

**CLUSTER 8**

**1. To decide whether companies in question are Government companies?**

**(i) Central Government and Government of Maharashtra together hold 40% of the paid-up share capital of MN Limited. A Government company also holds 20% of the paid-up share capital in MN Limited.**

**(ii) PQ Limited is a subsidiary but not a wholly owned subsidiary of a Government company.**

**Examine with reference to the provisions of the Companies Act, 2013 whether MN Limited and PQ Limited can be considered as Government Companies.**

**Ans.** As per Section 2(45), a company is a Government company if it satisfies any of the following 2 conditions:

(a) 51% or more of its paid-up share capital is held-

(i) by the Central Government; or

(ii) by any State Government(s); or

(iii) jointly by the Central Government and any State Government(s)

(b) It is a subsidiary company of a Government company.

Analysis and Conclusion

(i) A Government company holds only 20% of the paid-up share capital of MN Limited. As per Section 2(87), a company shall be a Subsidiary of another company if more than 50% Of its paid up share capital is held by such other company. Since only 20% of the paid-up share capital of MN Limited is held by a Government company. MN Limited is not a subsidiary of any Government Company.

The Central Government and a State Government (viz. Government of Maharashtra) together hold 40% of the paid-up share capital of MN Limited which is less than the required 51% for being a Government company. For this purpose, the shares held by any Government company are not to be considered.

Hence, MN limited is not a government company since it is neither a subsidiary of any Government company nor 51% or more of its paid-up share capital is held by the Central Government or one or more State Governments or jointly by the Central Government and one or more State Governments.

(ii) Since PQ Limited is a subsidiary of a Government company, it shall be considered as a Government Company, for being a Government company, there is no requirement that it has to be a wholly owned subsidiary.

**2. BUI Limited had filed certain documents with the Registrar of Companies. The said documents were authenticated by the ROC and Kept on record. In a suit against the company, the ROC produced the said documents in the court or law. BUI Limited intends to raise objection on the said documents on the ground that the documents need to be authenticated with further proof or production of the original documents as evidence. Advice BUI Limited. (CA (Final) May 2015)**

**Ans.** As per Section 397, a copy of a document produced by the Registrar before the Court shall be admissible as evidence without requiring production of the original document, if the conditions contained in Section 397 are satisfied, which is as under.

(a) A document was filed by a company with the Registrar on paper or in electronic form.

(b) The Registrar authenticated the document filed with him, and took the document on record.

(c) A copy of such document is produced by the Registrar.

Section 397 applies notwithstanding anything contained in any other law for the time being in force.

It is evident that as per Section 397, copies of original documents shall be admissible as evidence without production of the original documents.

In the given case, the Registrar has produced before the Court certain copies of the documents filed by BUI Limited and authenticated by the Registrar. However, the copies are not accompanied by the original documents.

Since the requirements of Section 397 have been satisfied, the copies shall be admissible as evidence and the objections raised by BUI Limited are not tenable at law.

- 3. Buina Limited has discontinued its business since 2015 and has not been filing annual returns. The Registrar of companies issued a notice for striking off the company. Since no reply was received within the time specified in the notice, the name of the company was struck off from the register of companies. There were tax arrears and a notice was sent to the company by the tax recovery officer. The directors contended that since the company's name has been struck off, the company does not exist and not liable to pay the tax. Referring to and analyzing the relevant provisions of the companies Act, 2013 examine the validity of the company's claim. (CA (Final) May 2019)**

**Ans.** As per Section 248, where the name of a company is removed from the register of companies and the company stands dissolved.

(a) the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations:

(b) the liability, if any, of every director, manager or other officer who was exercising any power of management, shall continue and may be enforced against him;

(c) the liability of every member of the company shall continue and may be enforced against him;

(d) the Tribunal shall be empowered to wind up such a company.

In the given case, the name of Buina Limited was struck off the register of companies. However, afterwards, it has become evident that there were certain tax arrears. It is contended by the directors of Buina Limited that the company is not liable to pay such arrears of tax as the name of the company has already been struck off the register of companies.

Section 248 expressly provides that even where the name of a company has been struck off the register of companies, its assets shall be made available for the payment or discharge of all its liabilities and also the liabilities of directors, manager, officers and members of the company can also be enforced against them.

Thus, the tax recovery officer is empowered to recover the arrears of tax payable by Buina Ltd.

- 4. Devgan Research Development Ltd. was registered to innovate unique business idea emerging from research and development in new area. It is a future project and the Company has no significant accounting transactions and business activities. Therefore, the Company made an application to RoC for obtaining the status of a Dormant Company. The application is under process. In the meantime, the Company without extinguishing all its liabilities filed an application to RoC for removing the name of the Company, after passing a special resolution giving effect to this.**

**In the light of the provisions of the Companies Act, 2013, analyse the following:**

**(1) Whether the application is tenable under the Act?**

**(2) What are the restrictions imposed under the Act for making application by a Company to remove the name of the Company from the register of RoC?**

**(3) What are the penal consequences in case of violation of restrictions?**

**Ans.**

Removal of name of company from the register of companies by the Registrar on an application by the company (Section 248)

**(a) A Company may file an application to the Registrar for removing its name from the register of companies on any of the following grounds:**

- (i) It has not commenced its business within 1 year of its incorporation.
- (ii) It is not carrying on any business or operation for a period of 2 immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under Section 455.
- (b) Such an application may be filed only if before making such application, the company has extinguished all its liabilities.
- (c) Such an application may be filed only if the company is authorised by-
  - (i) a special resolution; or
  - (ii) Consent of members holding 75% paid-up share capital.

**Analysis and conclusion:**

(1) The application made is not tenable because of the following reasons:

(a) The application for removal of name may be made by a company only if it has not made any application for obtaining the status of a dormant company. But, Devgan Research Development Ltd. had made an application for obtaining the status of a dormant company, and so this condition is not satisfied.

(b) The application for removal of name may be made by a company only if it has extinguished all its liabilities, But, Devgan Research Development Ltd. has not extinguished all its liabilities at the time of making application for removal of its name, and so this condition is not satisfied.

(2) A Company shall not be eligible to file an application to the Registrar for removing its name from the register of companies if, at any time during the previous 3 months, the company –

(a) has changed its name or shifted its registered office from one State to another

(b) has disposed of its property or rights, immediately before cessation of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;

(c) has engaged in any other activity except the one which is necessary or expedient for-

(i) the purpose of making an application under Section 248: or

(ii) deciding whether to do so; or

(iii) concluding the affairs of the company: or

(iv) complying with any statutory requirement;

(d) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded: or

(e) is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.

(3) If a company files an application with the Registrar under Section 248 for the purpose of removal of name of the company from the register of companies, but such application is in contravention of Section 249, then –

(a) the company shall be punishable with fine which may extend to Rs. 1 lakh:

(b) such application shall be withdrawn by the company or rejected by the Registrar as soon as it is brought to the notice of the Registrar that the company is not eligible to make an application for such removal.

**5. Mr. RG is a practicing Chartered Accountant and having 15 years of professional experience. Can he be appointed as Technical Member of National Company Law Appellate Tribunal as per Section 411 of the Companies Act, 2013? Will your answer be different, if he is appointed as Technical Member of National Company Law Tribunal? (CA (Final) Nov. 2018)**

**Ans.**

1. As per Section 409, a person may be appointed as a Technical Member of the Tribunal if he satisfies any of the six criteria contained in Section 409. One criteria is "where he is, or has

been, in practice as a chartered accountant for at least 15 years".

2. As per Section 411, a person may be appointed as a Technical Member of the Appellate Tribunal only if he is a person of proven ability, integrity and standing and has special knowledge and professional experience of not less than 25 years in industrial finance, industrial management, industrial reconstruction, investment and accountancy.

3. In the given case, Mr. RG is a practicing chartered accountant having professional experience of 15 years.

#### Conclusion

1. Mr. RG is not eligible for appointment as a Technical Member of National Company Law Appellate Tribunal, since his professional experience is less than 25 years.

2. Mr. RG is eligible for appointment as a Technical Member of National Company Law Tribunal, since he is in practice as a chartered accountant for 15 years.

**6. Mr. PRTJ was appointed as a member of the National Company Law Appellate Tribunal. During the month of April 2018, he was adjudged as an insolvent by a competent authority. The Central Government after consultation with the Chief Justice of India removed Mr. PRTJ from the membership of the National Company Law Appellate Tribunal. Being aggrieved by the decision of the Central Government Mr. PRTJ approached you to confirm himself whether the decision of the Central Government was appropriate since, he was not given a reasonable opportunity of being heard as a matter of principle of natural justice. Advise him.**

**Also state the circumstances in which the Central Government after consultation with the Chief Justice of India can remove any person from the office of President, Chairperson or any Member of the National Company Law Appellate Tribunal. (CA (Final) May 2018)**

**Ans:**

#### Provisions:

The Central Government can remove the President, Chairperson or any Member on the following grounds mentioned in Section 417:

(a) Where he has been adjudged an insolvent.

(b) Where he has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude.

(c) Where he has become physically or mentally incapable of acting as such President, the Chairperson, or Member.

(d) Where he has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, the Chairperson or Member.

(e) Where he has so abused his position as to render his continuance in office prejudicial to the public interest.

2. Before passing an order of removal of the President, Chairperson or any Member, the Central Government shall consult the Chief Justice of India.

3. Before removal, the President, the Chairperson or the Member shall be given a reasonable opportunity of being heard, if the ground of removal is any of the following:

(a) He has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude.

(b) He has become physically or mentally incapable of acting as such President, the Chairperson, or Member.

(c) He has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, the Chairperson or Member.

(d) He has so abused his position as to render his continuance in office prejudicial to the public interest.

#### Analysis and conclusion

1. Mr. PRTJ is a member of the Appellate Tribunal. He has been adjudged an insolvent. The

Central Government, after consultation with the Chief Justice of India, removed Mr. PRTJ from the membership of the Appellate Tribunal.

2. The ground for removal of Mr. PRTJ is 'he has been adjudged an insolvent'.

3. Section 417 does not require giving any opportunity of being heard before removing a member, where the ground for removal is he has been adjudged an insolvent'.

4. The removal of Mr. PRTJ from the membership of Appellate Tribunal is in accordance with Section 417, and is therefore, valid.

**7. JSK, a shareholder CRI (Private) Ltd. filed an application before erstwhile Company Law Board, alleging various acts of oppression and mis-management in the affairs of the Company and sought certain relief measures. The petition was transferred to NCLT on its constitution. The NCLT passed an order on 5th October 2017 without the consent of the parties, aggrieved by the order, the shareholder decided to prefer an appeal. Nevertheless, the shareholder was suffering from low blood pressure. He was medically advised not to move and he did not move. Therefore, he preferred the appeal with NCLAT on 5th December, 2017. Examine whether the appeal is admissible with reference to time limitation?**

**Identify the provisions governing further appeal on the orders of NCLAT under Section 423 of the Companies Act, 2013. (CA (Final) May 2018)**

**Ans.**

**Provisions**

1. As per Section 434, all such proceedings or cases as were pending before the Company Law Board shall stand transferred to the Tribunal, and the Tribunal shall dispose of such proceedings or cases.

2. Section 421 says

(a) Any person who is aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.

(b) However, no appeal can be preferred to the Appellate Tribunal against an order of Tribunal passed with the consent of the parties.

(c) The appeal may be preferred within 45 days of receipt of order of the Tribunal.

(d) The Appellate Tribunal is empowered to grant extension of time for preferring the appeal. However, such extension shall not exceed 45 days. The extension may be granted only if there was sufficient cause for not preferring the appeal within 45 days of receipt of order passed by the Tribunal.

**Analysis and Conclusion**

3. The Tribunal passed its order on 5th October, 2017.

4. In the absence of any information, assuming that the copy of the order was received by Mr. JSK on the same day, viz. 5th October, 2017, the last date (without extension of time) for filing the appeal was 19th November, 2017.

5. As Mr. JSK was medically advised not to exert himself and was advised to take rest, he could not prefer the appeal till 19th November, 2017.

6. Generally, where a party is medically unfit and is advised not to move, it is considered to be a 'sufficient cause' for the purpose of granting extension of time. Assuming that the Appellate Tribunal also considers that there was a sufficient cause for Mr. JSK for not preferring the appeal up to 19th November, 2017, the Appellate Tribunal may grant extension of time up to a maximum of 45 days. The last date (considering extension of time of 45 days) for filing the appeal is 3rd January, 2018.

7. Mr. JSK preferred the appeal on 5th December, 2017, viz. before the last date for preferring the appeal (with extension).

8. The appeal preferred on 5th December, 2017 by Mr. JSK with the Appellate Tribunal against the order of the Tribunal has been preferred within the time limit specified under Section 421,

and is therefore admissible.

9. Section 423 contains the provisions with respect to appeals against the orders of the Appellate Tribunal, as explained below:

(a) Any person aggrieved by an order passed by the Appellate Tribunal may prefer an appeal to the Supreme Court.

(b) The appeal may be preferred within 60 days from the date of receipt of the order of the Appellate Tribunal to him. However, if the Supreme Court is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of 60 days, it may allow the appeal to be preferred within a further period not exceeding 60 days.

