MOCK TEST PAPER 2

INTERMEDIATE GROUP – I

PAPER – 2: CORPORATE AND OTHER LAWS

ANSWERS

Division A

I. 1. (b)

2. (d)

3. (c)

4. (c)

5. (c)

6. (b)

7. (d)

8. (c)

9. (b)

10. (b)

11. (d)

12. (a)

13. (d)

14. (c)

15. (d)

16. (b)

17. (c)

18. (a)

19. (b)

20. (d)

21. (a)

Division B

1. (a) According to section 144 of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include designing and implementation of any financial information system.

In the said instance, the Board of directors of Prism Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision, said service is strictly prohibited.

In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in Section 147 of the Companies Act, 2013.

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In the light of the above provisions, it is advised that the Statutory Auditor not to take up the above stated assignment.

(b) As per the requirement of the question, disclosures which are the deciding factors in an allotment of shares are laid down in section 39 of the Companies Act, 2013.

According to section 39(1), no allotment of any securities of a company offered to the public for subscription shall be made unless-

- the amount stated in the prospectus as the minimum amount has been subscribed, and
- the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument.

The amount payable on application on every security shall not be less than five per cent of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf.

In the question, Bheem Ltd. issued shares to public by issuing of prospectus, disclosing minimum subscription, sum payable on application for the amount; and the amount received on share application is more than 5% of the nominal amount of the security.

Further, it revealed that Bheem Ltd. has applied for listing of shares in 3 recognized stock exchanges of which one application was rejected.

In the given instance, there is compliance to section 23, as nothing is talked about matters required to be included in the prospectus under section 26 (1) and about filing with the registrar; assuming that the said requirements have been complied with, requirement of section 39 as regards obtaining of minimum subscription and the minimum amount receivable on application (not less than 5% of the nominal value of the securities offered) are fulfilled.

The provisions of section 40 of the Companies Act, 2013 states that every company making public offer shall, before making such offer, make an application to one or more recognized stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

The above provision is very clear that not only the company has to apply for listing of the securities at a recognized stock exchange, but also obtain permission thereof from all the stock exchanges where it has applied, before making the public offer. Since one of the three recognized stock exchanges, where the company has applied for enlisting, has rejected the application and the company has proceeded with making the offer of shares, it has violated the provisions of section 40. Therefore, this shall be deemed to be irregular allotment of shares.

Consequently, Bheem Ltd. shall be required to refund the application money to the applicants in the prescribed manner within the stipulated time frame.

(c) **General lien of bankers:** According to section 171 of the Indian Contract Act, 1872, bankers, factors, wharfingers, attorneys of a High Court and policy brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to the effect.

Section 171 empowers the banker with general right of lien in absence of a contract whereby it is entitled to retain the goods belonging to another party, until all the dues are discharged. Here, in the first instance, the banker under an agreement has a right of particular lien on the gold pledged with it against the first secured loan of ₹ 50,000/-, which has already been fully repaid by

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Rakshit. Accordingly, Bank's decision to continue the lien on the gold until the unsecured loan of ₹ 20,000/- (which is the second loan) is not valid.

(d) **Date of maturity of the bill of exchange:** In this case the day of presentment for sight is to be excluded i.e. 1st June, 2022. The period of 120 days ends on 29th September, 2022 (June 29 days + July 31 days + August 31 Days + September 29 days = 120 days). Three days of grace are to be added. It falls due on 2nd October, 2022, which happens to be a public holiday. As such it will fall due on 1st October, 2022 i.e., the next preceding Business Day.

2. **(a)** According to section 124 of the Companies Act, 2013:

(1) **Unpaid or Unclaimed Dividend to be transferred to the Unpaid Dividend Account** - Where a dividend has been declared by a company but has not been paid or claimed within thirty (30) days from the date of declaration, the company shall, within seven (7) days from the expiry of the said period of 30 days, transfer the total amount of unpaid or unclaimed dividend to a special account called the Unpaid Dividend Account (UDA). The UDA shall be opened by the company in any scheduled bank.

(2) **Transfer of Unclaimed Amount to Investor Education and Protection Fund (IEPF)** - Any money transferred to the Unpaid Dividend Account which remains unpaid or unclaimed for a period of seven (7) years from the date of such transfer shall be transferred by the company along with interest accrued thereon to the Investor Education and Protection Fund.

(3) **Transfer of Shares to IEPF**- All shares in respect of which dividend has not been paid or claimed for 7 consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing the prescribed details.

(4) **Right of Owner of 'transferred shares' to Reclaim** - Any claimant of shares so transferred to IEPF shall be entitled to reclaim the 'transferred shares' from Investor Education and Protection Fund in accordance with the prescribed procedure and on submission of prescribed documents.

