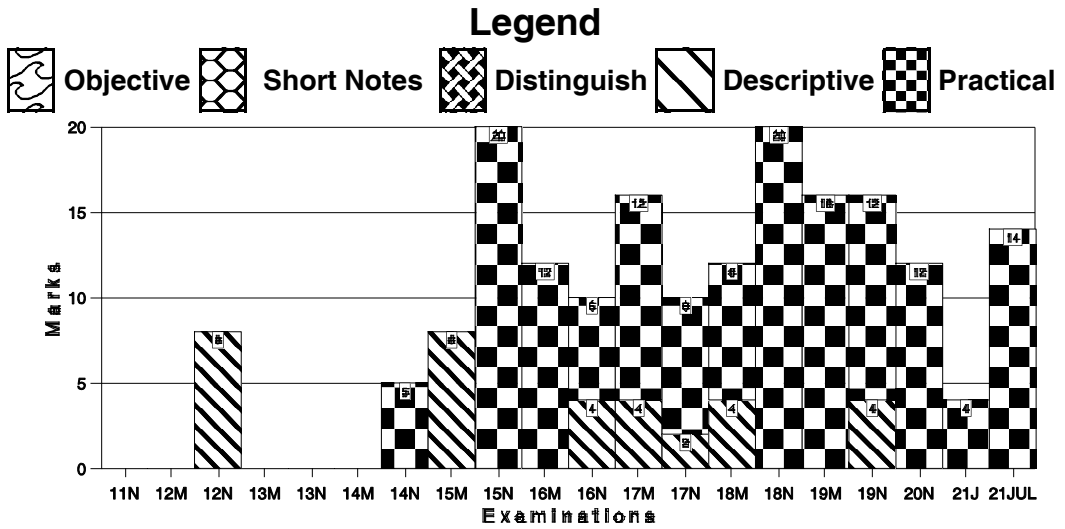


Star Rating

- On the basis of Maximum marks from a chapter ☆☆☆☆
- On the basis of Questions included every year from a chapter ☆
- On the basis of Compulsory questions from a chapter ☆☆☆☆

CHAPTER	<h1 style="margin: 0;">1</h1>	<h2 style="margin: 0;">Appointment and Qualification of Directors</h2>
THIS CHAPTER COMPRISES OF		
<ul style="list-style-type: none"> ☞ Appointment of Directors ☞ Allotment of Director Identification Number ☞ Obligation to indicate DIN ☞ Cancellation or Surrender or Deactivation of DIN ☞ Appointment of Additional Director, Alternate Director and Nominee Director ☞ Disqualifications for Appointment of Director ☞ Number of Directorship ☞ Duties of Directors ☞ Vacation of Office of Director ☞ Resignation of Directors ☞ Removal of Directors ☞ Register of Directors and Key Managerial Personnel and their Shareholding ☞ Members Right to Inspect 		

Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions



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DESCRIPTIVE QUESTIONS

2011 - May [6] (b) Annual general meeting of Hero Ltd. has been scheduled in compliance with the requirements of the Companies Act, 2013. In this connection, it has some directors who are rotational and out of which some have been appointed long back, some have been appointed on the same day.

Decide in this connection,

- (i) Which of the directors shall be retiring by rotation and be eligible for re-election?
- (ii) In case two directors were appointed on the same day, how would you decide their retirement by rotation?
- (iii) In case the meeting could not decide how the vacancies caused by retirement to be dealt with, what shall be consequences?
- (iv) What will be your answer, assuming that the matter could not be decided even at the adjourned meeting? (8 marks)

Answer :

- (i) **According to Sec. 152(6) (d)**, first those directors who are the longest in office must retire.
- (ii) **According to Sec. 152(6) (d)**, if two directors have been appointed on the same day, their retirement will be determined mutually or by lot.
- (iii) **According to Sec. 152(7)**, if vacancy is not filled up and the meeting has not expressly resolved not to fill vacancy, meeting will stand adjourned till
 - (a) the same day in next week at same time and place.
 - (b) and in case the same day in the next week is a public holiday, the next succeeding day, at same time and place.
- (iv) **If at the adjourned meeting** fresh appointment is not made and if no resolution against appointment is passed, then the retiring directors shall be deemed to have been appointed except in the following cases:

- (a) Where at the meeting or at the previous meeting the resolution for the reappointment of a particular director was put to vote but lost;
- (b) Where the retiring director has expressed his unwillingness to be reappointed by a written notice addressed to the company or its BOD;
- (c) Where he is unqualified or has been disqualified for appointment; and
- (d) Where any special or ordinary resolution is required for his appointment or reappointment.
- (e) Resolution in contravention of Sec. 162 is passed.