(c) The appeal may be preferred only on a question of law arising out of the order of the Appellate Tribunal.

**8. Aggrieved by an order of NCLT dated 05.05.2018, passed without the consent of the parties, Madhruk Ltd. decided to file an appeal before NCLAT. Meanwhile, the employees and officers of the company went on a strike from 10.05.2018 demanding higher pay and allowances and as a result of which, the operational and management activities were badly affected. The strike was called-off on 15.06.2018. Thereafter, the appeal was filed on 25.06.2018 before NCLAT with a prayer for condoning the delay in filing the appeal. A single judicial member of NCLT started the hearing. With reference to the provisions of the Companies Act, 2013, examine the following.**

**(i) Whether the appeal is admissible?**

**(ii) Maximum period allowed for condonation**

**(iii) Is the appeal transferable to a Bench consisting of two members? (CA (Final) Nov. 2018)**

**Ans.**

**Provisions**

1. Section 421 -Appeals

(a) Any person who is aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.

(b) However, no appeal can be preferred to the Appellate Tribunal against an order of the Tribunal passed with the consent of the parties.

(c) The appeal may be preferred within 45 days of receipt of order of the Tribunal.

(d) The Appellate Tribunal is empowered to grant extension of time for preferring the appeal. However, such extension shall not exceed 45 days. The extension may be granted only if there was sufficient cause for not preferring the appeal within 45 days of receipt of order passed by the Tribunal.

2. Section 419 (a) It shall be

competent for the Members of the Tribunal authorised in this behalf to function as a Bench consisting of a single Judicial Member and exercise the powers of the Tribunal in respect of such class of cases or such matters pertaining to such class of cases, as the President may, by general or special order, specify.

(b) If at any stage of the hearing of such case or matter, it appears to the Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of 2 Members, the case or matter may be transferred by the President, or, as the case may be, referred to him for transfer, to such Bench as the President may deem fit.

**Analysis and Conclusion**

1. The Tribunal passed its order on 5<sup>th</sup> May, 2018.

2. In the absence of any information, assuming that the copy of the order was received by Madhruk Ltd. on the same day, viz 5<sup>th</sup> May 2018, the last date (without extension of time) for filing the appeal was 19<sup>th</sup> June, 2018.

3. The employees and officers of the company were on strike from 10.05.2018 to 15.06.2018,

as a result of which, the operational and management activities were badly affected, and consequently, Madhruk Ltd. Could not prefer the appeal till 19<sup>th</sup> June, 2018.

4. Generally, where a party is unable to prefer an appeal by reason of circumstances beyond its control, like strike in the given case, it is considered to be a 'sufficient cause' for the purpose of granting extension of time. Assuming that the Appellate Tribunal also considers that there was a sufficient cause for Madhruk Ltd. for not preferring the appeal upto 19<sup>th</sup> June, 2018, the Appellate Tribunal may grant extension of time upto a maximum of 45 days. The last date for filing the appeal is 3<sup>rd</sup> August, 2018, including extension

5. Madhruk Ltd. preferred the appeal on 25<sup>th</sup> June, 2018, viz. before the last date for preferring the appeal (with extension.)

**Hence**

(i) The appeal preferred on 25<sup>th</sup> June, 2018 by Madhruk Ltd. with the Appellate Tribunal against the order of the Tribunal has been preferred within the time limit specified under Section 421, and is therefore admissible.

(ii) The Appellate Tribunal is empowered to condone the delay in filing the appeal, but such period shall not exceed 45 days.

(iii) As per Section 419, the Members of the Tribunal are authorised to function as a Bench consisting of a single Judicial Member, subject to the condition that if at any stage of hearing of a case, it appears to the Member that the case is of such a nature that it ought to be heard by a Bench consisting of 2 Members, the case may be transferred by the President, or, as the case may be, referred to him for transfer, to such Bench as the President may deem fit.

However, the Companies Act, 2013 does not contain any provision with respect to transfer of appeal from one Bench of Appellate Tribunal to another Bench of Appellate Tribunal. Thus, it is not possible to transfer an appeal to a Bench consisting of 2 members.

**9. Aggrieved by an order of Hon'ble NCLT, dated 3rd April, 2018, passed without the consent of parties, Solan Minerals Limited decided to file an appeal before Hon'ble NCLAT. The order was received by the company on 4th April, 2018. The employees and officers went on a strike for a period of 10 days from 22nd May, 2018 demanding higher bonus and pay. In view of this, the management of the company was forced to a grinding half during the strike period. Thereafter, the appeal was filed on 6th June 2018 before the Hon'ble NCLAT and the company prayed for condonation of delay. Referring to and analysing the applicable provisions of the Companies Act 2013, decide the following:**

**(i) Whether the proposed appeal would be admitted by the Hon'ble NCLAT.**

**(ii) What is the maximum period allowed by the NCLAT for condonation of delay? (CA (Final) May 2019)**

**Ans. Provisions**

**1. Section 421 -Appeals**

(a) Any person who is aggrieved by on order of the Tribunal may prefer an appeal to the Appellate Tribunal.

(b) However, no appeal can be preferred to the Appellate Tribunal against an order of the Tribunal passed with the consent of the parties.

(c) The appeal may be preferred within 45 days of receipt of order of the Tribunal.

(d) The Appellate Tribunal is empowered to grant extension of time for preferring the appeal. However, such extension shall not exceed 45 days. The extension may be granted only if there was sufficient cause for not preferring the appeal within 45 days of receipt of order passed by the Tribunal.

**Analysis and Conclusion**

1. The Tribunal passed its order on 3rd April, 2018.

2. The copy of the order of the Tribunal was received by Solan Minerals Limited on 4<sup>th</sup> April 2018. Thus, the last date (without extension of time) for filing the appeal was 19<sup>th</sup> May, 2018.

3. The employees and officers of the company were on strike from 22nd May, 2018 to 31st May, 2018, as a result of which, the operational and management activities were halted.

4. Generally, where a pay is unable to prefer an appeal by reason of circumstances beyond its control, like 'strike', it is considered to be a 'sufficient cause' for the purpose of granting extension of time. However, in the given case, the employees and officers of Solan Minerals Limited went on strike after the last date for filing the appeal, i.e. after 19<sup>th</sup> May 2018. Hence, strike by employees and officers does not amount to 'sufficient cause' for not filing the appeal up to 19<sup>th</sup> May, 2018.

5. Solan Minerals limited preferred the appeal on 6th June, 2018, i.e. after the last date for preferring the appeal (without extension).

**Hence,**

(i) The appeal preferred on 6th June, 2018 by Solan Minerals Limited before the Appellate Tribunal (NCLAT) against the order of the Tribunal has not been preferred within the time limit specified under Section 421, and in the given facts and circumstances it is not possible for the Appellate Tribunal to be satisfied that there was 'sufficient cause' for not filing the appeal upto 19<sup>th</sup> May, 2018, and so the appeal shall not be admitted by the Appellate Tribunal.

(ii) The Appellate Tribunal is empowered to condone the delay in filing the appeal, but such period shall not exceed 45 days.

**10. Examine with reference to the provisions of the Companies Act, 2013 whether the following companies can be treated as foreign companies:**

**(i) A company incorporated outside India having a share registration office at Mumbai.**

**(ii) Indian citizens incorporated a company in Singapore for the purpose of carrying on business there. (CA (Final) May 2003, Nov. 1996)**

**OR**

**As per provisions of the Companies Act, 2013, what is the status of XYZ Ltd., a company incorporated in London, U.K., which has a share transfer office at Mumbai? CA (Final) Nov. 2004)**

**Ans.** As per Section 2(42) of the Companies Act, 2013, 'foreign company' means any company or body corporate incorporated outside India which –

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

Here,

(i) A share transfer office or share registration office constitutes a place of business (Section 386 of the Companies Act, 2013). Thus, a company incorporated outside India having a share registration office at Mumbai shall be a foreign company, whether or not it conducts any business activity in India.

(ii) In this case, Indian citizens have formed a company outside India. The company has neither established any place of business in India nor does it conduct any business activity in India in any manner. So, the company cannot be said to be a foreign company. The fact that Indian citizens have formed a company in a foreign country is immaterial in deciding whether the company is a foreign company or not.

**11. Indian citizens incorporated a company in U.K. for the purpose of carrying on business there. Examine with reference to the relevant provisions of the Companies Act, 2013 whether it is a "Foreign Company". What would be your answer in case the U.K. company was incorporated by a company registered in India?**

**Ans.** As per Section 2(42) of the Companies Act, 2013, "foreign company" means any company or body corporate incorporated outside India which-

(a) has a place of business in India whether by itself or through an agent, physically or through



electronic mode; and

(b) conducts any business activity in India in any other manner.

Hence, for deciding as to whether a company is a foreign company or not, the criterion is to see as to whether the company has established a place of business in India or not, and whether the company conducts any business activity in India in any manner, and not the persons who have incorporated the company.

In this case, Indian citizens have formed a company outside India. The company has neither established any place of business in India nor does it conduct any business activity in India in any manner. So, the company cannot be said to be a foreign company. The fact that Indian citizens have formed a company in a foreign country is immaterial in deciding whether the company is a foreign company or not.

The answer would have remained same even if the U.K. Company had been incorporated by a company registered in India for the same reason as stated above.

**12. Examine in the light of the provisions of the Companies Act, 2013 whether the following companies can be considered as "Foreign Companies"**

**(i) A company incorporated outside India having a share registration office at New Delhi;**

**(ii) A company incorporated outside India having shareholders who are all Indian Citizens;**

**(iii) A company incorporated in India but all the shares are held by foreigners.**

**Also examine whether the above companies can issue Indian Depository Receipts under the provisions of the Companies Act, 2013? (CA (Final) May 2013)**

**Ans.** As per Section 2(42) of the Companies Act, 2013, 'foreign company means any company or body corporate incorporated outside India which-

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

Analysis and conclusion

(i) A share transfer office or share registration office constitutes a place of business (Section 386 of the Companies Act, 2013). Thus, a company incorporated outside India having a share registration office at Mumbai shall be a foreign company, whether or not it conducts any business activity in India.

(ii) A Company incorporated outside India does not become a foreign company by the mere fact that all its shareholders are Indian citizens. Assuming that the company has not established any place of business in India, and the company does not conduct any business activity in India in any manner, the company is not a foreign company.

(iii) A Company incorporated in India is a 'company' within the meaning of Clause (20) of Section 2 of the Companies Act, 2013. It cannot become a foreign company by the mere fact that all the shares of the company are held by foreigners.

Section 390 of the Companies Act, 2013 authorises a company incorporated outside India (whether or not it has established a place of business in India, i.e. whether or not it is a foreign company) to issue Indian Depository Receipts in accordance with the Rules prescribed by the Central Government. Accordingly, -

(i) 'A Company incorporated outside India having a share registration office at New Delhi' can issue IDRs in accordance with the Rules prescribed by the Central Government.

(ii) A Company incorporated outside India having shareholders who are all Indian Citizens' can issue IDRS in accordance with the Rules prescribed by the Central Government.

(iii) A company incorporated in India but all the shares are held by foreigners' cannot issue IDRS.

**13. Robertson Ltd. is a company registered in Thailand. Although, it has no place of business established in India, yet it is doing online business through telemarketing in India. Whether it will be treated as a Foreign Company under the Companies Act, 2013? Explain. (CA (Final) Nov. 2015)**

**Ans.** As per clause (42) of Section 2 of the Companies Act, 2013, 'foreign company' means any company or body corporate incorporated outside India which –

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

Clause (c) of Sub-Rule (1) of Rule 2 of the Companies (Registration of Foreign Companies) Rules, 2014 defines 'electronic mode'. As per the said clause, electronic mode includes providing online services such as telemarketing.

In the given case, Robertson Ltd. is carrying on online business through telemarketing in India. As per Rule 2(1)(c), Robertson Ltd. has a place of business in India. Since Robertson Ltd. is a company incorporated outside India and also it has a place of business in India, it is a foreign company.

**14. In the light of the provisions of the Companies Act, 2013 explain whether the following companies can be considered as a foreign company:**

**(i) A company which has no place of business established in India, yet, is doing online business through telemarketing in India.**

**(ii) A company which is incorporated outside India employs agents in India but has no place of business in India.**

**(iii) A company incorporated outside India having shareholders who are all Indian citizens. (CA (Final) Nov. 2018)**

**Ans.**

**Provisions**

1. As per Section 2(42). 'foreign company' means any company or body corporate incorporated outside India which –

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

2. As per Rule 2(1)(c), electronic mode includes providing online services such as telemarketing.

**Analysis and conclusion**

(i) A company is doing online business through telemarketing in India, though it has not established any physical place of business in India. As per Rule 2(1)(c), such company has a place of business in India. Therefore, the company is a foreign company.

(ii) A company incorporated outside India employs agents in India, but it has not established any place of business in India. As per Section 2(42), where a company incorporated outside India does not have any place of business in India by itself, but has a place of business through an agent, such a company is a foreign company. Therefore, in the given problem, the company incorporated outside India employing agents in India, is a foreign company.