As per the provisions of sub-section (3) of section 125 of the Companies Act, 2013, read with rule 7 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, any person, whose unclaimed dividends have been transferred to the Fund, may apply for refund, to the Authority, by submitting an online application.

In the given question, Mr. R did not claim the payment of dividend on his shares for a period of more than 7 years (i.e. expiry of 30 days from 31.08.2014 to last week of September 2022). As a result, his unclaimed dividend (₹ 2,000) along with such shares (1,000 equity shares) must have been transferred to Investor Education and Protection Fund Account. Therefore, the company is justified in refusing to accept the request of Mr. R for the payment of dividend of ₹ 2,000 (declared in Annual General Meeting on 31.8.2014).

In terms of the above stated provisions, Mr. R should be advised as under:

(i) If Mr. R wants to reclaim the transferred shares, he should apply to IEPF authorities along with the necessary documents in accordance with the prescribed procedure.

(ii) He is also entitled to get refund of the dividend amount, which was transferred to the above fund; in accordance with the prescribed rules.

(b) As per section 7 of the Companies Act, 2013 where a company has been got incorporated by furnishing any incorrect information, the Tribunal may on an application made to it, on being satisfied that the situation so warrants:

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(a) pass orders for regulation of the management of the company including changes, if any, in its memorandum and articles; or

(b) direct that liability of the members shall be unlimited; or

(c) direct removal of the name of the company from the register of companies; or

(d) pass an order for the winding up of the company; or

(e) pass such other orders as it may deem fit:

Provided that before making any order under this sub-section,—

(i) the company shall be given a reasonable opportunity of being heard in the matter; and

(ii) the Tribunal shall take into consideration the transactions entered into by the company.

Also the promoters, the persons named as the first directors of the company and the persons making declaration at the time of registration of company shall each be liable for action under section 447.

(c) (i) Creditor should proceed legal action first against the Principal Debtor and later against the surety: Invalid

Reasoning: As per Section 128 of the Indian Contract Act, 1872, the surety's liability is co-extensive with that of Principal debtor. It's not mandatory that creditor should proceed legal action in case of default, first against the Principal debtor and later against the surety. It is on creditor to start action first either against the Principal debtor or the surety.

(ii) A guarantee which extends to a single debt/ specific transaction is called continuing Guarantee: Invalid

Reasoning: Continuing Guarantee [Section 129 of the Indian Contract Act, 1872] - A guarantee which extends to a series of transaction is called a continuing guarantee. It applies not to a specific number of transactions but to any number of transactions and makes the surety liable for the unpaid balance at the end of the guarantee.

(d) The following alterations **do not affect** the liability of parties thereto:

(1) If the alteration is unintentional and due to pure accident (e.g. accidental disfigurement of document).

(2) Alteration made by a stranger without the consent of holder and without any fraud and negligence on his part.

(3) An alteration made to correct a clerical error or a mistake, thus, if instead of 1823, the date entered was 1832, the agent of drawer held entitled to correct mistake [*Brutt v pikard (1824) Ry & M 37*]. Such correction is deemed to be giving effect to the original intention of the parties.

(4) Alteration made to carry out common intention of original parties is permitted by Section 87. For example, where the words "or order" after the name of payee, inserted subsequently [*Byrom v Thomson (1839) 11 A&E 31*].

(5) Alteration with the consent of the parties liable thereto.

(6) An alteration made before the completion or the issue of negotiable Instrument.

(7) A material alteration doesn't affect the liability of those parties who become liable after the alteration is made. Section 88 provides that the acceptor or indorser is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

(8) An alteration which is not material e.g. when a bill payable to bearer is converted to bill

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payable to order/or an incomplete name of a person converted into the complete name of same person.

3. (a) According to section 77 of the Companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge.

Thus, charge may be created within India or outside India. Also the subject-matter of the charge i.e. the property or assets or any of the company's undertakings, may be situated within India or outside India.

In the given question, the company has obtained a loan by creating a charge on the assets of the foreign establishment.

As per the above provisions, it is the duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and whether situated in or outside India, to register the particulars of the charge.

Hence, the stand taken by Star Ltd. not to register the particulars of charge created on the assets located outside India is not correct.

(b) Section 118 of the Companies Act, 2013 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting.

By virtue of Rule 25 of the Companies (Management and Administration) Rules, 2014 read with section 118 of the Companies Act, 2013, each page of every such book shall be initialed or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

Therefore, the minutes of the meeting referred to in the case of Moon Light Ltd. can be signed in the absence of Mr. Shreeram, by any director, authorized by the Board in this respect.

(c) According to section 84 of the Negotiable Instruments Act, 1881, if a holder does not present a cheque within reasonable time after its issue, and the bank fails causing damage to the drawer, the drawer is discharged as against the holder to the extent of the actual damage suffered by him.