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2012 - Nov [2] (b) Pipliya Powders Limited has four Directors. A Board meeting was convened. It was attended by two Directors only and they appointed Mr. Soorajbhan who was related to both of them, as an Additional Director. Decide, whether the said appointment is valid under the provisions of the Companies Act, 2013?

Draft a "Board Resolution" for appointment of a person as an Additional Director in a public company. (8 marks)

Answer :

Provision

Contracts voted upon by the Interested Director shall be void where:

1. His exclusion from quorum would have resulted in a situation of no quorum.
2. Exclusion of his vote would have resulted in failure of such resolution.
[Victors Ltd. Vs Firestone Tyre & Rubber Co.]

Present Case :

Pipliya Powders Limited has four Directors. A Board meeting was convened. It was attended by two Directors only and they appointed Mr. Soorajbhan who was related to both of them, as an Additional Director.

Thus the appointment of Mr. Soorajbhan as an Additional Director is void.

Draft Board Resolution:

“Resolved that pursuant to the AOA of the company and Sec. 161 of the Companies Act, 2013, Mr. Soorbhan be and is hereby appointed as an Additional Director of the company with effect from 1.4.2015 to hold office up to date of the next AGM of the company.

Resolved further that Mr. Y who is appointed as an additional director will enjoy the same powers and rights as other directors.

Resolved further that Mr. Z, Secretary of the company be and is hereby authorized to electronically file necessary returns with the Registrar of Companies by putting his digital signature and to do all other necessary things required under the Act.”

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2015 - May [2] (a) Examine the validity of the following appointments with reference to the provisions of the Companies Act, 2013:

- (i) The Board of Directors of MNP Limited appointed Ms. Neha as a Women Director in the Board Meeting held on 10th September, 2014. The said appointment was made to fill the vacancy of the Woman Director, which had occurred as a result of resignation of Ms. Sheela on 30th June, 2014.

Will your answer differ if the Board Meeting of the company was held on 8th November, 2014? (4 marks)

Answer:**Appointment of Woman Director****Provision:**

A company incorporated under the Companies Act, 2013 and covered under second proviso of Sec. 149 (1) shall appoint Woman Director within a period of six months from the date of its incorporation.

Any intermittent vacancy of a Woman Director shall be filled-up by the board at next board meeting or three months from the date of such vacancy whichever is later. **[2nd Proviso to Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014]**

Present Case:

The vacancy of a woman director of MNP Limited which arose on 30th June 2014, due to the resignation of Ms. Sheela, should be filled up latest by 29th September 2014 or the day of the next Board Meeting, whichever is later. Since Ms. Neha was appointed in the next Board Meeting after the vacancy arose, i.e. on 10th September 2014, her appointment is valid. Even if MNP Ltd. appoints Ms. Neha in the Board Meeting held on 8th November 2014, provided the said meeting is the first meeting of the Board after 30th June 2014 i.e. after the resignation of Ms. Sheela.

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2015 - May [5] (a) (i) Some changes in the particulars of a Director, who has already obtained a Director Identification Number have taken place. Now the Director wants to incorporate the changes in his DIN in the database maintained by the Central Government in this regard. Describe the procedure to be followed by the Director. (4 marks)

Answer:**Intimation of changes in particulars specified in DIN application:****Rule 12 of Companies (Appointment and Qualification of Directors)**

Rules, 2014 provides for the procedure for intimation of changes in particulars specified in the DIN application.