(iii) A company incorporated outside India has shareholders who are all Indian citizens. The company has neither established any place of business in India nor does it conduct any business activity in India in any manner. The company cannot be said to be a foreign company. The fact that all the shareholders of the company are Indian citizens is immaterial in deciding whether the company is a foreign company or not.

**15. Mr. Ziyen an Indian citizen holds 25% of the paid-up capital of Laurel Steven Limited, a company which was incorporated in Singapore with a paid-up capital of 10 million**

Singapore Dollars. Swaraj Limited a company registered in India holds 30% of the paid-up capital of Laurel Steven Limited. Laurel Steven Limited has recently established a share transfer office at New Delhi. The company seeks your advice as to what formalities it should observe as a foreign company under Companies Act, 2013. (CA (Final) Nov. 2017)

OR

M/s Joel Ltd. was incorporated in London with a paid-up capital of 10 million pounds. Mr. Y an Indian citizen holds 25% of the paid-up capital. M/s. X Ltd. a company registered in India holds 30% of the paid-up capital of Joel Ltd. M/s. Joel Ltd. has recently established a share transfer office at New Delhi. The company seeks your advice as to what formalities it should observe as a foreign company under Companies Act, 2013. State briefly the requirements relating to filing of accounts with the Registrar of Companies by the foreign company in respect of its global business as well as Indian business. (CA (Final) Nov. 2007)

**Ans.** As per Section 2[42], 'foreign company means any company or body corporate incorporated outside India which –

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

As per Section 386, a share transfer office or share registration office constitutes a place of business.

As per Section 379, if 50% or more of the paid-up share capital (whether equity or preference or partly equity and partly preference) of a foreign company is held (whether singly or in the aggregate) by –

(a) one or more Indian citizens; or

(b) one or more companies or bodies corporate incorporated in India; or

(c) one or more Indian citizens and one or more bodies corporate incorporated in India,

then, such a foreign company shall, in respect of its Indian business, comply with Sections 379 to 393 and such other provisions of the Act as may be prescribed by the Central Government, as if it were a company incorporated in India.

In the given case, Laurel Steven Limited is a company incorporated in Singapore (viz. outside India) and it has a share transfer office (viz., a place of business) at New Delhi (viz. in India). So, Laurel Steven Limited is a foreign company within the meaning of Section 2(42) read with Section 386.

An Indian Citizen (Mr. Ziyen) along with a company incorporated in India (Swaraj Limited) hold in aggregate more than 50% of the paid-up capital of Laurel Steven Limited. So, Laurel Steven Limited shall be covered under Section 379. Accordingly, it shall have to comply with, in respect of its Indian business, Chapter XXII of the Companies Act, 2013

**16. Qinghai Huading Industrial Company Ltd. incorporated in China established a place of business at Mumbai. The Charter / Documents constituting the Company is in Mandarin Chinese (Chinese local language). It is required inter alia to file a certified translation of above documents with the Registrar of Companies in India. Who can authenticate the translated charter/documents as per the provisions of the Companies Act, 2013 and Rules made there under governing foreign companies in case such translation is made at Mumbai? (CA (Final) May 2018)**

**Ans.**

Section 380 requires a foreign company to deliver such documents to the Registrar as are specified in that Section. Section 380 further requires that where such documents are in a language other than English, a certified English translation of such documents shall be filed with the Registrar.

As per Rule 10 of the Companies (Registration of Foreign Companies) Rules, 2014, where the

translation is made at a place in India, such translation shall be authenticated by-  
(a) an advocate, attorney or pleader entitled to appear before any High Court; or  
(b) an affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.

In the given case, the English translation of the documents required to be filed with the Registrar under Section 380 shall be authenticated as per the above stated provisions.

**17. ABC Ltd., a foreign company having its Indian principal place of business at Kolkata, West Bengal is required to deliver various documents to Registrar of Companies under the provisions of the Companies Act, 2013. You are required to state, where the said company should deliver such documents.**

**Ans.** Section 380 requires a foreign company to deliver such documents to the Registrar as are specified in that Section.

As per Rule 8 of the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

In the given case, the principal place of the foreign company (viz. ABC Ltd.) is situated at Kolkata, in the State of West Bengal.

As per Rule 8, the documents required to be delivered to the registrar shall be delivered to the Registrar, New Delhi. There is no requirement of delivering the document with the Registrar, West Bengal.

**18. Trans Asia Limited is registered as a public company u/s 4(7) of the erstwhile Companies Act, 1956 which is a subsidiary of Galileo Limited, a foreign company. Trans Asia Limited carries on business in India describing itself as a foreign company. Can it do so? State the actions that can be taken against the company for improper use or description as foreign company under the provisions of the Companies Act, 2013. (CA (Final) Nov. 2018)**

**Ans.**

1. As per Section 2(42), 'foreign company' means any company or body corporate incorporated outside India which –

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

2. It is evident that a company incorporated in India is a 'company' within the meaning of Clause (20) of Section 2 of the Companies Act, 2013. Therefore, a company incorporated in India cannot become a foreign company by the mere fact that it is a subsidiary of a company incorporated outside India or of a foreign company.

3. As per Rule 12, if any person trades or carries on business in any manner under any name or title or description as a foreign company, that person shall, unless duly registered as a foreign company, shall be liable for investigation under Section 210 of the Act and action consequent upon that investigation shall be taken against that person.

4. Trans Asia Limited is not a foreign company, but it has been carrying on business in India describing itself as a foreign company. It amounts to contravention of Rule 12. As per Rule 12 read with Section 210, the Central Government is empowered to order an investigation into the affairs of Trans Asia Limited and on receipt of report of investigation, action may be taken against Trans Asia Limited and other persons guilty of any offence in accordance with the provisions of Section 224.

**19. X Inc. is a company registered in UK and carrying on Trading Activity, with Principal Place of Business in Chennai. Since the company did not obtain registration or make arrangement to file Return, the State VAT Officer having jurisdiction, intends to serve show**

**cause notice on the Foreign Company. As Standing Counsel for the Department, advise the VAT Officer on valid service of Notice. (CA (Final) Nov. 2014)**

**Ans.** The VAT Officer is advised to serve the show cause notice on the foreign company in accordance with the provisions of Section 383 of the Companies Act, 2013, i.e. by addressing it to the person whose name and address had been delivered to the Registrar under Section 380, and sending it to such person by-

- (i) post; or
- (ii) hand delivery; or
- (iii) electronic mode, viz. e-mail.

**20. Blue Berry Ltd. is a company incorporated outside India. 50% of its preference share capital and 20% of its equity share capital are held by companies incorporated in India. It issued prospectus inviting subscriptions in India for its shares but did not state the country in which it is incorporated. Examine in the light of the provisions of the Companies Act, 2013 whether the issue of prospectus by the company is valid. (CA (Final) May 2003, Nov. 1996)**

**Ans.** As per Section 387 of the Companies Act, 2013, the prospectus issued by a company incorporated outside India shall contain the particulars with respect to the following matters:

- (i) The instrument constituting or defining the constitution of the company
- (ii) The enactment under which the company was incorporated
- (iii) Address in India where the said instrument, enactment, or copies thereof, and if the same are not in the English language, a certified translation thereof in the English language can be inspected
- (iv) The date and the country of incorporation
- (v) Whether the company has established a place of business in India and, if so, the address of its principal office in India.

In the given case, Blue Berry Ltd. is a company incorporated outside India, and if has issued a prospectus in India. Therefore, the provisions contained in Section 387 shall become applicable to Blue Berry Ltd. even if it does not have any place of business in India, it does not carry on any business in India and it is not a foreign company as per Section 2(42).

As per Section 387, it is mandatory for a company incorporated outside India to state the name of the country of incorporation in the prospectus issued by it. Since Blue Berry Ltd. has defaulted in including in the prospectus the country of its incorporation, it amounts to contravention of Section 387, and therefore, the issue of prospectus is not valid.

**21. Chang Limited, a company incorporated in Singapore proposes to issue prospectus offering its securities in India. The company has no established place of business in India. The officer in charge of the issue of the prospectus in India seeks your opinion regarding the provisions relating to registration of the prospectus under the Companies Act, 2013. List out the documents required to be enclosed with the prospectus. (CA (Final) May 2018)**

OR

**In case, a foreign company does not deliver its documents to the Registrar of Companies as required under Section 380 of the Companies Act, 2013, state the penalty prescribed under the said Act, which can be levied. (CA (Final) Nov. 2004)**

OR

**ABC Limited, a foreign company failed to deliver some desired documents to the Registrar of Companies as required under Section 380 of the Companies Act, 2013. State the provision of penalty prescribed under the said Act, which can be levied on ABC Limited for its failure. (CA (Final) May 2015)**

OR

**Ronnie Coleman Ltd., a foreign company failed to deliver some documents to the**

**Registrar of Companies as required under Section 380 of the Companies Act, 2013. State the provisions of penalty prescribed under the Act, which can be levied on Ronnie Coleman Ltd. for its failure to deliver the documents. (CA (Final) Nov. 2018)**

**Ans.** As per Section 390, the documents to be enclosed with the prospectus

- (a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;
- (b) the full address of the registered or principal office of the company;
- (c) a list of the directors and secretary of the company containing such particulars as may be prescribed;
- (d) the name and address or the names and address of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
- (e) the full address of the office of the company in India which is deemed to be its principal place of business in India;
- (f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;
- (g) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad

As per Section 392, if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an additional fine which may extend to fifty thousand rupees for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

**22. Draft a Board resolution for appointment of Mr. Paul as the managing director for 5 years with effect from 1st June, 2014 of DBM Limited passed in a Board meeting held on 2nd May, 2014 at its registered office. (ICAI, RTP, May 2015)**

OR

**Mr. Paul was appointed as the managing director for 5 years with effect from 1<sup>st</sup> June, 2011 in a Board meeting of DBAM Limited. Draft a Board resolution for such appointment. (ICAI, RTP, Nov. 2012)**

**Ans.**

- Subject - Appointment of managing director
- Authority - Board of directors
- Nature of the Resolution - Resolution with simple majority

"RESOLVED THAT pursuant to the provisions of Sections 196, 197, 203, Schedule V and all other applicable provisions, if any, of the Companies Act, 2013 and subject to the approval of the members in the general meeting, Mr. Paul, who fulfils the requirements given under Part I of Schedule V of the Companies Act, 2013 be and is hereby appointed as the managing director of the company for a period of 5 years with effect from 1st June, 2014 on such remuneration and such terms and conditions as are contained in the draft agreement entered into between the company and Mr. Paul, a copy of which has been initiated by the Chairman for the purpose of identification and is laid before this meeting.

FURTHER RESOLVED THAT Mr. Paul shall not be liable to retire by rotation.

FURTHER RESOLVED THAT Mr. \_\_\_\_\_ the Company Secretary of the company, be and is hereby authorised to file necessary returns with the Registrar, make necessary entries in the relevant

Registers and take all such steps and actions as may be required to give effect to this resolution."

**23. Morbani Woods Limited decides to appoint Mr. Wahid as its Managing Director for a period of 5 years with effect from 1 May, 2018. M. Wahid fulfils al the conditions as specified in Part I and Part II of Schedule V of the Companies Act, 2013.**

The terms of appointment are as under:

(i) Salary Rs. 1 lakh per month;

(ii) Commission, as may be decided by the Board of directors of the company:

(iii) Perquisites:

Free housing,

Medical reimbursement up to Rs. 10,000 per month,

Leave travel concession for the family,

Club membership fee,

Personal accident insurance Rs. 10 lakh,

Gratuity, and

Provident fund as per company's policy.

You, being the Secretary of the said company, are required to draft a resolution to give effect to give effect to the above, assuming that Mr. Wahid is already the Managing Director in a public limited company. (CA (Final) May 2013)

**Ans.**

Subject - Appointment of a person as managing director who  
Is already managing director in one public company

Authority - Board of directors

Nature of the Resolution - Unanimous resolution

"RESOLVED THAT pursuant to the provisions of Sections 196, 197, 203, Schedule V and all other applicable provisions, if any, of the Companies Act, 2013, and pursuant to the approval of the remuneration committee, and subject to the approval of the members in the general meeting, consent of all the directors present at this meeting be and is hereby accorded to the appointment of M. Wahid, who is already a managing director in M/s \_\_\_\_\_ Limited, and who fulfils the requirements given under Part I and Part II of Schedule V to the Companies Act, 2013, as the managing director of the company for a period of 5 years effective from 1<sup>st</sup> May. 2018 on the following terms and conditions:

(A) Salary: Rs. 1 lakh per month

(B) Commission: As may be decided by the Board of directors of the company

(C) Perquisites:

(i) Free housing

(ii) Medical reimbursement up to Rs. 10,000 per month

(iii) Leave travel concession for the family

(iv) Club membership fee

(v) Personal accident insurance Rs. 10 lakh

(vi) Gratuity

(vii) Provident fund as per company's policy.

FURTHER RESOLVED that in case of loss or inadequacy of profit, Mr. Wahid shall be paid remuneration in accordance with Section II and Section III of Part II of Schedule V.

