes of the meeting held on 24.11.2014 could be signed either by the chairman of the meeting held on 24.11.2014 or by the chairman of the next meeting held on 15.12.2014. Incidentally, the chairman of these two meetings is the same, i.e. Mr. Rameshwar, who has died. The result is that the minutes of the two previous Board meetings, held on 24.11.2014 and 15.12.2014, have remained unsigned.

There is no legal provision covering the above situation. Therefore, it is advisable to convene a Board meeting and appoint a chairman who shall be authorized to sign the minutes of both the meetings held on 24.11.2014 and 15.12.2014.

51. 17th Board meeting of Jai Entertainment Ltd. was held at its registered office situated at B-17, Industrial Area, Suncity. While discussing the matter of appointment of Mr. Kaabil as Managing Director of the company, certain defamatory remarks were made by Mr. X. one of the directors. The draft minutes submitted by the Company Secretary also incorporated the indecent remarks of Mr. X. The chairman wants to remove those undesirable remarks from the minutes. Can he do so? (CA (Final) May, 2017)

Ans.

Provisions

1. As per Section 118, no matter shall be included in the minutes, if the chairman is of the opinion that it is-

(i) defamatory of any person; or

(ii) irrelevant or immaterial; or

(iii) detrimental to the interests of the company.

2. The chairman shall exercise absolute discretion with regard to the inclusion or non-inclusion of any matter in the minutes on any of the grounds specified above.

Analysis and Conclusion

1. Certain defamatory remarks were made by Mr. X, one of the directors of the company. The chairman, exercising his discretion, intends to exclude such defamatory remarks from the minutes.

2. The decision of the chairman is in accordance with the provisions of Section 118, which

grants an absolute discretion to the chairman with respect to inclusion or non-inclusion of any matter in the minutes. Thus, if the chairman is of the opinion that certain matters are defamatory of any person and so such matter should not be included in the minutes, the chairman is empowered to make an order for exclusion of such matters from the minutes; no Board resolution or consent of any directors requited tor this purpose.
3. The decision of the chairman to exclude certain defamatory/indecent remarks from the minutes, is valid.

52. A member wants to inspect he minutes book of the meetings of the Board. Advise. (CS (Final) Dec. 1995: June 1999)

Ans. Section 119 confers a right on the members of the company to inspect and obtain the copies of the minutes of a general meeting. However, this right does not extend to the minutes of a Board meeting.
The Companies Act, 2013 contains no provision either specifically permitting or prohibiting inspection by the shareholders of the minutes of the Board meeting. Unless the articles of the company otherwise provide, a shareholder has no right of inspection or of taking copies of the minutes of the Board meetings (Department Letter No. 8/15 (169) 63-PR, dated 11.2.1963)
In the given case, if the articles of the company give a right to the members to inspect the minutes, the inspection cannot be declined; otherwise the member has no right to make the inspection.

53. Mr. Smart was appointed as the managing director of a public limited company for a period of 5 years effective from 1.4.1993. It is noticed that he performed certain acts on behalf of the company after the expiry of his term. Some of the aggrieved parties have questioned the validity of the managing director's acts. Advise. (CA (Final) May 1998)

Ans. Section 176 validates the acts of a director if it is subsequently discovered that –
- his appointment was invalid by reason of any defect or disqualification; or
- his appointment was terminated by virtue of any provision contained in the Act or in the articles.

However, the acts done by a director in his capacity as a managing director are not validated under Section 176, except the acts done in the capacity of a director.
Where a managing director ceased to hold his office, all his subsequent acts were held to be invalid. It was not an irregular exercise of power, but exercise of power by a person who had no authority at all **[Varkey Souriar v Keraleeya Banking Co. Ltd. AIR 1957 Ker 97].**
Thus, the acts done by Mr. Smart, after the expiry of his term of office will not be valid.

54. MTP was appointed as a director at the Annual General Meeting of a limited company held on 30th September, 2013 and he carried on his duties and functions as a director. In the month of August, 2014, it was found out that there were certain irregularities in his appointment and on 31st August, 2014, his appointment was declared invalid. But Mr. MTP continued to act as director even after 31st August, 2014. You are required to state, with reference to the provisions of the Companies Act, 2013 whether the acts done by Mr. MTP are valid and binding upon the company? (CA (Final) May 2007)

Ans. Section 176 validates the acts of a director if it is subsequently discovered that-
-his appointment was invalid by reason of any defect or disqualification; or
his appointment was terminated by virtue of any provision contained in the Act or in the articles.
However, where it is noticed by the company that the appointment of a director was invalid or has terminated, all subsequent acts done by such a director shall be invalid.
In the given case, the appointment of Mr. MTP was invalid, but this fact was not in the knowledge of the company at the time of his appointment. Subsequent to his appointment,

the fact that his appointment was invalid was noticed by the company on 31st August, 2014. As per Section 176, the acts done by Mr. MTP upto 31st August, 2014 shall be valid. However, any act done by Mr. MTP after31st August, 2014 shall not be valid as per the provisions of Section 176.