In the given situation, when the cheque ought to be presented, 'A' had sufficient funds at the bank to meet it. The bank failed before the cheque was presented. Thus, the drawer ('A') is discharged, but the holder ('B') can prove against the bank for the amount of the cheque.

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

4. (a) In line with section 119 read with Rule 26 of the Companies (Management and Administration) Rules, 2014, any member shall be entitled to be furnished, within seven working days after he

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has made a request in that behalf to the company, with a copy of any minutes of any general meeting, on payment of such sum as may be specified in the articles of association of the company.

As Mr. Krish, in the given case, is the member of ABC Ltd., so shall be entitled to receive a copy of any minutes book of general meeting.

(b) According to section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of -

(i) its free reserves;

(ii) the securities premium account; or

(iii) the capital redemption reserve account.

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

Conditions for issue of Bonus Shares: No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—

(i) it is authorised by its Articles;

(ii) it has, on the recommendation of the Board, been authorised in the general meeting of the company;

(iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;

(iv) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;

(v) the partly paid-up shares, if any, outstanding on the date of allotment, are made fully paid-up;

(vi) it complies with such conditions as are prescribed by Rule 14 of the Companies (Share Capital and debentures) Rules, 2014 which states that the company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

Further, the company has to ensure that the bonus shares shall not be issued in lieu of dividend.

For the issue of bonus shares Bhuj Cement Limited will require reserves of ₹ 50,00,000 (i.e. half of ₹ 1,00,00,000 being the paid-up share capital), which is readily available with the company. Hence, after following the above conditions relating to the issue of bonus shares, the company may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

(c) Good Faith

In general, anything done with due care and attention, which is not malafide is presumed to have been done in good faith.

But, according to section 3(22) of the General Clauses Act, 1897, a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not.

The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case.

It is therefore understood that the General Clauses Act, 1897 considers the honesty in doing the Act as a primary test to constitute the thing done in good faith and therefore the act done

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honestly but with negligence may also be termed as done in good faith as per the General Clauses Act, 1897.

The term "Good faith" has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed. This definition may be applied only if there is nothing repugnant in subject or context, and if that is so, the definition is not applicable.

(d) **Preamble:** The Preamble expresses the scope, object and purpose of the Act more comprehensively. The Preamble of a Statute is a part of the enactment and can legitimately be used as an internal aid for construing it. However, the Preamble does not over-ride the plain provision of the Act. But if the wording of the statute gives rise to doubts as to its proper construction, for example, where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction.

In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

Example: Use of the word 'may' in section 5 of the Hindu Marriage Act, 1955 provides that "a marriage may be solemnized between two Hindus....." has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in section 2 of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: 'An Act to amend and codify the law relating to marriage among Hindus" [*GullipoliSowria Raj v. BandaruPavani, (2009)1 SCC714].*

5. **(a)** As per section 130 of the Companies Act, 2013, a company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—

(i) the relevant earlier accounts were prepared in a fraudulent manner; or

(ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

However, no order shall be made in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year.

In the given instance, an application was filed for re-opening and re-casting of the financial statements of Sun Ltd. for the financial year 2011-2012 which is beyond 8 financial years immediately preceding the current financial year.

Though application filed by the Income Tax Authorities to NCLT is valid, its recommendation for reopening and recasting of financial statements for the period earlier than eight financial years immediately preceding the current financial year i.e. 2022-2023, is invalid.

(b) According to section 121, every listed public company shall prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened held and conducted as per the provisions of the Act and the rules made thereunder. A copy of the report is

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to be filed with the Registrar within thirty days of the conclusion of AGM along with the prescribed fee.

Since, Ganges Ltd. is a listed company, hence it has to file a copy of report on annual general meeting with the Registrar within 30 days from 31st August, 2022.

(c) Specific Guarantee- A guarantee which extends to a single debt/ specific transaction is called a specific guarantee. The surety's liability comes to an end when the guaranteed debt is duly discharged or the promise is duly performed.

Continuing Guarantee- A guarantee which extends to a series of transaction is called a continuing guarantee. A surety's liability continues until the revocation of the guarantee.

The essence of continuing guarantee is that it applies not to a specific number of transactions but to any number of transactions and makes the surety liable for the unpaid balance at the end of the guarantee.

(d) (i) Insurance Policies covering immovable property have been held to be immovable property: This statement is not valid.

Insurance policy is a written document containing an agreement between the insurer and insured. It includes a matter intended to be used or may be used for the purpose or recording of the matter. Hence, the insurance policies covering immovable property is not covered under the definition of immovable property.

(ii) The word 'bullocks' could be interpreted to include 'cows': This statement is not valid. Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act, 1897 do not apply. Thus, the word 'bullocks' could not be interpreted to include 'cows'.

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