FURTHER RESOLVED that the duties of Mr. Wahid shall be the overall supervision of the functioning of the company, handling day to day affairs of the company, regularly reporting to Board with respect to the activities of the company and to perform all other duties that the Board may delegate to him from time to time.

**24. A public company proposes to appoint Shri Ram as additional director and Shri Gopal as**

director in the casual vacancy caused by resignation of the office of the director by Shri Mohan. Draft suitable resolutions for the appointment of Shri Ram and Shri Gopal as directors. (CA (Final) Nov. 1999)

OR

Draft a "Board Resolution" for appointment of a person as an additional director in a public company. (CA (Final) Nov. 2012)

OR

Mr. N is appointed as an additional director by the Board of directors of MNR Company Limited at its meeting held on 1st October, 2014 for a period as permitted by the law. Draft a resolution and state the body which appoints N. (CA (Final) Nov. 2014)

Ans.

Subject - Appointment of an additional director  
Authority - Board of directors  
Nature of the Resolution - Resolution with simple majority

"RESOLVED THAT pursuant to the provisions of Section 161(1) and all other applicable provisions, if any, of the Companies Act, 2013 and pursuant to Regulation No.\_\_\_\_ of the articles of association of the Company, Shri Ram, who holds Director Identification No. \_\_\_\_\_ and who has filed his consent with the company as per the provisions of Section 152(5) of the Companies Act, 2013, and who is not disqualified as per the provisions of Section 164 of the Companies Act, 2013, be and is hereby appointed as an additional director of the company.

FURTHER RESOLVED THAT Shri Ram shall hold office of additional director till the next annual general meeting or the last date on which the AGM should have been held, whichever is earlier.

FURTHER RESOLVED THAT Mr..... the Company Secretary of the company, be and is hereby authorised to file all the necessary returns in this regard with the Registrar, make necessary entries in the Register of Directors and to do all acts and things as may be necessary in this connection."

Subject - Filing up of a casual vacancy  
Authority - Board of directors  
Nature of the Resolution - Resolution with simple majority

"RESOLVED THAT pursuant to the provisions of Section 161(4) of the Companies Act, 2013, and subject to the approval of the members in the immediately next general meeting, Shri Gopal who holds Director Identification No. \_\_\_\_\_ and who has filed his consent with the company as per the provisions of Section 152(5) of the Companies Act, 2013, and who is not disqualified as per the provisions of Section 164 of the Companies Act. 2013, be and is hereby appointed as a director of the company to fill up the casual vacancy caused by the resignation of Shri Mohan.

FURTHER RESOLVED THAT Shri Gopal shall hold office only up to the date up to which Shri Mohan would have held office had he not resigned.

FURTHER RESOLVED THAT Mr..... the Company Secretary of the company, be and is hereby authorised to file all the necessary returns in this regard with the Registrar, make necessary entries in the Register of Directors and to do all acts and things as may be necessary in this connection."

FURTHER RESOLVED THAT Mr. \_\_\_\_\_ the Company Secretary of the company, be and is hereby authorised to file necessary returns with the Registrar, make necessary entries in the relevant Registers and take all such steps and actions as may be required to give effect to this resolution."

**25. X Ltd. wants to constitute an Audit Committee. Draft a Board resolution covering the following matters (compliance with Companies Act, 2013 to be ensured):**



- (1) Members of the Audit Committee  
(2) Chairman of the Audit Committee  
(3) Any 2 functions of the said Committee  
(CA (Final) May 2002, May, 2003, May, 2007, Nov. 2008, May, 2016)

OR

Draft a suitable Board resolution to appoint an Audit Committee covering the aspects as provided in the Companies Act, 2013.

**Ans.**

Subject - Constitution of audit committee  
Authority - Board of directors  
Nature of the Resolution - Resolution with simple majority

"RESOLVED THAT pursuant to the provisions of Section 177 and all other applicable provisions, if any, of the Companies Act, 2013, consent of the Company be and is hereby given for the constitution of an audit committee consisting of the following directors:

1. Mr. \_\_\_\_\_ Managing Director
2. Mr. \_\_\_\_\_ Independent Director
3. Mr. \_\_\_\_\_ Independent Director
4. Mr. \_\_\_\_\_ Independent Director
5. Mr. \_\_\_\_\_ Independent Director
6. Mr. \_\_\_\_\_ Non-Executive Director

FURTHER RESOLVED THAT the Chairman of the audit committee shall be elected by the members of the committee from amongst themselves and shall attend the annual general meeting.

FURTHER RESOLVED THAT the quorum for the committee shall be one third of total number of its members or two directors, whichever is higher.

FURTHER RESOLVED THAT the committee shall have the authority to investigate into any matter as prescribed under Section 177 or referred to it by the Board and for this purpose it shall have access to information contained in the records of the company and to seek external professional advice, if necessary.

FURTHER RESOLVED THAT the committee shall perform the following functions:

- (i) The recommendation for appointment, remuneration and terms of appointment of auditors of the company
- (ii) Review and monitor the auditor's independence and performance, and effectiveness of audit process
- (iii) Examination of the financial statement and the auditors' report thereon
- (iv) Approval or any subsequent modification of transactions of the company with related parties
- (v) Scrutiny of inter-corporate loans and investments
- (vi) Valuation of undertakings or assets of the company, wherever it is necessary
- (vii) Evaluation of internal financial controls and risk management systems
- (viii) Monitoring the end use of funds raised through public offers and related matters.

FURTHER RESOLVED THAT the recommendations of the committee on any matter relating to financial management including the audit report shall be binding on the Board, unless the Board records the reasons for not accepting any such recommendation.

FURTHER RESOLVED THAT the committee shall meet at least 4 times in a year.

FURTHER RESOLVED THAT the Company Secretary be and is hereby authorised to act as the coordinator and facilitator for the smooth functioning of the audit committee."

**26. Mr. Weldon was appointed as a director of Esquire Engineering Ltd. with effect from 1st April, 2017. Since the company, namely, Esquire Engineering Ltd. wanted to take full advantage of the wisdom and expertise of Mr. Weldon, it offered him remuneration**

payable on monthly basis. Esquire Engineering Ltd. started paying such remuneration from the date of appointment and continued to do so till 31st March, 2018.

On scrutiny of the accounts, It was established that the company, till 31st March, 2018, has paid to Mr. Weldon a total sum of Rs. 1.20 lakhs in excess of the remuneration permissible under Section 197, You are required to draft a resolution for waiver of recovery of the excess remuneration so paid by the company. (CA (Final) Nov. 2004, Nov. 2007, Nov. 2009 (Modified))

**Ans.**

Subject - Waiver of recovery of excess remuneration  
Authority - General Meeting  
Nature of the Resolution - Special Resolution

"RESOLVED THAT pursuant to the provisions of Section 197 and other applicable provisions, if any, consent of the company be and is hereby given for waiving the recovery of an amount of Rs. 1,20,000 paid to Mr. Weldon, the director of the company, during the period 1st April, 2017 to 31st March, 2018, being in excess of the remuneration permissible under Section 197. FURTHER RESOLVED THAT the Company Secretary be and is hereby authorised to take the necessary steps in this regard.

**27. Draft a Board resolution to give effect to the following decision taken by the Board of directors of M/s. Handerson Gem and Company Limited:**

**The Board is dissatisfied with the performance of Mr. IndraSen, managing director and has decided to terminate his contract of service from 1.6.2014 and to pay compensation for loss of office. He has been appointed as managing director for a period of three years with effect from 1.1.2013. (CA (Final) May 1999)**

**Ans.**

Subject - Termination of services of a managing director and payment of Compensation to him

Authority - Board of directors  
Nature of the Resolution - Resolution with simple majority

WHEREAS Mr. IndraSen was employed for period of 3 years as the managing director of the company from 1.1.2013, AND WHEREAS the company wanted to dispense with the services of Mr. IndraSen with effect from 1.6.2014, AND WHEREAS the company has duly served the notice of termination to Mr. IndraSen in terms of clause \_\_\_\_ of the agreement between the company and him;

NOW THEREFORE IT IS HEREBY RESOLVED THAT an amount of Rs. \_\_\_\_ be paid to Mr. IndraSen as compensation for the loss of his office as the managing director of the company."

**28. Draft a resolution for declaration of interim dividend.**

**Ans.**

Subject - Declaration of interim dividend  
Authority - Board of directors  
Nature of the Resolution - Resolution with simple majority

"RESOLVED THAT pursuant to the provisions of Section 123 and all other applicable provisions, if any, of the Companies Act, 2013 and pursuant to Regulation No. \_\_\_\_ of Articles of Association of the Company, an interim dividend of \_\_\_\_ % on equity shares of the company be and is hereby declared for the Financial Year 2017-2018, out of the profits of the Company for the Financial Year 2017-2018 and surplus in the Profit and Loss Account.

FURTHER RESOLVED THAT the interim dividend shall be paid to those shareholders whose names appear on the Register of members of the Company as on \_\_\_\_\_

FURTHER RESOLVED THAT the amount of interim dividend shall be deposited in a Separate Bank Account to be opened with \_\_\_\_\_ (Name of the Bank) within 5 days of declaration of interim dividend.

FURTHER RESOLVED THAT Mr. \_\_\_\_\_ the director of the company, be and is hereby authorised to sign the dividend warrants and \_\_\_\_\_ (Name of the Bank) be advised to honour all the dividend warrants/cheques bearing the signature of Mr. \_\_\_\_\_ by debiting the said Separate Bank Account.

FURTHER RESOLVED THAT the dividend warrants shall be posted to all the shareholders of the Company within 30 days of declaration of interim dividend.

FURTHER RESOLVED THAT the interim dividend so declared shall be ratified by the shareholders of the company in the forthcoming Annual General Meeting of the Company.

FURTHER RESOLVED THAT Mr. \_\_\_\_\_ the director of the company, be and is hereby authorised to take all such steps and actions as may be required to give effect to this resolution."

**29. Draft a resolution for declaration of final dividend.**

**Ans.**

Subject - Declaration of final dividend  
Authority - General Meeting  
Nature of the Resolution - Ordinary Resolution

"RESOLVED THAT pursuant to the provisions of Section 123 and all other applicable provisions, if any, of the Companies Act, 2013 and pursuant to recommendation of dividend of \_\_\_ % by the Board of directors of the Company, a final dividend of \_\_\_ % on equity shares of the company be and is hereby declared for the Financial Year 2016-2017, out of the profits of the Company.

FURTHER RESOLVED THAT the dividend shall be paid to those shareholders whose names appear on the Register of members of the Company as on \_\_\_\_\_

FURTHER RESOLVED THAT the amount of interim dividend shall be deposited in a Separate Bank Account to be opened with \_\_\_\_\_ (Name of the Bank) within 5 days of declaration of interim dividend.

FURTHER RESOLVED THAT M. \_\_\_\_\_ the director of the company, be and is hereby authorised to sign the dividend warrants and \_\_\_\_\_ (Name of the Bank) be advised to honour all the dividend warrants/cheques bearing the signature of Mr. \_\_\_\_\_ by debiting the said Separate Bank Account.

FURTHER RESOLVED THAT the dividend warrants shall be posted to all the shareholders of the Company within 30 days of declaration of dividend.

FURTHER RESOLVED THAT Mr. \_\_\_\_\_ the director of the company, be and is hereby authorised to take all such steps and actions as may be required to give effect to this resolution."

**30. Mr. White is working as Chief Accountant in M/s. White Metal Limited. The Board of directors of the said company propose to charge him with the duty of ensuring compliance with the provisions of the Companies Act, 2013 so that books of account can be properly maintained and Balance Sheet and Profit and Loss Account can be prepared as per the provisions of law.**

**Draft a "Board Resolution" for the said purpose. (CA (Final) Nov. 2003, June 2009, May 2010, Nov. 2011)**

OR

**Mr. Shukla is working as General Manager (Finance and Accounts) in Target Limited. The Board of directors of the said company propose to entrust him with the duty of ensuring compliance with the provisions of the Companies Act, 2013 so that the books of accounts, balance sheet, statement of profit and loss and the cash flow statements can be prepared and maintained in accordance with law. Draft a Board Resolution for the said**

**purpose. (CA (Final) Nov. 2017)****Ans.**

Subject - Charging a person with the duty of compliance with the provisions of Sections 128 and 129 of the Companies Act

Authority - Board of directors

Nature of Resolution- Resolution with simple majority

"RESOLVED THAT subject to the provisions of Sections 128, 129 and all other applicable provisions, if any, of the Companies Act, 2013, Mr. White, the chief accountant of the company be and is hereby charged with the duty of ensuring compliance with proper maintenance of books of account and preparation of financial statement.

RESOLVED FURTHER that the duties of Mr. White shall be supervision of functioning of the Finance and Accounts Department of the company, handling day to day affairs of the Department, regularly reporting to Board on the activities of the Department and to perform all other duties that the Board may delegate to him from time to time."

**31. Draft a resolution for removal of a Company Secretary.****Ans.**

Subject - Removal of a Company Secretary

Authority - Board of directors

Nature of the Resolution - Resolution with simple majority

"RESOLVED THAT Mr. C, the Company Secretary of the company having been convicted of an offence involving moral turpitude be and is hereby removed from the office of Company Secretary of the company.