55. Z was appointed as director of the company in an annual general meeting. He took over the office and carried on his functions as director. Subsequently, it was found that there were some irregularities in voting and hence the appointment was declared invalid. Would the act done by Z, while in office as director, be binding upon the company? (CS (Final) Dec. 1995, Dec. 1999)

Ans. Section 176 validates the acts of a director if it is subsequently discovered that-
-his appointment was invalid by reason of any defect or disqualification; or
-his appointment was terminated by virtue of any provision contained in the Act or in the articles.
However, where it is noticed by the company that the appointment or d director was invalid or has terminated, all subsequent acts done by such a director shall be invalid.
In the given case, the appointment of Mr. Z was invalid, but this fact was not in the knowledge of the company at the time of his appointment, and so Mr. Z acted as a director, exercised some powers, performed certain functions and fulfilled his duties as a director. Subsequent to his appointment, the fact that his appointment was invalid was noticed by the company.
As per Section 176, the acts done by Mr. Z up to the date when his appointment was noticed by the company as invalid, shall be binding on the company. However, any act done by Mr. Z after that date shall not be binding on the company as per the provisions of Section 176.

56. X Ltd. wants to constitute an Audit Committee.
(i) What would be the minimum likely turnover or capital of this company?
(ii) What is the role of the Audit Committee vis-a-vis the statutory auditor when the company wishes to engage them to perform certain engagements not restricted under Section 144?

Ans.
(i) Minimum like turnover or capital
he given problem relates to Section 177 of the Companies Act, 2013 read with Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014. As per Section 177 and Rule 6, constitution of an audit committee is mandatory for the following companies:
(a)Listed public companies.
(b) Public companies having paid up share capital of Rs. 10 crore or more.
(c) Public companies having turnover of Rs. 100 crore or more.
(d) Public companies which have, in aggregate, Outstanding loans, debentures and deposits, exceeding Rs. 50 crore.
However, the following classes of unlisted public companies shall not be required to constitute the audit committee:
(a) A joint venture
(b) A wholly owned subsidiary
(c) A dormant company as defined under Section 455 of the Act.
The paid-up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account.
In the given case. X Ltd. intends to constitute the audit committee. So, the likely turnover of X Ltd. shall be Rs. 100 crore or more or the likely paid up share capital of X Ltd. shall be Rs. 10 crore or more. However, if X Ltd. is a listed public company or the aggregate of outstanding loans, debentures and deposits of X Ltd. exceeds Rs. 50 crore, it shall be mandatory for X Ltd.

to constitute the audit committee irrespective of its paid up share capital and turnover.
(ii) Role of the Audit Committee vis-a-vis the statutory auditor performing non-audit services
(a) As per Section 144, if the company has constituted the audit committee, the auditor shall provide to the company only such other services as are approved by the audit committee.
(b) The audit committee shall perform the following functions:
(i) Recommend the appointment, remuneration and terms of appointment of statutory auditors.
(ii) Review and monitor the auditor's independence and performance, and effectiveness of audit process.
(iii) Examine the financial statements and the auditors' report thereon.
(c) The Audit Committee shall exercise the following powers:
(i) Power to call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors.
(ii) Power to review the financial statements before their submission to the Board.
(iii) Power to discuss any issues with respect to financial statements with the internal and statutory auditors and the management of the company.

57. Referring to the provisions of the Companies Act, 2013, examine the following:
XYZ Limited, a listed company has constituted an audit committee consisting of five members out of whom two are independent directors.
Subsequently, the company increased the composition of audit committee to six members with three independent directors. (CA (Final) Nov. 2016)

Ans. The given problem relates to Section 177 of the Companies Act. 2013, as explained below:
(a) The Audit Committee shall consist of a minimum of 3 directors.
(b) The majority of members of the Audit Committee shall be the independent directors.
(c) Majority of members of the Audit Committee (including the Chairperson of the Audit Committee) shall be persons with ability to read and understand the financial statements.
In the given case, XYZ Limited has constituted an audit committee consisting of 5 members, out of whom 2 are independent directors. The number of members of the audit committee (viz. 5) is in compliance with the provisions of Section 177. However, the number of independent directors is only 2, whereas Section 177 requires that majority of directors (viz. 3, in this case) shall be independent directors. Thus, XYZ Limited has contravened the provisions of Section 177.
Subsequent to constitution of the audit committee, XYZ Limited increased the number of members to 6, out of whom 3 are independent directors. After such reconstitution, the number of directors is only 3, whereas as per Section 177, the number of independent directors has to be in majority, i.e. 4 in this case. Thus, even after increasing the number of directors to 6 with independent directors, there is a contravention of Section 177.

58. MNC Ltd., a company, whose paid up capital was Rs. 4.00 crores, has Issued rights shares in the ratio of 1:1. The said company is listed with Mumbai Stock Exchange. Whether the company is required to appoint any Audit Committee? (CA (Final) Nov. 2016)

Ans. The given problem relates to Section 177 to the Companies Act. 2013 read with Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014. As per Section 177and Rule 6, constitution of an audit committee is mandatory for the following companies:
(a) Listed public companies
(b) Public companies having paid up share capital of Rs. 10 crore or more.
(c) Public companies having turnover of Rs. 100 crore or more.
(d) Public companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding RS. 50 crore.

However, the following classes of unlisted public companies shall not be required to constitute the audit committee:
(a) A joint venture
(b) A wholly owned subsidiary
(c) A dormant company as defined under Section 455 of the Act.
The paid up share capital or turnover or outstanding loans, debentures and deposits, as the Case may be, as existing on the last date of latest audited financial statements shall be taken into account.
In the given case, the paid-up capital of MNC Ltd., after issue of rights shares, is Rs. 8 crores, which is less than Rs. 10 crores (being the minimum amount of paid up capital, for the purpose of mandatory constitution of audit committee). However, the fact that the paid-up capital of MNC Ltd. is less than Rs. 10 crore is irrelevant, since MNC Ltd. is a listed company, and as per Section 177 read with Rule 6, every listed company is required to constitute an audit committee, irrespective of its paid up share capital, turnover, aggregate of its outstanding loans, debentures and deposits, etc.
Thus, it is mandatory for MNC Ltd. to constitute an audit committee.