FURTHER RESOLVED THAT Mr. E, the managing director of the company be and is hereby directed to inform Mr. C accordingly and to take custody of the records in the possession of Mr. C.

FURTHER RESOLVED THAT Mr. E, the managing director of the company be and is hereby authorised to file the necessary returns with the Registrar of Companies, make necessary entries in the Register of Directors and Key Managerial Personnel and to do all acts and things as may be necessary in this connection."

Adam, a 15% shareholder of a company and other shareholders have lost confidence in the Managing Director (MD) of the company. He is a director not liable to retire by rotation and was reappointed as Managing Director for 5 years w.e.f. 1.4.2012 in the last Annual General Meeting of the company.

**32. Draft a suitable resolution to be passed for removal of MD. (CA (Final) Nov. 2006)****Ans.**

Subject - Removal of a managing director

Passing Authority - General Meeting

Nature of the Resolution - Ordinary resolution

RESOLVED THAT pursuant to the provisions of Section 169 and all other applicable provisions, if any, of the Companies Act, 2013. Mr....., the managing director of the company be and is hereby removed.

FURTHER RESOLVED THAT, Subject to the provisions of Section 202 of the Companies Act, 2013 and other applicable provisions, if any, Mr. ....shall be paid a compensation of Rs.....in accordance with Clause..... of the agreement dated ..... entered into between the company and Mr. ....

FURTHER RESOLVED THAT Mr..... the Company Secretary of the company, be and is hereby authorised to file all the necessary returns in this regard with the Registrar, make necessary entries in the Register of Directors and to do all acts and things as may be necessary in this connection."

**33. The Board of directors of XYZ Limited decided to pass a resolution to purchase 35,000 equity shares of Rs. 100 each of PQR Limited at a meeting. Draft a specimen Board resolution to be passed at the said meeting. (ICAI, Mock Test Paper, August 2018)**

**Ans.**

- Subject - Making investment in the equity shares of any other company
- Authority - Board of directors
- Nature of the Resolution - Unanimous resolution

RESOLVED THAT pursuant to the provisions of Sections 179, 186 and all other applicable provisions, if any, of the Companies Act, 2013, consent of all the directors present at this meeting be and is hereby accorded to invest a sum of Rs. 100 crore by acquiring 10 crore equity shares of XYZ Limited at Rs. 10 each, being such investment together with the loans and guarantees already made and securities already provided and investments already made does not exceed the limit specified under Section 186(2).

RESOLVED FURTHER that Mr. \_\_\_\_\_ the director of the company, be and is hereby authorised to prepare, sign and execute the necessary documents, make necessary entries in the Register of investments and take all such steps and actions as may be required to give effect to this resolution."

**34. The members of XYZ Limited decided to pass a resolution for appointing Mr. Smith as an independent director of the company. Draft a specimen resolution to be passed at the said meeting. (ICAI, RTP, Nov. 2016)**

**Ans.**

- Subject - Appointment of an independent director
- Authority - General Meeting
- Nature of the Resolution - Ordinary Resolution

"RESOLVED THAT pursuant to the provisions of Sections 149, 150, 152 and all other applicable provisions, if any, of the Companies Act 2013 read with Schedule IV to the Companies Act, 2013, Mr. Smith, who holds Director Identification No. .... and who was appointed as an Additional Director of the Company with effect from..... under Section 161(1) of the Companies Act, 2013, and who holds office up to this annual general meeting, and whose appointment as an Independent Director has been recommended by the Nomination and Remuneration Committee, and who has submitted a declaration with the company that he meets the criteria of independence as required under Section 149(6) of the Companies Act, 2013, be and is hereby appointed as an Independent Director of the Company."

FURTHER RESOLVED THAT Mr. Smith shall be a director not liable to retire by rotation.

FURTHER RESOLVED THAT Mr. Smith shall hold the office of independent director for a period of 5 years starting from ..... and ending on .....

FURTHER RESOLVED THAT Mr..... the Company Secretary of the company, be and is hereby authorised to file all the necessary returns in this regard with the Registrar, make necessary entries in the Register of Directors and to do all acts and things as may be necessary in this connection."

**35. Draft a resolution proposed to be passed at a general meeting of M/s. Red Rooster Limited, a public company, giving consent to the Board of directors for borrowing up to a specified amount in excess of the limits laid down under Section 180(1)(c) of the Companies Act, 2013. (ICAI, RTP, Nov. 2018)**

**Ans.**

- Subject - Resolution authorising the Board of directors to borrow money exceeding the limit specified u/s 180(1)(c)
- Authority - General Meeting

Nature of the Resolution - Special Resolution

"RESOLVED THAT pursuant to the provisions of Section 180(1)(c) and all other applicable provisions, if any, of the Companies Act 2013, the consent of the company be and is hereby given to the Board to borrow money exceeding the aggregate of paid up share capital, free reserves and securities premium account, subject to the condition that the moneys already borrowed together with moneys proposed to be borrowed (apart from temporary loans obtained from the company's bankers in the ordinary course of business) shall not exceed Rs. ....

FURTHER RESOLVED THAT the power to borrow money shall not be exercised by the Board by passing a resolution by circulation.

FURTHER RESOLVED THAT Mr. ...., the Company Secretary of the company, be and is hereby authorised to file a copy of the special resolution with the Registrar and to do all acts and things as may be necessary in this connection."

**36. The Board of directors of RPS Limited decides to pass a resolution by circulation for allotment of 1,000 equity shares to Mr. A. Draft a specimen Board resolution to be passed by circulation for this purpose. [CA (Final) May 2015]**

Ans.

**PJC Ltd.**  
**Regd. Office: B-11, Third Floor, Samvit Vihar, Delhi - 110092.**

To  
Mr. .... (Director)  
Resident of .....

Sir,

Please find enclosed the following resolution which is proposed to be passed by circulation pursuant to the provisions of Section 175 of the Companies Act, 2013 read with Regulation No. \_\_\_\_\_ of the Articles of Association of the company:

"RESOLVED THAT pursuant to the provisions of Section 42 and all other applicable provisions, if any, of the Companies Act, 2013, and pursuant to the consent of the members obtained by passing a special resolution at an extraordinary general meeting held on \_\_\_\_\_, and pursuant to Regulation No. \_\_\_\_\_ of the Articles of Association of the Company, 1,000 equity shares of the company of Rs. 100 each be and are hereby allotted at par value to Mr. A, Resident of B-1, Nehru Vihar, Delhi from whom a sum of Rs. 1,00,000 has been received vide Cheque No. \_\_\_\_\_ dated \_\_\_\_\_ drawn on \_\_\_\_\_ (Bank).

RESOLVED FURTHER THAT Mr. \_\_\_\_\_ the Company Secretary of the Company and Mr. \_\_\_\_\_ the Managing director, be and are hereby authorised to file a return of allotment with the Registrar in accordance with the provisions of Section 39 of the Companies Act, 2013, make necessary entries in the Register of Members in accordance with the provisions of Section 88 of the Companies Act, 2013, and to take all other steps and actions as may be required to give effect to the said resolution."

You are requested to send your assent or dissent to the aforesaid resolution, within 7 days of receipt of this letter, by sending the duly filled and signed 'Response / Reply Letter attached herein below as a perforated slip.

However, if you are interested in the aforesaid resolution, you are not required to vote on this resolution.

Yours sincerely,  
Sd/-

(Company Secretary)

RESPONSE / REPLY LETTER

I hereby convey my assent / dissent (Strike off whichever is not applicable) to the aforesaid resolution.

Name of the Director: .....

Signature:.....

1. The minutes should not be drafted in tabular or chart form. The minutes should be drafted in the form of paragraphs and points. Appropriate headings should be used.
2. The minutes should state the name of the company and the time, date, day and place of the meeting.
3. The minutes should state the number of directors present, whether the quorum was present, the person who chaired the meeting or the person who was elected as chairperson and the names of the directors present in the meeting.
4. In case persons other than directors were present in the meeting (e.g. the auditor, the internal auditor, the Company Secretary, any special invitee), the minutes should state the same.
5. In case the meeting is held by video conferencing, the minutes should state the same, and also state the names and locations of the directors who attended the meeting by video conferencing.
6. The minutes should state that the statutory registers which are required to be placed in the Board meeting were placed at the Board meeting. The minutes should also contain the names of the directors who signed such registers.
7. If leave of absence was granted to any director, the minutes should state the same.
8. With respect to every resolution put before the directors at the meeting, the minutes should contain the subject of the resolution proposed, its complete contents, the number of directors who voted in favour, the number of directors who voted against and the number of directors who abstained from voting, and also the names of the directors who either voted against or abstained from voting.
9. If any director was interested in a resolution, the minutes should state such a fact along with the name of the interested director and nature of his interest, and the fact that the interested director did not participate in the meeting on such resolution.
10. All the appointments made at the meeting should be included in the minutes.
11. If any resolution was passed by circulation after the previous Board meeting was held, such resolution should be made part of the minutes of the Board meeting.
12. The minutes should contain the signatures of the person authorised to sign them (i.e. the chairman of the same meeting or the chairman of the next meeting) and the date of signing of the minutes.

**37. Board of directors of DBM Limited held a Board meeting on 2nd May, 2014 at its registered office. You are required to state the salient points to be taken into account while drafting the minutes of the said Board meeting. (CA (Final) May 2008, May 2005)**

**OR**

**Explain briefly the salient points to be taken into account while drafting the minutes of the meetings of Board of directors. (CA (Final) May 2001)**

**OR**

**Draft the minutes of 17<sup>th</sup> Board meeting of Jai Entertainment Limited held at its registered office situated at B-17, Industrial Area, Suncity containing the matter regarding appointment of Mr. Kaabil as the managing director in addition to the usual items. (CA (Final) May 2017)**

Ans.

**Jai Entertainment Limited**  
**Minutes of the 17<sup>th</sup> Board Meeting**  
**held at the Registered Office of the company at B-17, Industrial Area, Suncity**  
**on Friday, the 16<sup>th</sup> February, 2018 at 11 A.M.**

**Directors Present:**

1. Mr.....(Director)
2. Mr..... (Director)
3. Mr..... (Director)
4. Mr. .... (Director)
5. Mr..... (Director)

**In attendance:**

Mr..... (Company Secretary)

**1. Chairman of the Meeting**

Mr..... was elected as the Chairman of the Board Meeting. Mr. .... welcomed all the directors present in the meeting.

**2. Grant of leave of absence**

Mr. .... and Mr. .... who had expressed their inability to attend the Board meeting were granted leave of absence

**3. Presence of Quorum**

After ascertaining that the requisite quorum was present, the Chairman declared that the proceedings of the meeting could commence.

**4. Notice and agenda taken as read**

With the consent of all the directors present in the meeting, the notice and agenda of the Board Meeting were taken as read.

**5. Confirmation of Minutes of previous Board Meeting**

Minutes of the previous Board Meeting held on ..... duly initiated by the Chairman, were placed before all the directors for their consideration and approval. All the directors confirmed the correctness of the minutes.

**6. Appointment of Mr. Kaabil as the Managing Director**

The Chairman proposed the appointment of Mr. Kaabil as the managing director of the company. After discussions, the following resolution was passed:

"RESOLVED THAT pursuant to the provisions of Sections 196, 197, 203, Schedule V and all other applicable provisions, if any, of the Companies Act, 2013 and subject to the approval of the members in the general meeting, Mr. Kaabil, who fulfils the requirements given under Part I of Schedule V of the Companies Act, 2013 be and is hereby appointed as the managing director of the company for a period of 5 years with effect from \_\_\_/\_\_\_/\_\_\_ on such remuneration and such terms and conditions as are contained in the draft agreement entered into between the company and Mr. Kaabil, a copy of which has been initialled by the Chairman for the purpose of identification and is laid before this meeting.

RESOLVED FURTHER THAT Mr..... the Company Secretary of the company, be and is hereby authorised to file necessary returns with the Registrar, make necessary entries in the relevant Registers and take all such steps and actions as may be required to give effect to this resolution".

**7. Time, place and day of the next Board meeting**

It was decided to hold the next Board meeting of the company on.....at ..... at the registered office of the Company.

**8. Vote of Thanks**

As there was no other business to be transacted, the meeting concluded with a vote of thanks



to the Chair.

Sd/

Dated:.....

(Chairman)

**38. Draft a notice for the first meeting of the Board of directors of India Timber Ltd. (CA (Final) Nov. 2015)**

Ans.

India PJC Ltd.

Regd. Office: B-11, Third Floor, Samvit Vihar, Delhi - 110092.