59. The following Information is provided in respect of M/s. Fortune Limited under three different case scenarios on the borrowing powers of the Board of directors of the company. Mr. Murli, the CFO seeks your advice with explanations as to the nature of resolution which needs to be passed under each of the case scenarios as per the provisions of Section 180(1) (c) of the Companies Act, 2013, Detailed workings should form part of your answer.

Particulars	Case I (Rs. in Crores)	Case II (Rs. in Crores)	Case III (Rs. in Crores)
Equity Share Capital (Paid- up)	50	50	50
Preference Share Capital (Paid-up)	50	50	50
Securities Premium Account	50	50	50
Free Reserves	20	20	20
Total:	270	270	270
working Capital Loan (repayable on demand-Existing) from Sigma Capital Limited	50	50	50
Cash Credit Limit from a scheduled bank (repayable on demand-Existing)	120	120	120
6months loan for purchase of Plant & Machinery from scheduled bank-(proposed)	30	40	130
24 months loan for purchase of Plant & Machinery from scheduled bank-(proposed)	10	20	150
Total	210	230	450

(CA (Final) May 2019)

Ans. As per Section 180(1)c) of the Companies Act, 2013, without the prior consent of the members in the general meeting by a special resolution, the Board of directors of a company shall not borrow moneys where the borrowings (already made plus proposed) exceed the aggregate of the paid up share capital, free reserves and securities premium account. However, temporary loans obtained from the company's bankers in the ordinary course of business shall not be considered as borrowings.
Temporary loans' means loans repayable on demand or within 6 months from the date of the loan. But loans raised for the purpose of financial expenditure of a capital nature shall not be

treated as temporary loans and will be included in borrowings.
Paid up share capital shall include paid up equity share capital as well as paid up preference share capital.
The information given in the question is presented in the following format so as to determine the nature of resolution required:

Particulars	**Case I (Rs. in crores)**	**Case II (Rs. in crores)**	**Case III (Rs. in crores)**
Equity Share Capital (Paid- up)	150	150	150
Preference Share Capital (Paid-up)	50	50	50
Paid up share capital	200	200	200
Free reserves 20	20	20	
Securities Premium Account	50	50	50
Aggregate of paid up share capital, free reserves and securities premium account	270	270	270
Borrowings already made for the purpose of Section 180(1)(c):			
Working Capital Loan from Sigma Capital Limited (It shall be included in 'borrowings' since it has not been obtained from company's bankers)	50	50	50
	50	50	50
Borrowings already made for the purpose of Section 180(1)(c): Cash Credit Limit from a scheduled Bank repayable on demand (It shall not be included in 'borrowings since it is temporary loan obtained from company's bankers, assuming that the Scheduled Bank from whom Cash Credit Limit is availed is the Company's Banker)	Nil	Nil	Nil
Borrowings proposed to be made for the purpose of Section 180(1)(c): 6 months loan for purchase of Plant and Machinery from Scheduled Bank (It shall be included in "borrowings since such loan is to be utilised tor financing capital expenditure)	30	40	130
Borrowings proposed to be made for the purpose of Section 180(1)(c): 24 months loan for purchase of Plant And Machinery from Scheduled Bank (It shall be included in "borrowings since such loan is to be utilised for financing capital expenditure and also because the loan is repayable after 6 months)	10	20	150
Borrowings already made and Borrowing proposed to be made for the purpose of Section 180(1)(c)	90	110	330

Whether 'borrowings already made and borrowings proposed to be made for the purpose of Section 180(1)(c) exceeds the aggregate of the paid up share capital, free reserves and securities premium account	No	No	Yes
Whether the consent of the members by way of a special resolution is required for exercising the borrowing powers?	No	No	Yes

Conclusions:

(a) In Case I and Case II, Section 180(1)(c) is not attracted, and so consent of the members by way of a special resolution is not required. But, as per Section 179(3), the power to borrow money shall be exercised by the Board by passing a resolution in a Board meeting. However, as per proviso to Section 179(3), the Board may delegate the power to borrow money subject to the following conditions:

(i) The delegation shall be made by passing a resolution at a Board meeting only.

(ii) The power may be delegated to Committee of directors, managing director, manager, principal officer of the company or principal officer of the branch office.

(b) In Case III, the consent of the members by way of a special resolution shall be required before obtaining loan of Rs. 280 crore (being Rs. 130 crore for loan for 6 months and Rs. 180 crore for loan for 24 months). However, if the company decides to first obtain only one loan (whether loan of Rs. 130 crore for 6 months or loan of Rs. 180 crore for 24 months), consent of the members by way of a special resolution shall not be required for obtaining such loan, but the consent of the members by way of a special resolution shall be required subsequently for obtaining the second loan.

For obtaining the loan of Rs. 130 crore as well as of Rs. 180 crore, a resolution in the Board meeting shall be required in terms of Section 179(3). However, such power may be delegated in accordance with proviso to Section 179(3), as explained above.

60. Consider the following information:

(a) Aggregate of paid up share capital, free reserves and securities premium account: Rs. 100 crore

(b) Moneys already borrowed as on 31.03.2014: Rs. 70 crore

(c) Moneys already borrowed as on 14.11.2014: Rs. 80 crore

As on 14.11.2014, you are required to determine the maximum amount that may be borrowed without requiring a special resolution?

Ans. As per Section 180(1)(c) a special resolution is required if the moneys already borrowed along with the moneys proposed to be borrowed exceed the aggregate of paid up share capital, free reserves and securities premium account.

Section 180 does not expressly state as to whether the 'moneys already borrowed' shall be taken as at the date of latest balance sheet or as at the date when the company proposes to borrow more money. All the moneys borrowed should be considered and not only moneys borrowed up to the date of latest balance sheet.

In the given case, the aggregate of paid up share capital, free reserves and securities premium account is Rs. 100 crores.

Moneys already borrowed is Rs. 80 crore. Therefore, the Board may, without requiring a special resolution, borrow a maximum of Rs. 20 crores.

61. The last three years balance sheets of PTL Ltd. contain the following information and figures:

	As at 31.03.2003 (Rs.)	As at 31.03.2004 (Rs.)	As at 31.03.2005 (Rs.)
Paid up capital	50,00,000	50,00,000	75,00,000
General Reserve	40,00,000	42,50,000	50,00,000
Credit Balance in Profit & Loss Account	5,00,000	7,50,000	10,00,000
Debenture Redemption Reserve	15,00,000	20,00,000	25,00,000
Secured Loans	10,00,000	15,00,000	30,00,000

On going through other records of the company, the following is also determined:
Net profit for the year
Rs. 12,50,000 As at 31.03.2003
Rs. 19,00,000- As at 31.03.2004
Rs. 34,50,000 As at 31.03.2005
In the ensuing Board meeting scheduled to be held on 5th November, 2005, among other items of agenda, following items are also appearing:
(i) To decide about borrowings from financial institutions on long-term basis.
(ii) To decide about contributions to be made to charitable funds.
Based on above information, you are required to find out as per the provisions of the Companies Act, 2013 the amount up to which the Board can borrow from financial institutions and the amount up to which the Board of directors can contribute to charitable funds during the financial year 2005-06 without seeking the approval in general meeting. (CA (Final) May 2008, Nov. 2005)

Ans. As per Section 180(1)(c) of the Companies Act, 2013, without the prior consent of the members in general meeting by a Special resolution, three Board of directors of a company shall not borrow moneys where the borrowings (already made plus proposed) exceed the aggregate of the paid up share capital, free reserves and securities premium account. However, temporary loans obtained from the company's bankers in the ordinary course of business shall not be considered as borrowings.

In the given case, the aggregate of paid up share capital, free reserves and securities premium account comes to Rs. 1,3500,000 (75,00,000 + 50,00,000+ 10,00,000). It is to be noted that 'net profit for the year amounting to Rs. 34.50,000 would already have been added while arriving at the figures of 'General Reserve' and Credit Balance in Profit and Loss Account and accordingly, it shall not be again added at the time of determining the aggregate of paid up share Capital, tree reserves and securities premium account. Debenture Redemption Reserve is not a free reserve since it is not available for distribution of dividend.

Since the company has already borrowed Rs. 30,00,000 (it has been assumed that secured loans of Rs. 30,00.000 is not a temporary loan, i.e. it is not a loan obtained from the company's bankers in the ordinary course of business), the long-term borrowings from financial institutions shall not exceed Rs. 1,05,00,000 without the consent of the members by way of a special resolution.

(ii) As per Section 181 of the Companies Act, 2013, without the prior consent of the members in general meeting, the Board shall not contribute to bonafide charitable and other funds exceeding 5% of average net profits during immediately preceding 3 financial years.

The average net profits during immediately preceding 3 financial years comes to Rs. 22,00,000. viz., 1/3rd of (Rs. 12,50,000 + Rs. 19,00,000 + Rs. 34,50,000). 5% of Rs. 22,00,000 comes to Rs. 1,10,000. Therefore, the Board may make contributions to charitable funds up to Rs. 1,10,000 during the financial year 2005-06 without prior permission of the company in general meeting.

62. The Board of directors of a company in the private sector propose to donate during the current year Rs. 1,00,000 to a school run exclusively for the benefit of employees;

Advise the Board of directors about their powers in respect of the above explaining the relevant provisions of the Companies Act, 2013. (CA (Final) May 1995 (Modified)

OR

Advise the Board of directors of a company about their powers in respect of the following proposals explaining the relevant provisions of the Companies Act, 2013:
Donation of Rs. 5,00,000 to a hospital established exclusively for the benefit of employees. (CA (Final) May 2003 (Modified)

OR

Decide in the light of the provisions of the Companies Act, 2013 the validity and extent of powers of Board of Directors and the procedure to be complied with in the following matters:
Donation of Rs. 5 lakhs to a hospital established exclusively for the benefit of employees. (CA (Final) June 2009)

OR

The Board of directors of LM Limited propose to donate Rs. 3,00,000 to a school established exclusively for the benefit of children of employees during the financial year ending 31st March, 2015. The average net profits during the three immediately preceding financial years is Rs. 40,00.000.
Examine with reference to, the provisions of the Companies Act, 2013 whether the proposed donation is within the powers of the Board of directors of the company. (CA (Final) Nov. 2009 (Modified)

OR

Srajan Ltd. is a company incorporated in July 2015. The Board of directors of Srajan Ltd. proposed to donate Rs. 2.00,000 to a school established exclusively for the benefit of the employees of the company. The net profit during the financial year 2017-2018 was Rs. 35,00,000. In the light of the stated facts under the relevant provisions of the Companies Act, 2013, decide whether the contribution by Srajan Ltd. to a school established for the benefit of employees is charitable contribution. (ICAI, Mock Test Paper, October 2018)