**Notice of First Board Meeting**

To

Mr. \_\_\_\_\_ (Name of the Director)

\_\_\_\_\_ (Address of the Director)

Dear Sir,

Notice is hereby given that the First Meeting of the Board of Directors of the Company will be held on Tuesday, 24<sup>th</sup> November, 2015 at 10:30 AM at the registered office of the company, at B-11, Third Floor, Samvit Vihar, Delhi - 110092 to transact the following business:

1. To appoint the Chairman of the Board Meeting.
2. To grant leave of absence to Mr. \_\_\_\_\_ who has expressed his inability to attend the Board Meeting vide a letter dated \_\_\_\_\_
3. To adopt the Common Seal of the Company.
4. To appoint the First Auditors of the Company.
5. To decide the opening of the Bank Account and the manner of its operation.
6. To decide the procedure for maintenance of minutes of the meetings of the Board and General Meetings.
7. To adopt the pre-incorporation contracts placed before the Company and reimburse the pre-incorporation expenses incurred by the promoters.
8. To authorise the Company Secretary to file the necessary forms and documents with the appropriate authorities.
9. To authorise the Company Secretary to maintain the Statutory Registers and Records.
10. To elect the Chairman of the Board.
11. To fix the date and time of the next Board Meeting.
12. To consider any other matter with the permission of the Chair.

You are requested to make it convenient to attend the meeting. You have the option to attend the Board meeting either in person or by video conferencing. You are requested to inform the option exercised by you. In case no reply is received from you, it shall be presumed that you will attend the Board meeting in person.

For India PJC Ltd.

Sd/MB

(Company Secretary)

Place: New Delhi

Dated: 10<sup>th</sup> November, 2019

**39. Big Ben Ltd, a reputed public company, had advanced certain sum of money to one of its directors, namely Mr. Tanmay on certain terms and conditions and fixing the time limit for repayment thereof. Now, Mr. Tanmay 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. Draft an appropriate notice for the meeting where such extension may be granted. (CA (Final) June 2009, May 2012)**

Ans.

**Big Ben Ltd.**

**Regd. Office: Big Ben Tower, 15 Community Centre, Sanjay Nagar, 560094**

Notice is hereby given that an Extraordinary General Meeting (EGM) of the members of Big Ben Limited will be held on Friday, 5<sup>th</sup> June, 2014 at 10.30 A.M. at the Registered Office of the Company at Big Ben Tower, 15 Community Centre, Sanjay Nagar, Bangalore -560094 to transact the following business:

**Special Business:**

1. Giving extension of time for repayment of loan by the director, Mr. Tanmay to consider and, if thought fit, to pass, with or without modification(s), the following resolution as a Special

**Resolution:**

"RESOLVED THAT pursuant to the provisions of Section 180(1)(d) and all other applicable provisions, if any, of the Companies Act, 2013, the Board of Directors of the Company be and is hereby authorised to allow an extension of 6 months for repayment of loan of Rs. 12 lakh, otherwise due to be fully repaid by \_\_\_\_\_ out of the total amount of loan of Rs. \_\_\_\_\_ granted on \_\_\_\_\_ by the Company to Mr. Tanmay, a director of the Company.

RESOLVED FURTHER THAT Mr. .... the Company Secretary of the company, be and is hereby authorised to file a copy of the special resolution and other necessary returns with the Registrar, and take all such steps and actions as maybe required to give effect to this resolution."

By Order of the Board of Directors

Place: Bangalore  
Dated May 10, 2019

For Big Ben Limited,  
Sd/XYZ

(Secretary)

**Notes:**

**1. A member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote, on a poll, instead of himself and the proxy so appointed need not be a member of the company.**

**2. Proxies in order to be effective must be sent so as to reach the registered office of the company latest by 10.30 A.M. on 3<sup>rd</sup> June, 2014 duly completed, stamped and signed, otherwise the proxy form will be rejected. A blank proxy form is enclosed.**

3. Explanatory Statement pursuant to Section 102 of the Companies Act, 2013, in respect of the business under Item 1 as set out above is annexed hereto.

**Annexure to the Notice of Extraordinary General Meeting**

**Explanatory statement pursuant to Section 102 of the Companies Act, 2013**

**Item No. 1**

A Loan of Rs. \_\_\_\_\_ Lakhs was granted by the company to Director, Mr. Tanmay on \_\_\_\_\_ for the purpose of \_\_\_\_\_. Out of Loan of Rs. \_\_\_\_\_ Lakhs, Mr. Tanmay has already paid Rs. \_\_\_\_\_, and balance amount of Loan of Rs. 12 lakhs is due to be paid on \_\_\_\_\_. Mr. Tanmay has expressed his inability to repay the balance amount of loan of Rs. 12 lakhs on the said due date, and has requested the company to grant extension of time of 6 months for repayment of Rs. 12 Lakhs.

As per Section 180(1) (d) of the Companies Act. 2013, extension of time for repayment of a debt payable by a director requires approval of the Members by means of a special resolution passed in the general meeting.

The Board of Directors accordingly recommends passing of the aforesaid Resolution.

No director or manager or Key Managerial Personnel or any of their relatives, except Mr. Tanmay, is concerned or interested in the said resolution.

By Order of the Board of Directors,  
For Big Ben Limited  
Sd/ABC

Place: Bangalore

Dated: May 10, 2010

(Secretary)

**40. PNT Ltd. is a company, which is listed with Mumbai Stock Exchange. Its 16<sup>th</sup> annual general meeting was held at Mumbai on 30<sup>th</sup> September 2014 in respect of financial year ended 31<sup>st</sup> March, 2014, whereat all the usual business required to be conducted by a company under the provisions of the Companies Act, 2013 were carried out. Following further information is also available**

**(i) The company has total 8 directors (including the Chairman) out of which 2 directors are not liable to retire by rotation.**

**(ii) The company has its registered office at Mumbai and a branch at Kolkata.**

**(iii) From the audited annual accounts for year ended 31<sup>st</sup> March, 2014, it is observed that directors have proposed a dividend of 20% on equity share capital.**

**(iv) 75% of the shares of the company are held in dematerialised form and balance in physical form.**

**(v) The accounts of Kolkata branch of the company are audited by a firm of Chartered Accountants, who are not the statutory auditors of the company.**

**Based on the above, you are required to draft the minutes of the proceedings of the annual general meeting of PNT Ltd. (CA (Final) Nov. 2005 (Modified))**

**Ans.**

**PNT Ltd.  
Minutes of the 16<sup>th</sup> Annual General Meeting  
held at the Registered Office of the company at..... Mumbai  
on Friday, the 30<sup>th</sup> of September, 2014 at 11 A.M.**

Present (as per signatures obtained on attendance slips):

1. Mr..... (Chairman)
2. Mr..... (Director and Member)
3. Mr..... (Director and Member)
4. Mr..... (Director and Member)
5. Mr..... (Director and Member)
6. Mr..... (Company Secretary and Member)
7. Mr..... (Auditor)
8. Mr..... (Representative of ..... Ltd. under Section 113)

AND

34 other members in person and 10 members represented by proxies.

**Preliminaries**

1. Mr. .... chaired the annual general meeting. The Chairman extended a very warm welcome to the members and introduced his colleagues on the Board to the members. Thereafter, the Chairman's speech was read.

With the permission of the members, the notice convening the annual general meeting and the Board's Report, having been circulated to the members, were taken as read.

2. After ascertaining that the requisite quorum for the meeting was present, the Chairman informed that the formal proceedings of the meeting could commence.

3. The Auditor's report was read by the Company Secretary.

4. The Chairman informed the meeting that the Register of Members and Register of Directors and key managerial personnel and their shareholding were kept open and accessible during the continuance of the annual general meeting.

The Chairman proposed the following resolutions for consideration and approval of members:

**1. Adoption of financial statements and other documents**

Following resolution was proposed as an ordinary resolution:

"RESOLVED THAT the Profit and Loss Account for the year ended 31st March, 2014, the Balance Sheet as on that date, the Board's Report and Auditor s Report, as laid before the members at this meeting be and are hereby considered and adopted."

The Chairman invited the members to ask queries relating to the Profit and Loss Account, Balance Sheet, Board's Report and the Auditor's Report.

Several questions were asked and suitably replied by the Chairman and Chairman of the Audit Committee. The motion was then put to vote, and on voting by show of hands, the resolution was passed unanimously.

**2. Declaration of dividend**

Following resolution was proposed as an ordinary resolution:

RESOLVED THAT. Pursuant to the provisions of Section 123 and all other applicable provisions, if any, of the Companies Act 2013, and pursuant to the recommendations made by the Board of directors of the company, a dividend @ 20% one equity shares be and is hereby declared. FURTHER RESOLVED THAT, pursuant to the provisions of Section 127 of the Companies Act, 2013, Director, Mr..... be and is hereby authorised to post the dividend warrants within 30 days to all the members."

The motion was then put to vote and on voting by show of hands, it was passed unanimously.

**3. Retirement of Director, Mr. ...., and his reappointment**

Following resolution was proposed as an ordinary resolution:

RESOLVED THAT pursuant to the provisions of Section 152 and all other applicable provisions. If any, of the Companies Act, 2013, Mr....., who retires by rotation and being eligible for reappointment, be and is hereby reappointed as a director of the company.

The motion was then put to vote and on voting by show of hands, it was passed unanimously.

**4. Retirement of Director, Mr. .... and his reappointment**

Following resolution was proposed as an ordinary resolution:

"RESOLVED THAT pursuant to the provisions of Section 152 and all other applicable provisions. if any, of the Companies Act, 2013, Mr. .... who retires by rotation and being eligible for reappointment, be and is hereby reappointed as a director of the company."

The motion was then put to vote and on voting by show of hands, it was passed unanimously.

**5. Appointment of auditors**

Following resolution was proposed as an ordinary resolution:

"RESOLVED THAT pursuant to the provisions of Section 139 and all other applicable provisions, if any, of the Companies Act, 2013, M/s .....Chartered Accountants, the retiring auditors of the company. be and are hereby reappointed as Auditors of the company for the period commencing from the conclusion of this annual general meeting till the conclusion of the twenty first annual general meeting of the company at a remuneration of Rs..... plus actual out of pocket expenses incurred by them in connection with the company's audit.

FURTHER RESOLVED THAT pursuant to the provisions of Section 139. 143(8) and all other applicable provisions, if any, of the Companies Act, 2013, M/s..... Chartered Accountants, be and are hereby reappointed as Auditors of the Kolkata Branch for the period commencing from the conclusion of this annual general meeting till the conclusion of the twenty first annual general meeting of the company at a remuneration of Rs..... ..plus actual out of pocket expenses incurred by them in connection with the audit of Kolkata Branch."

The motion was then put to vote and on voting by show of hands, it was passed unanimously.

**Vote of Thanks**

As there was no other business to be transacted, the meeting concluded with a vote of thanks to the Chair.

Sd/

Dated:.....

(Chairman)

**41. A majority of the Board of directors of M/s High Value Infotech Ltd. have realised that some of the business activities carried out in the name of the company are not in the interest of either the company or its members. They want that the company should make an application to the Central Government to appoint an inspector to carry out an investigation so as to find out the whole truth. Draft the application to be made to the Central Government. (CA (Final) Nov. 2001)**

OR

**A majority of the Board of directors of M/s Bulk Drugs Ltd. have reasons to believe that some of the business activities carried on in the name of the company are prima facie against the interests of the company and its members. They want the matter to be referred to Central Government in the form of an application for appointment of an inspector to reach to the bottom of the matter and unveil the truth. In this connection you are required to draft an application to be made to the Central Government. (CA (Final) May 2007, May 2005)**

**Ans:**

**High Value Infotech Ltd.  
Regd. Office: S-80, AdvaitVihar, Delhi - 110083.**

Dated: 16<sup>th</sup>August, 2019

To.  
The Secretary,  
Ministry of Corporate Affairs,  
New Delhi.  
Sir,

**Subject: Application seeking an order of investigation under Section 210 of the Companies Act, 2013**

As per the provisions of Section 210 of the Companies Act, 2013, the Central Government is empowered to order an investigation into the affairs of the company, if a special resolution is passed in the General Meeting of the company and an intimation of passing such special resolution is given to the Central Government.

In the Annual General Meeting held on 12<sup>th</sup>August, 2019 at the registered office of the company, the following special resolution was passed requiring an investigation into the affairs of the company:

RESOLVED THAT pursuant to the provisions of Section 210 and all other applicable provisions, if any, of the Companies Act, 2013, the consent of the company be and is hereby accorded to the conduct of an investigation into the affairs of the Company by the Central Government.

RESOLVED FURTHER THAT Mr. ABC the Company Secretary of the company, be and is hereby authorised to make an application to the Central Government seeking an order of investigation into the affairs of the company, to submit all such documents and furnish all such

information to the Central Government as may be required by that Government so as to satisfy the Central Government that an investigation into the affairs of the company is required, and to take all such steps and actions as may be required to give effect to this resolution."

Therefore, the Central Government be pleased to make an order of investigation into the affairs of the company.