Ans. As per Section 181 of the Companies Act. 2013, without the prior consent of the members in the general meeting, the Board shall not contribute to bona fide charitable and other funds, if the amounts contributed in a financial year will exceed 5% of average net profits during immediately preceding 3 financial years.
Any contribution made by a company shall amount to charitable contribution only if it is not intended to result in any benefit for the company or for its employees, and does not have any direct relation with the business of the company.
In the given case, donation of Rs. 1,00,000 to a school run exclusively for the benefit of employees amounts to welfare expenses for the employees by which the employees are likely to receive benefits. By making such donation, the company has not made any charity; the facilities in the hospital cannot be used by any member of the public, but only by the employees of the company. Such donation may be equated to staff welfare. As such, the donation of Rs. 1,00,000 is outside the purview of charitable donations, and so the provisions of Section 181 of the Companies Act, 2013 are not at all attracted. Therefore, donation of Rs. 1,00,000 to the school established exclusively for the benefit of employees is within the powers of the Board, and so the permission of the members in general meeting is not required.

63. The Board of directors of a public company in the private sector having made an average profit of Rs. 1 crore during the last 3 financial years propose to donate during the current year Rs. 40,000 to a general charitable fund.

Advise the Board of directors about their powers in respect of the above explaining the relevant provisions of the Companies Act. 2013. (CA (Final) May 1995)

Ans. As per Section 181 of the Companies Act. 2013, prior permission of the company in general meeting shall be required, if the amount of charitable contribution exceeds 5% of average net profits during preceding 3 financial years.

The donation of Rs. 40,000 to general charitable fund is not related to the business of the company and is therefore subject to the restrictions imposed under Section 181 of the Companies Act, 2013. Accordingly, the donation shall not exceed 5% of average net profits during immediately preceding 3 financial years, unless prior permission of the company in general meeting is obtained. In the given case, donation up to Rs. 5,00,000 (being 5% of Rs. 1 crore) is permissible without obtaining prior permission of the company in general meeting. Since, the Board has donated only Rs. 40,000, such donation is within the limits and does not require the prior permission of the company in general meeting.

64. **Decide In the light of the provisions of the Companies Act, 2013 the validity and extent of powers of Board of directors and the procedure to be complied with in the following matters:**
A donation of Rs. 5 lakhs to a charitable trust registered under Section 12A and exempted under Section 80G of the Income-tax Act, 1961. (CA (Final) June 2009)

Ans. As per Section 181 of the Companies Act, 2013, prior permission of the company in general meeting shall be required, if the amount of charitable contribution exceeds 5% of average net profits during preceding 3 financial years.

The donation of Rs. 5,00,000 to a charitable trust registered under Section 12A and exempted under Section 80G of the Income-tax Act, 1961, is not related to the business of the company and is therefore subject to the restrictions imposed under Section 181 of the Companies Act, 2013. Accordingly, such donation shall not exceed 5% of average net profits during immediately preceding 3 financial years, unless prior permission of the company in general meeting is obtained.

Thus, contribution of Rs. 5 lakhs by the Board (without obtaining prior permission of the members) shall be within the powers of the Board only if the company has made average net profits of Rs. 1 crore or more (i.e. Rs. 5,00,000 x 100/5) during immediately preceding 3 financial years.

65. **The Board of directors of Laxmi Ltd. decides to contribute to charitable funds, a sum of 10% of the company's average profits earned for the 5 years immediately preceding the financial year 2015-16. Referring to the provisions of the Companies Act, 2013 examine the validity of the decision of the Board. (CS (Final) June 2016)**

Ans. As per Section 181 of the Companies Act, 2013, prior permission of the company in general meeting shall be required, if the amount of charitable contribution exceeds 5% of average net profits during preceding 3 financial years.

In the given case, the Board of directors of Laxmi Ltd. has decided to contribute to charitable funds a sum of 10% of average net profit of immediately preceding 5 financial years. The amount of profits earned by the company in any of the preceding 5 financial years has not been given. So. if the amount proposed to be contributed to the charitable funds (viz. 10% of average net profits of immediately preceding 5 financial years) is not more than 5% of average net profits of preceding 3 financial years, the Board is authorised to contribute the said amount without requiring prior permission of the company in general meeting.

However, if the amount proposed to be contributed to charitable funds (viz. 10% of average net profits of immediately preceding 5 financial years) is more than 5% of average net profits of preceding 3 financial years, the Board is authorised to contribute the said amount only after obtaining prior permission of the company in general meeting.

66. Dildaar Heart Ltd. has been contributing Rs. 75,000 to a general charitable trust every financial year. During the first 9 months of the financial year 2014-15, the company has incurred a loss of Rs. 40 lakh. However, the Board desires to contribute Rs. 75,000 to a general charitable trust as in the past years. Advise.

Ans. As per Section 181 of the Companies Act, 2013, without the prior consent of the members in the general meeting, the Board shall not contribute to bona fide charitable and other funds, if the amounts contributed in a financial year will exceed 5% of average net profits during immediately preceding 3 financial years.

In the given case, if the amount proposed to be paid to the general charitable trust (viz. Rs. 75,000) does not exceed 5% of the average net profits during immediately preceding 3 financial years, then, the Board may contribute such amount without requiring any approval of the members. Thus, if the average net profits of Dildaar Heart Ltd. during preceding 3 financial years were Rs. 15 lakhs or more, then, no approval of the members is required.

However, if the average net profits of Dildaar Heart Ltd. during preceding 3 financial years were less than Rs. 15 lakh, then, charitable contribution of Rs. 75,000 can be made only with the approval of the members in the general meeting.

It is immaterial that the company is incurring losses during the financial year in which charitable contribution is proposed to be made.

67. M/s Jai Industries Limited earned net profit for last three years as under:

Financial year	**Net Profit (Rs. in Crores)**
2013-14	**30**
2014-15	**40**
2015-16	**50**

During the financial year 2016-17, the Board of directors of the company contributed to a charitable fund Rs. 1.25 crores in July, 2016. Again, in January 2017, the Board of directors passed resolution to contribute to another charitable fund Rs. 1.00 crore

Decide the validity of the decision of the Board of directors regarding the contribution on both the occasions with reference to the provisions of the Companies Act, 2013. (CA (Final) Nov. 2017)

Ans. As per Section 181 of the Companies Act. 2013, prior permission of the company in general meeting shill be required, if the amount of charitable contribution exceeds 5% of average net profits during preceding 3 financial years.

The average net profits of M/s Jai Industries Ltd. during the preceding 3 financial years is Rs. 40 crore. 5% of the average net profits amounts to Rs. 2 crore. Thus, the Board may, without obtaining prior permission of the company in general meeting, contribute to charitable funds any amount not exceeding Rs. 2 crore. But, charitable contribution exceeding RS. 2 crore may be made by the Board only if the prior permission of the members is obtained.

The donation of Rs. 1.25 crore and of Rs. 1 crore (totaling Rs. 2.25 crore) to charitable funds are not related to the business of the company and are therefore subject to the restrictions imposed under Section 181 of the Companies Act, 2013. The donation of Rs. 1.25 crore made in July, 2016 is in accordance with the provisions of Section 181. However. the charitable contribution made in January, 2017 is in contravention of Section 181, since the Board could only contribute 0.75 crore without obtaining the prior permission of the members in the general meeting, but the Board has contributed Rs. 1 crore. Thus, the excess Contribution of Rs. 0.25 crore is ultra-vires the provisions of Section 181.

68. The Board of directors of Very Well Ltd., are contributing every year to a charitable organization a sum of Rs. 60,000/- In a particular year, the company suffered losses and the directors are contemplating to contribute the said amount in spite of the losses. In this connection, state whether the directors can do so?

Ans. As per Section 181 of the Companies Act, 2013, prior permission of the company in

general meeting shall be required, if the amount of charitable contribution exceeds 5% of average net profits during preceding 3 financial years.
In the given case, the Board intends to contribute a sum of Rs. 60,000 to a charitable organization inspite of the fact that the company has incurred losses during the financial year in which such charitable contribution is proposed to be made.
As per Section 181, for making any charitable contribution, there is no such condition that the company should have earned profits during the financial year in which such charitable contribution is to be made.
During any financial year, a company can, without the approval of the members, make a charitable contribution up to 5% of average net profits of preceding 3 financial years. Any charitable contribution exceeding 5% of average net profits of preceding 3 financial years requires prior permission of the company in general meeting.
Thus, the Board of directors can, without the approval of the members, make a charitable contribution of Rs. 60,000 if the company has earned average net profits of Rs. 12 lakhs during preceding 3 financial years (i.e. total profits of Rs. 36 lakhs during preceding 3 financial years).
However., if the average net profits during the preceding 3 financial years were less than Rs. 12 lakhs, the Board can contribute Rs. 60,000 to the charitable organisation only after taking prior permission of the members in general meeting.

69. Answer the following cases:

Case I. Papa Group of Companies known for their business repute have been advocating for payment of donations to political parties as one of the methods of funding election. The group has recently floated a company by name M/s. Papa Computers Ltd., and in the very first year of its working made a net profit of Rs. 6 crores. Examine with reference to the provisions of the Companies Act, 2013 whether the said company can make political donations and what is the maximum limit up to which a company can make political donations. (CA (Final) Nov. 1999)

Case II. State with reference to the provisions of the Companies Act, 2013 whether the following companies can make donations (as on 1.12.2014) to political parties and f so the conditions to be complied with in this regard:
(i) ABCD Ltd., a Government company registered in 2009 wants to donate a sum of Rs. 10 lakhs.
(ii) EFG Ltd., a public company registered in 2008 wishes to contribute a sum of Rs. 5 lakhs.
(iii) RST Ltd., a company incorporated in the year 2014, decides to contribute a sum of Rs. 3 lakhs. (CA (Final) Nov. 1996 (Modified)

Case III. Decide in the light of the provisions of the Companies Act, 2013, the validity and extent of powers of Board of Directors and the procedure to be complied with in the following matters:
Donation of Rs. 5 lakhs to a political party registered with the appropriate authority.(CA (Final) June 2009)

Case IV. The Board of directors of a public company in the private sector having made an average profit of Rs. 1 crore during the last 3 financial years propose to donate during the current year Rs. 4,00,000 to a political party.
Advise the Board of directors about their powers in respect of the above explaining the relevant provisions of the Companies Act, 2013. (CA (Final) May 1995)

Case V. Sunrise Industries Ltd. has paid Rs. 1,00,000 to a political party as its contribution to fight elections. Can it do so under the provisions of the Companies Act, 2013? Will it

make any difference if the company has advertised its products in the monthly magazine published by the political party? (CA (Final) May 2005)

Case VI. The Board of Directors of LM Limited propose to donate Rs. 50,000 to a political party during the Financial year ending 31st March, 2015. The average net profits during the three immediately preceding financial years is Rs. 40,00,000.
Examine with reference to the provisions of the Companies Act, 2013 whether the proposed donations are within the powers of the Board of Directors of the Company. (CA (Final) Nov. 2009 (Modified)