Yours sincerely

Sd/

Mr. ABC

(Company Secretary)

**42. Case (a) M/s. Take It Easy Holding Ltd. has filed the annual accounts for the year ended 31.3.2016 with the registrar of companies, Calcutta. The registrar, after examination of the accounts issued a show cause notice to the company and its directors why prosecution proceedings should not be launched for not disclosing true and fair view of the state of affairs of the company. After careful examination you find that the registrar is justified in issuing the show cause notice. Advise as to how the company and its directors can save themselves from the prosecution proceedings under the provisions of the Companies Act, 2013. (CA (Final) May 1999)**

**Case (b). M/s X Ltd. and its two directors have received a show cause notice from the Registrar of Companies, Mumbai as to why prosecution proceedings should not be launched against them for violation of the provisions of Section 188 of the Companies Act, 2013 in respect of a contract entered into by the company with a firm in which one of the directors of the company is interested as a partner. The company seeks your help. Advise the company the steps that should be taken to avoid prosecution proceedings, assuming that they have committed the offence. (CA (Final) Nov. 2008)**

**Case (c). The Directors of a public company received a show cause notice from the Registrar of Companies for violation of Section 185 of the Companies Act, 2013. State whether the said offence is compoundable under the said Act. Is it possible for a person to apply for compounding of offence even after prosecution has been launched? Whether penalty paid in respect of compounding of an offence will be treated as a disqualification under Part I of Schedule V to the Companies Act, 2013 for the appointment of such person as a Managing Director of a public company? (CA (Final) Nov. 2012)**

**Ans.** Section 441 of the Companies Act. 2013.

**Case (a).**

The offence relates to non-disclosure of true and fair view of the state of affairs as required under Section 129 of the Act.

In case of non-compliance of any of the provisions of Section 129, all such persons as are responsible for ensuring compliance with the provisions of Section 129 shall be liable to –

- (i) imprisonment up to 1 year; or
- (ii) fine: Minimum Rs. 50,000; Maximum Rs. 5,00,000; or
- (iii) both.

Since the offence is punishable with imprisonment or fine or both, it may be compounded. Since the maximum fine for the offence does not exceed Rs. 25 lakh, the compounding authority shall be the Regional Director or any officer authorised by the Central Government. While compounding the offence, the Regional Director or the officer authorised by the Central Government shall have the power to give directions to the company to make good the default. The application for compounding shall be made to the Registrar who shall

forward the same to the Regional Director or the officer authorized by the Central Government, as the case may be. The Registrar has a right to make his comments while forwarding the application.

**Case (b).**

In the given case the offence relates to contravention of the provisions of Section 188. For contravention of Section 188, the director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this Section, shall be punishable as follows:

(a) In case of a listed company, he shall be punishable with imprisonment up to 1 year or fine which shall not be less than Rs. 25,000 but which may extend to Rs. 5 lakh, or with both.

(b) In case of any other company, he shall be punishable with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 5 lakh.

Irrespective of the fact as to whether the company is a listed company or an unlisted company, the offence may be compounded.

Thus, to avoid prosecution, the company or any of the directors or employees, who had committed the contravention of Section 188, may make an application for compounding the offence, in accordance with the provisions of Section 441. The application for compounding shall be made to the Registrar, who shall forward the same to the compounding authority (viz. the Regional Director or the officer authorised by the Central Government, as the case may be, since the maximum fine for the offence does not exceed Rs. 25 lakh in case of listed as well as other companies). The Registrar has a right to make his Comments while forwarding the application. It is the discretion of the Regional Director or the officer authorised by the Central Government to compound the offence. While compounding the offence, the Regional Director or the officer authorised by the Central Government shall have the power to give directions to the company to make good the default. Where an offence is compounded, no prosecution shall be launched in relation to that offence.

**Case (c).**

In the given case, the offence relates to contravention of Section 185. The punishment for contravention of Section 185 is as under:

(a) The company shall be punishable with fine which shall not be less than Rs. 5 lakh but which may extend to Rs. 25 lakh.

(b) The specified person (to whom the loan has been given, or for whom the guarantee has been given or security has been provided, in contravention of Section 185) shall be punishable with imprisonment up to 6 months or with fine which shall not be less than Rs. 5 lakh but which may extend to Rs. 25 lakh, or with both.

The company or the specified person may make an application for compounding the offence, and the offence may be compounded. The application for compounding shall be made to the Registrar, who shall forward the same to the compounding authority (viz. the Regional Director or the officer authorised by the Central Government, as the case may be, since the maximum fine for the offence does not exceed Rs. 25 lakh.

The application for compounding may be made either before or after the institution of any prosecution. Thus, application for compounding may be made even after prosecution has been launched. If the offence is compounded, the Court shall discharge the company or its officers, as the case may be.

When an offence is compounded under Section 441, the applicant has to pay the sum specified by the Compounding Authority. Such 'sum specified' does not amount to fine for the purpose of ascertaining eligibility for appointment of managerial person under Part I of

Schedule V.

**43. In the annual general meeting of XYZ Ltd, while discussing on the matter of retirement and reappointment of director Mr. X, allegations of fraud and financial irregularities were levelled against him by some members. This resulted into chaos in the meeting. The situation was normal only after the chairman declared about initiating an inquiry against the director. Mr. X, however, could not be re-appointed in the meeting. The matter was published in the newspapers next day. On the basis of such news, whether the court can take cognizance of the matter and take action against the director on its own? Justify your answer with reference to the provisions of the Companies Act, 2013 (CA (Final) May 2015)**

**Ans.** As per Section 439, no court shall take cognizance of any offence under this Act, which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing made by-

- (i) the Registrar;
- (ii) a shareholder of the company;
- (iii) a person authorised by the Central Government in that behalf;
- (iv) a person authorized by the Securities and Exchange Board of India, in case of an offence relating to issue and transfer of securities and non-payment of dividend.

In the given case, no person as mentioned in Section 439 has filed any complaint with the Court. On the basis of news published in a newspaper, the Court cannot take cognizance of any offence against any director of the company. In other words, the Court cannot take the cognizance of such offence suo motu.

**44. All offences under the Companies Act, 2013 are non-cognizable except offences of fraud covered under Section 447 of the Act. Explain the validity of the statement. (CA (Final) May 2018)**

**Ans.** As per Section 439, every offence under this Act except the offences referred to in sub-Section (6) of Section 212 shall be deemed to be non-cognizable.

As per Section 212(6), the offences covered under Section 447 of this Act shall be cognizable. Section 212(6) shall apply notwithstanding anything contained in the Code of Criminal Procedure, 1973.

To conclude, all the offences covered under the Companies Act, 2013 shall be non-cognizable. However, there is one exception to this, viz. the offences relating to fraud which are covered under Section 447 shall be cognizable.

Thus, the given statement is correct.

**45. Mr. Z, a director of Southern Highway Tolls Private Limited, is duly authorized by the Board of directors to prepare and file returns, report or other documents to the Registrar of Companies on behalf of the company. Though he filed all required documents to Registrar in time, however, subsequently it was found that the filed documents were false and inaccurate in respect to material particulars (knowing it to be false) submitted to the Registrar. State the penal provision under the Companies Act, 2013? (CA (Final) May 2017)**

**Ans.** As per Section 448, a person shall be liable under Section 447 if

- (i) he makes a statement in any return, report, certificate, financial statement, prospectus, statement or other document required by any of the provisions of this Act or Rules; and
- (ii) and such statement
  - (a) is false in any material particulars, knowing it to be false; or
  - (b) omits any material fact, knowing it to be material

As per Section 447, where any person is found guilty of fraud, he shall be punishable as follows:



(a) If the fraud involves an amount of at least Rs. 10 lakh or 1% of the turnover of the company, whichever is lower, any person who is guilty of fraud shall be punishable as follows:

(i) If the fraud involves public interest, the period of imprisonment shall not be less than 3 years but which may extend to 10 years, and also with fine which shall not be less than the amount involved in the fraud but which may extend to 3 times the amount involved in the fraud.

(ii) If the fraud does not involve public interest, the period of imprisonment shall not be less than 6 months but which may extend to 10 years, and also with fine which shall not be less than the amount involved in the fraud but which may extend to 3 times the amount involved in the fraud.

(b) If the fraud involves an amount less than Rs. 10 lakh or 1% of the turnover of the company, whichever is lower, and the fraud does not involve public interest, any person guilty of such fraud shall be punishable with –

(i) imprisonment up to 5 years; or

(ii) fine up to Rs. 20 lakh; or

(iii) both.

In the given case, Mr. Z has been found guilty of filing documents containing false and inaccurate particulars. Therefore, he is punishable with imprisonment and fine as contained in Section 447.

**46. Sunflow Limited decided to terminate the services of Mr. Ram, who was employed as sales manager. However, the company feels that the sales manager may not vacate the company's flat at Mumbai. What action can be taken by the company under the Companies Act, to regain possession of the flat? Is it necessary to take such action under the Companies Act before terminating the services of Mr. Ram? Will it make any difference, if the flat is not owned by the company, but taken on lease? (CA (Final) Nov. 2003)**

OR

**XYZ Limited decided to terminate the services of Mr. X, who was employed as sales manager. It is apprehended by the company that the sales manager may not vacate the company's flat at Bombay. What action can be taken by the company under the Companies Act to regain possession of fiat? Is it necessary to take such action under the Companies Act before terminating the services of Mr. X? Will it make any difference if the flat is not owned by the company but taken on lease? (CA (Final) May 2000)**

OR

**Mountbay Company Limited decided to terminate the services of Mr. Gopal who was employed as Sales Manager. The Company, however, feels that the Sales Manager may not vacate the company's flat at Delhi. What action can be taken by the company under the Companies Act, to regain possession of the flat? Is it necessary to take such action before terminating the services of Mr. Gopal? Will it make any difference, if the flat is not owned by the company, but taken on lease? (CA (Final) Nov. 2008)**

**Ans.** As per Section 452, an officer or employee of a company shall be punishable with fine which shall not be less than Rs. 1 lakh but which may extend to Rs.5 lakh in the following cases:

(a) Where he wrongfully obtains possession of any property of a company.

(b) Where he was already in the possession of any property of the company, and he wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by this Act.

On a complaint made to the Court under Section 452 by the company or any creditor of the company or any contributory of the company or any member of the company, the Court may order him to deliver any such property within a time to be fixed by the Court.

**Analysis and conclusion**

(i) The company can file a complaint with the Court under Section 452 of the Companies

Act, 2013. If the Court is satisfied that the sales manager of the company has wrongfully refused to vacate the company's flat, it may order the sales manager to deliver the possession of the flat to the company within such time as may be fixed by the Court. The Court may also impose fine which shall not be less than Rs. 1 lakh, but which may extend to Rs. 5 lakh. Further, if the sales manager fails to comply with the order of the Court, the Court may order him to suffer imprisonment for a term which may extend to 2 years.

(ii) The Supreme Court has held that Section 630 of the Companies Act, 1956 (corresponding to Section 452 of the Companies Act, 2013) applies both to 'existing officers or employees' and 'past officers or employees' (**Baldev Krishna Sahi v Shipping Corporation of India Ltd. (1987) 3 Comp LJ 57**). Therefore, complaint under Section 452 of the Companies Act, 2013 can be filed even if the services of Mr. Ram/Mr. X/Mr. Gopal have been terminated.

(iii) Section 452 of the Companies Act, 2013 does not concern the aspect of title, but it is exclusively confined to the aspect of possession. Accordingly, Section 452 of the Companies Act, 2013 shall apply to a property, which does not belong to the company, but in respect of which the company is in exclusive possession. Accordingly, the company can make a complaint under Section 452 of the Companies Act, 2013 even if the company is not the owner of the property but only has a leasehold right (**Kannankadi Gopal Krishna Nair v Prakash Chunder Juneja (1994) 81 Comp Cas 104**).

**47. An officer of a company was allotted one room for two years in a guest house owned by the company at some other city where he used to stay while on tour. It came to notice of the company that he had not vacated the said room after the expiry of two years and is holding the unauthorized possession of that room and has been permitting to stay outsiders in the said room, at a rent of Rs. 500 per day. The record shows that he had permitted the outsider for 45 days and collected Rs. 22,500 and retained the said amount with him. As per the letter of allotment, there was no such clause which can be invoked against him for making any recovery on account of such wrongful occupation. The Manager of the company seeks your advice as to whether the recovery can be made from him under any of the provisions of his employment or Companies Act. (CA (Final) May, 2017)**

**Ans.** As per Section 452 of the Companies Act, 2013, an officer or employee of a company shall be punishable with fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 5 lakh in the following cases:

- (a) where he wrongfully obtains possession of any property of a company; or
- (b) where he was already in the possession of any property of the company, and he wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by this Act.

The Court may order him to deliver any such property within a time to be fixed by the Court. If the officer or the employee fails to comply with the order of the Court, the Court may order him to suffer imprisonment for a term which may extend to 2 years.

In the given case, an officer of the company has withheld the guest house of the company after the period of 2 years, for which he was allowed to stay in the guest house. Also, the officer of the company has knowingly applied the guest house of the company for the purpose of letting Out and earning rent. Because of the said acts, the officer of the company is punishable under Section 452. The Court may order that-

- (a) such officer shall be punishable with fine, which shall not be less than Rs. 1 lakh but which may extend to Rs. 5 lakh;
- (b) the officer shall deliver the possession of the guest house to the company within a time to be fixed by the Court;
- (c) the officer shall be liable to imprisonment not exceeding 2 years, in case the officer fails to deliver the possession of the property to the company.

The complaint under Section 452 may be made by -

- (a) the company; or
- (b) any creditor of the company; or
- (c) any contributory of the company; or
- (d) any member of the company.

The right to take action against the officer is conferred by Section 452 of the Act, and therefore, no provision enabling the company to take any action against the officer is required in the letter of allotment.