Case VII. Win Ltd. is a company incorporated 15 years ago and during the last three consecutive financial years it earned profits of Rs 5.00 lakhs, 8.00 lakhs and 11.00 lakhs. In order to augment its business prospects, it wants to make donations to political parties. State with reference to the provisions of the Companies Act, 2013 whether the company can make such donations and if yes to what extent. (CA (Final) May 2012)

Case VIII. Sewak Cycles Limited is a company incorporated four years ago. It has earned profits amounting to Rs. 5 lakh, Rs. 8 lakh and Rs. 11 lakh respectively during the last three financial years. The Board of Directors of the company propose to donate a sum of Rs. 50,000 to a political party. Examine with reference to the provisions of the Companies Act, 2013 whether the proposed donation is within the powers of the Board of Directors of the company. (CA (Final) May 2015)

Case IX. State with reference to the provisions of the Companies Act, 2013 whether the following companies can make donations to political parties on 1st November, 2018, and If so the conditions to be complied with in this regard.
(i) ABCD Ltd., a Government company registered in 1991, wants to donate a sum of Rs. 10 lakhs.
(ii) EFG Ltd, a public company registered in 2013, wishes to contribute a sum of Rs. 5 lakhs.
(iii) RST Ltd., a company incorporated in the year 2014, decides to contribute a sum of Rs. 3 lakhs.
(iv) Rama Ltd. wants to make political contribution of Rs. 2,000 in cash. (CA (Final) Nov. 2018)

Case X. XYZ Ltd. was incorporated on 1st January, 2016. On 1st November, 2018 a political party approaches the company for a contribution of Rs. 10 lakhs for political purpose. Advise in respect of the following:
(i) Is the company legally authorised to give this political contribution?
(ii) will it make any difference, if the company was in existence on 1st October, 2015?
(iii) Can the company be penalized for defiance of provisions in this regard? (ICAI, RTP, May 2015)

Ans. As per Section 182 of the Companies Act, 2013, a company shall not make a political contribution unless the following Conditions are satisfied:
(a) The company is not a Government company.
(b) The company has been in existence for 3 or more financial years.
(c) The political contribution shall be made by passing a resolution at a Board meeting only.
(d) The company shall disclose in its profit and loss account, the amount contributed by it to any political party.
(e) The political contribution shall not be made except-
(i) by an account payee cheque drawn on a bank; or
(ii) by an account payee bank draft; or

(iii) by use of electronic clearing system through a bank account; or
(iv) through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.

Case I. In this case, M/s. Papa Computers Ltd. cannot make any political donation because the company is not in existence for a period of 3 financial years.

Case II.

In this case-
(i) ABCD Ltd. is a Government company and so it is prohibited from making any political contribution.
(ii) EFG Ltd. has been in existence for more than 3 financial years and so it can make political contribution without any limit, provided-
(a) the political contribution is made by passing a resolution at a Board meeting only:
(b) the company shall disclose in its profit and loss account, the amount contributed by it to any political party:
(c) the political contribution shall not be made except-

- by an account payee cheque drawn on a bank; or
- by an account payee bank draft; or
- by use of electronic clearing system through a bank account; or
- through any instrument, issued pursuant to any scheme notified under any law for
- the time being in force, for contribution to the political parties.

(iii) RST Ltd. cannot make any political contribution because the company has not been in existence for a period of 3 financial years.

Case III. In this case, the Board has made a political contribution of Rs. 5 lakh. Such political contribution shall be valid, provided-
(a) the political contribution is made by passing a resolution at a Board meeting only;
(b) the company shall disclose in its profit and loss account, the amount contributed by it to any political party;
(c) the political contribution shall not be made except-

- by an account payee cheque drawn on a bank; or
- by an account payee bank draft; or
- by use of electronic clearing system through a bank account; or
- through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.

Case IV. In this case, the company is not prohibited from making political contribution since it is not a Government company, and it has been in existence for more than 3 financial years. Accordingly, it may make the political contribution without any limit, provided-
(a) the political contribution is made by passing a resolution at a Board meeting only;
(b) the company shall disclose in its profit and loss account, the amount contributed by it to any political party:
(c) the political contribution shall not be made except-

- by an account payee cheque drawn on a bank; or
- by an account payee bank draft; or
- by use of electronic clearing system through a bank account; or
- through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.

Case V. The term political contribution' shall include any expenditure incurred by a company on advertisement in any publication. If such publication is by or on behalf of a political party, it shall be deemed to be a political contribution to a political party. If such publication is not by or on behalf of a political party, but for the benefit of a political party, it shall be deemed

to be a political contribution to the person publishing it.
In the given case, Sunrise Industries Ltd. has made a political contribution of Rs. 1 lakh. Such political contribution shall be valid, provided-
(a) the company is in existence for 3 or more financial years;
(b) the political contribution is made by passing a resolution at a Board meeting only:
(c) the company shall disclose in its profit and loss account, the amount contributed by it to any political party:
(d) the political contribution shall not be made except-

- by an account payee cheque drawn on a bank; or
- by an account payee bank draft; or
- by use of electronic clearing system through a bank account; or
- through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.

Even if Sunrise Industries Ltd. pays Rs. 1,00,000 as consideration for advertisement in the monthly magazine published by the political party, the payment of Rs. 1,00,000 shall be regarded as political contribution, since as per Section 182 of the Companies Act. 2013. payment made as a consideration for advertisement in any publication brought by a political party shall amount to a political contribution made to such political party. Therefore, all the conditions of Section 182 of the Companies Act, 2013, as explained before, must also be complied with in case Rs. 1,00,000 is paid by Sunrise Industries Ltd. as consideration for advertisement in the monthly magazine published by the political party.
Case VI. In this case, assuming that LM Limited is not a government company, it may make political contribution without any limit, provided
(a) the political contribution is made by passing a resolution at a Board meeting only
(b) the company shall disclose in its profit and loss account, the amount contributed by it to any political party:
(c) the political contribution shall not be made except-

- by an account payee cheque drawn on a bank: or
- by an account payee bank draft; or
- by use of electronic clearing system through a bank account; or
- through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.

Case VII. In this case, Win Ltd. is not prohibited from making political contribution since it is not a Government Company, and it has been in existence for more than 3 financial years. It may make political contribution without any limit, provided-
(a) the political contribution is made by passing a resolution at a Board meeting only:
(b) the company shall disclose in its profit and loss account, the amount contributed by it to any political party
(c) the political contribution shall not be made except-

- by an account payee cheque drawn on a bank; or
- by an account payee bank draft; or
- by use of electronic clearing system through a bank account; or
- through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.

Case VIII. In this case, Sewak Cycles Limited is not prohibited from making political contribution since it is not a Government company and it has been in existence for more than 3 financial years. It may make political contribution without any limit, provided-
the political contribution is made by passing a resolution at a Board meeting only:
(b) the company shall disclose in its profit and loss account, the amount contributed by it to any political party;

(c) the political contribution shall not be made except-
- by an account payee cheque drawn on a bank; or
- by an account payee bank draft; or
- by use of electronic clearing system through a bank account; or
- through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.

Case IX. In this case

(i)ABCD Ltd. is a Government company and so it is prohibited from making any political contribution.

(ii) and (iii) EFG Ltd. and RST Ltd. have been in existence for more than 3 financial years and so these companies can make political contribution without any limit, provided-

(a) the political contribution is made by passing a resolution at a Board meeting only:

(b) each company shall disclose in its profit and loss account, the amount contributed by it to any political party:

(c) the political contribution shall not be made except -
- by an account payee cheque drawn on a bank; or
- by an account payee bank draft; or
- by use of electronic clearing system through a bank account; or
- through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.

(iv) Rama Ltd. cannot make any political contribution in cash since political can be made only by the following means:
- By an account payee cheque drawn on a bank; or
- By an account payee bank draft; or
- By use of electronic cleaning system through a bank account; or
- Through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.

Case X.

(i) XYZ Ltd. was incorporated on 1st January, 2016. The period of first financial year of XYZ Ltd. would have been 1.1.2016 to 31.3.2017, The period of second financial year would have been 1.4.2017 to 31.3.2018. As on 1st November, 2018, XYZ Ltd. has not been in existence for 3 financial years, and so it cannot make any political contribution.

(ii) Had XYZ Ltd. been in existence on 1st October. 2015, it would have been in existence for more than 3 financial years as on 1st November, 2018 (First financial year: 1.10.2015 to 31.3.2016; Second financial year: 1.4.2016 to 31.3.2017; Third financial year: 1.4.2017 to 31.3.2018), and so it can make political contribution without any limit, provided-

(a) the political contribution is made by passing a resolution at a Board meeting only.

(b) it shall disclose in its profit and loss account, the amount contributed by it to the political party;

(c) the political contribution shall not be made except-
- by an account payee cheque drawn on a bank; or
- by an account payee bank draft; or
- by use of electronic clearing system through a bank account; or
- through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.

(iii) In case XYZ Ltd. makes any political contribution in contravention of the provisions of Section 182. XYZ Ltd. shall be punishable with fine up to 5 times the amount so contributed, and every officer of XYZ Ltd. who is in default shall be punishable with imprisonment up to 6 months and shall also be liable to fine up to 5 times the amount so contributed.

70. Advise the Board of directors of a public company about their powers in respect of the following proposals explaining the relevant provisions of the Companies Act, 2013: Delegating to the managing director of the company the power to invest surplus funds of the company in the shares of some companies. (CA (Final) May 2003, June 2009 (Modified)

OR

Advise the Board of directors of Spectra Papers Ltd. regarding validity and extent of their powers, under the provisions of the Companies Act, 2013 in relation to delegation of power to the managing director of the company to invest surplus funds of the company in the shares of same companies. (CA (Final) May 2010 (Modified)

Ans. As per Section 179(1) of the Companies Act. 2013, the Board is entitled to exercise all such powers as the company is authorised to exercise. Similarly, the Board is authorised to do all such acts and things as the company is authorised to do. However, the provisions of Section 179(1) of the Companies Act, 2013 are subject to the other provisions of the Companies Act,2013 (e.g. Sections 179(3). 180, 181 and 182 of the Companies Act, 2013).

As per Section 179 (3) of the Companies Act, 2013, the powers relating to investment of funds of the company shall be exercised by the Board at a Board meeting only. However, such power may be delegated by the Board, subject to the following:

(a) The power to invest the funds of the company may be delegated to a committee of directors, managing director, manager, a principal officer of the company or a principal officer of the branch office.

(b) The delegation of power shall be made by passing a resolution at a Board meeting.

(c) The Board may delegate such power subject to such conditions as it may deem fit.

However, as per Section 186 of the Companies Act, 2013, acquisition of securities of any body corporate shall be made by passing a unanimous resolution at a Board meeting only. Therefore, as per Section 186, the power to invest the funds in the shares of other companies cannot be delegated.

In the present case, the power to invest surplus funds of the company in the shares of some companies is proposed to be delegated to the managing director of the company. Such delegation is not permissible in view of provisions of Section 186 of the Companies Act, 2013.