**48. Gulmohar Ltd. is a company registered in India for last 5 years. Since last 2 financial years, it has not been carrying on any business or operations and has not filed financial statements and annual returns saying that it has not made any significant accounting transaction during the last two financial years. Considering the current situation, directors of the company are contemplating to apply to Registrar of Companies to obtain the status of dormant or inactive company.**

**Advise them on:**

**(i) Whether Gulmohar Ltd. is eligible to apply to Registrar of Companies to obtain dormant status for the company?**

**(ii) Will your answer be different if Gulmohar Ltd, is continuing payment of fees to Registrar of Companies and payment of rentals for its office and accounting records for last two financials years?**

**(iii) Is special resolution in general meeting a pre-requisite to make an application to Registrar of Companies for obtaining the status of dormant company?**

**(iv) What will be your answer if it is found after making an application of dormant company to Registrar of Companies that an investigation is pending against the company which was ordered 6 months ago? (CA (Final) May 2019)**

**Ans:** Section 455 of the Companies Act, 2013.

(i) If a company is an inactive company, it may make an application to the Registrar for obtaining the status of a dormant company.

An 'inactive company' means-

- (a) a company which has not been carrying on any business or operation; or
- (b) a company which has not made any significant accounting transaction during the last 2 financial years: or
- (c) a company which has not filed financial statements and annual returns during the last 2 financial years.

Gulmohar Ltd, has not filed its financial statements and annual returns during the last 2 financial years. Also, it had not made any significant accounting transaction during the last 2 financial years. Therefore, Gulmohar Ltd, is an inactive company and so it is eligible to make an application to the Registrar for obtaining the status of a dormant company.

(ii) 'Significant accounting transaction' means any transaction other than-

- (a) payment of fees by a company to the Registrar;
- (b) payments made by it to fulfil the requirements of this Act or any other law
- (c) allotment of shares to fulfil the requirements of this Act; and
- (d) payments for maintenance of its office and records.

Even if Gulmohar Ltd, has been making payment of fees to Registrar and payment of rent for its office and payments for maintenance of accounting records for last 2 financials years, none of such payments shall amount to 'significant accounting transaction'. So, despite the fact that Gulmohar Ltd. has made any of such payments, it shall remain an active company, and so it shall be eligible to make an application to the Registrar for obtaining the status of a dormant company.

(iii) As per Rule 3 of the Companies (Miscellaneous) Rules, 2014, an application for obtaining

the status of a dormant Company may be made only if-

- (a) a special resolution to this effect is passed in the general meeting of the company; or
- (b) a notice is issued to all the shareholders of the company for this purpose and consent of at least 3/4<sup>th</sup> shareholders (in value) is obtained.

Thus, either a special resolution is required or consent of at least 3/4<sup>th</sup> shareholders in value is required for making an application for the status of a dormant company.

(iv) As per Rule 3 of the Companies (Miscellaneous) Rules, 2014, a company shall be eligible to apply only if no inspection, inquiry or investigation has been ordered or taken up or carried out against the company.

Therefore, if, after an application for obtaining the status of a dormant company is made by Gulmohar Ltd., it is revealed that an investigation was pending against it, the application made by Gulmohar Ltd. for obtaining the status of a dormant company shall be rejected.

**49. Gulmohar Ltd., a company registered under Indian law owns a factory in Calcutta, wherein it manufactures jute products. By a notification of the State Government, issued during October, 1996 due to a strike and lockout it was declared a relief undertaking. After four months, in February, 1997 the lockout was lifted. However, during the said period the company's directors defaulted in payment of provident fund (PF) and other ancillary dues. During the month of December, 1997, the Regional PF Commissioner initiated criminal proceedings against the company and its directors under the Employees PF and Miscellaneous Provisions Act, 1952, for default and delay in payment of PF dues.**

**Immediately the directors of the company applied to the High Court for relief under the Companies Act, praying for relief from liability under the PF law. The petition is now pending before a single judge. The company and its directors desire to know from you, as to the tenability of their claim for relief at the High Court, and as to whether they would be excused and exonerated by the High Court, in respect of the contraventions committed under the PF Law.**

**Briefly discuss the law on the subject and state whether the petition filed by the directors would be admitted under the Companies Act. (CA (Final) Nov. 1998)**

**Ans.** The Court may, in its discretion, relieve an officer of the company from liability, if it appears to the Court that-

- (a) he is or may be liable for negligence, default, breach of duty, misfeasance or breach of trust;
- (b) he has acted honestly and reasonably; and
- (c) having regard to all the circumstances of the case, he ought fairly to be excused.

In the present case, the following two questions need to be answered:

1. Under Section 463, the Court has the power to grant relief only to a director or officer of a company, and not to the company. Therefore, Gulmohar Limited cannot claim any relief from the High Court under Section 463.

2. Relief under Section 633 of the Companies Act, 1956 (corresponding to Section 463 of the Companies Act, 2013) cannot be extended in respect of any liability under any Act, other than the Companies Act [**Rabindra Chamarla v ROC (1992) 73 Comp Cas 257**]. In the present case, the proceedings against the company and the directors have been initiated as a result of certain acts and omissions committed under the Employees PF and Miscellaneous provisions Act, 1952. There has been no default, refusal, contravention, non-compliance or failure under the Companies Act. Therefore, the Court cannot grant any relief to the directors.

**50. One of the directors of your company has been prosecuted for non-payment of sales tax by the company. He intends to obtain relief under the Companies Act. Will he succeed?**

OR

**Annual General Meeting of a Company has been concluded on 30th April 2008. Now,**

**the company is required to submit/file its Annual Return and Annual Accounts with Register of Companies. You are required to state the procedure for such submission/filing. (CA (Final) May 2008)**

**Ans.** The Court may, in its discretion, relieve an officer of the company from liability, if it appears to the Court that-

(a) he is or may be liable for negligence, default, breach of duty, misfeasance or breach of trust:

(b) he has acted honestly and reasonably; and

(c) having regard to all the circumstances of the case, he ought fairly to be excused.

Relief under Section 463 of the Companies Act, 2013 cannot be extended in respect of any liability under any Act, other than the Companies Act. The expression 'any proceedings' occurring in Section 463 of the Companies Act, 2013 cannot be read out of context and treated in isolation, and must be confined to the Companies Act only.

Accordingly, Section 633 of the Companies Act, 1956 (corresponding to Section 463 of the Companies Act, 2013) applies to all legal proceedings under the Companies Act only. Otherwise the application of Section 633 of the Companies Act, 1956 (corresponding to Section 463 of the Companies Act, 2013) would result in the penal provisions of other Acts being rendered ineffective. Furthermore, if the parliament had intended that Section 633 of the Companies Act, 1956 (corresponding to Section 463 of the Companies Act, 2013) should apply to other Acts also, it would have specifically provided for it. It is a sound rule of construction to confine the provisions of a statute to itself and therefore Section 633 of the Companies Act, 1956 (corresponding to Section 463 of the Companies Act, 2013) cannot be availed in respect of any proceedings under any other Act **[Rabindra Chamaria v ROC (1992) 73 Comp Cas 257]**.

In the present case a director of the company has been prosecuted under the Sales Tax Act. Since the application of Section 463 is restricted to Companies Act only, the Court cannot grant any relief to the director.

**51. M/s EVA Optical Networking India Private Limited having its registered office situated in the city of Gurugram, Haryana State, falling within the jurisdiction of Registrar of Companies, NCT, Delhi & Haryana has filed a petition before the Central Government under the Companies Act, 2013 seeking an exemption be granted to the petitioner company to change the financial year of the company from 1<sup>st</sup> April to 31<sup>st</sup> March presently adopted by following the financial year in below manner:-**

**(i) For the next financial year: From 1<sup>st</sup> April, 2018 to 31<sup>st</sup> December, 2018 both days inclusive.**

**(ii) For the subsequent financial year: Be changed to a period of one calendar year beginning 1<sup>st</sup> January of one year and concluding on 31<sup>st</sup> December of the same year.**

The petitioner company in its petition avers that it is a part of EVA Optical Networking Singapore Pvt. Ltd., a company incorporated in Singapore (being the parent company) holding 99% of the Equity Share Capital of the petitioner and the remaining 1% of the equity share capital is held by EVA Optical Networking SE, a company incorporated in Germany, which is represented to be the ultimate holding company. The parent company as well as the ultimate holding company follows their financial year as 1<sup>st</sup> January to 31<sup>st</sup> December of the same year for the purpose of consolidation of accounts and hence in order to streamline the preparation of the consolidated financials of the parent company, the petitioner company is required to align with it. Advise whether the petition will stand before the Central Government as per the provisions of the Companies Act, 2013. What would be your answer if M/s EVA Optical Networking India Private Limited was registered as a Specified International Financial Services Centre (IFSC) private company? (CA (Final) May 2018 (Modified))

**Ans.**

1. As per 2(41) of Companies Act

'Financial year' in relation to any company or body corporate, means the period ending on the 31<sup>st</sup> day of March every year, and where it has been incorporated on or after the 1<sup>st</sup> day of January of a year, the period ending on the 31<sup>st</sup> day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year:

Provided further that any application pending before the Tribunal as on the date of commencement of the Companies, (Amendment) Second Ordinance, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement:

Provided also that a company or body corporate, existing on the commencement of this Act, shall, within a period of 2 years from such commencement, align its financial year as per the provisions of this clause.

2. Specified IFSC public companies have been granted the following exemption by the Central Government vide Notification No. G.S.R. 9(E) dated 4<sup>th</sup> January, 2017:

In case of a specified IFSC private company, which is a subsidiary of a foreign company, the financial year of the subsidiary may be same as the financial year of its holding company and approval of the Central Government shall not be required.

**Analysis and conclusion**

1. M/S EVA Optical Networking India Private Limited is a subsidiary of EVA Optical Networking Singapore Pvt. Ltd. (hereinafter referred to as 'parent company', a company incorporated in Singapore, and EVA Optical Networking Singapore Pvt. Ltd. is a subsidiary of EVA Optical Networking SE (hereinafter referred to as 'ultimate holding company'), a company incorporated in Germany. The period of financial year of the parent company as well as of the ultimate holding company is 1<sup>st</sup> January to 31<sup>st</sup> December of the same year.

2. M/s EVA Optical Networking India Private Limited has filed an application before the Central Government seeking permission to change its financial year from 1<sup>st</sup> April to 31<sup>st</sup> March presently adopted by it to 1<sup>st</sup> April, 2018 to 31<sup>st</sup> December, 2018 for the next financial year, and the period starting on 1<sup>st</sup> January to 31<sup>st</sup> December of the same year for all subsequent financial years.

3. The application made by M/s EVA Optical Networking India Private Limited to the Central Government states that such alignment of financial year is required so as to streamline the preparation of the consolidated financial statements of the parent company with M/s EVA Optical Networking India Private Limited.

4. Section 2(41) empowers the Central Government to make an order that a company incorporated in India shall be allowed to follow a different period as its financial year (i.e. different from 1<sup>st</sup> April to 31<sup>st</sup> March of the following year), whether such different period is a year or not. However, the Central Government may make such an order if it is satisfied that-

(a) the company incorporated in India is a holding company or a subsidiary company or an associate company of a company incorporated outside India; and

(b) for the purpose of consolidation of accounts with a company incorporated outside India, the company incorporated in India is required to follow a different financial year (i.e. different from 1<sup>st</sup> April to 31<sup>st</sup> March of the following year).

**Conclusion**

1. Both the conditions as discussed in Point (b) above have been satisfied by M/s EVA Optical

Networking India Private Limited, and so M/s EVA Optical Networking India Private Limited can rightfully make an application to the Central Government seeking an order of change in financial year, and the Central Government is empowered to make an order that M/s EVA Optical Networking India Private Limited shall be allowed to follow the financial year(s) as requested.

2. Had M/s EVA Optical Networking India Private Limited been an IFSC private company, it would have the power to change its financial year as desired by it, without making any application to the Central Government, in terms of Notification No. G.S.R. 9(E) dated 4th January, 2017.

**52. The e-forms rolled out by the Ministry of Corporate Affairs (MCA) under the provisions of the Companies Act, 2013 and rules framed there under are mandatorily numbered alphanumeric. Explain this concept. What is the chapter-wise nomenclature of e-forms provided by MCA in respect of- Acceptance of Deposits by Companies Management and Administration? (CA (Final) May 2018)**

**Ans.** In order to facilitate easy understanding of the e-forms rolled out under the provisions of Companies Act, 2013 and Rules made there under, the forms under the Companies Act, 2013 are mandatorily numbered alpha-numeric. Each e-form starts with 2 or 3 alphabets based on the subject of the Chapter, followed by serial number of the form. By referring to the alphanumeric numbering of any e-form, it becomes possible to identify the relevant Chapter of the Companies Act, 2013 to which the form pertains and the nature of the e-form.

Chapter No.	Name of the Chapter	Nomenclature of e-form	Example
V	Acceptance of Deposits by Companies	DPT	Form No. DPT-4  (Statement regarding deposits existing on the commencement of the Act)
VI	Management and Administration	MGT	Form No. MGT-14  (Filing of Resolutions and agreements with the Registrar)