1. Every individual who has been allotted a DIN under these rules shall in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the Central Government within a period of thirty days of such change(s) in Form DIR-6 in the following manner, namely:
 - (i) The Applicant shall download Form DIR-6 from the portal and fill in the relevant changes and also attach copy of the proof of the changed particular and verification in the Form DIR-7 all of which shall be scanned and submitted electronically in Form DIR - 6 [Substituted by Companies (Appointment and Qualification of Directors) Amendment Rules, 2014.]

- (ii) The form shall be digitally signed by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice
 - (iii) The applicant shall file the Form DIR-6.
2. The Central Government upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained by the Ministry.
 3. The DIN cell of the Ministry shall also intimate the change(s) in the particulars of the director submitted to it in Form DIR-6 to the concerned Registrar(s) under whose jurisdiction the RO of the company(s) in which such individual is a director is situated.
 4. The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within fifteen days of such change.

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2016 - Nov [7] (b) Sky Limited, a listed company has been incorporated under the Companies Act, 2013. An intermittent vacancy of a woman director has arisen on 15th June, 2016. Advise the company to fill the vacancy as per the provisions of the Companies Act, 2013. The Board meeting was held on 14th August, 2016. (4 marks)

Answer:

Provision

As per 2nd proviso to Sec. 149(1) of the Companies Act, 2013, all listed company shall require to appoint atleast one woman director.

[2nd Proviso to Companies (Appointment and Qualification of Directors) Rules, 2014].

Where any vacancy arises in office of woman director shall be required to be filled up by the board by passing board resolution within:

- (i) Three months of date of vacancy, or
- (ii) In next Board Meeting of Company, whichever is later.

Present Case:

In this case, Sky Limited is which vacant of a woman director has arisen on 15th June, 2016 and company held next board meeting on 14th August, 2016. In such case vacancy can be filled in board meeting held on 14th August, 2016 or also vacancy can also be filled on or before 14th September, 2016.

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2017 - May [4] (b) (i) Surya, a director in New Age Limited holding Directors Identification Number (DIN) wants to make certain changes in the particulars of his DIN. What procedure would you follow to get changes incorporated in the DIN already allotted to Surya? (2 marks)

(ii) Vijay, a director resigns after giving due notice to the company and he forwards a copy of resignation in e-form DIR-11 to the Registrar of Companies (ROC) within the prescribed time.

What would be the status of Vijay if the company fails to intimate about the resignation of Vijay to ROC? (2 marks)

Answer:

(i) **Intimation of changes in particulars specified in DIN application**

1. **As per Rule 12 of Companies (Appointment of Directors) Rules**

2014, Surya should intimate changes to Central Government within a period of thirty days of such changes(s) in Form DIR - 6 in the following manner,

- (i) The applicant (Surya) shall download Form DIR - 6 from the portals fill in the relevant changes, verify the Form and attach duly scanned copy of the proof of the changed particulars and submit electronically;
- (ii) The form shall be digitally signed by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice;
- (iii) The applicant (Surya) shall submit the Form DIR - 6.

2. The Central Government, upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained by the Ministry.
3. The DIN cell of the Ministry shall also intimate the change(s) in the particulars of the director submitted to it in Form DIR - 6 to the concerned Registrar(s) under whose Jurisdiction the registered office of the company(s) in which such individual is a director is situated.
4. The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within fifteen days of such change.

(ii) Resignation of Directors: As per Companies (Amendment) Act, 2017,

A director may resign from his office by giving a notice in writing to the company. The Board shall on receipt of such notice take note of the same. The company may within 30 days from the date of receipt of notice of resignation from a director, intimate the Registrar in Form DIR - 12 and post the information on its website, if any.

Such director may also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30 days from the date of resignation in FORM DIR-11 along with the prescribed fee.

Provision:

As per Sec. 168 (2) of the Companies Act, 2013, the resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

Present Case:

In the present case, Vijay, a director resigns after giving due notice to the company and he forwards a copy of resignation in e-form DIR - 11 to the ROC within the prescribed time.

Thus the resignation shall be effective from the date company received the notice, even though the company fails to intimate about the resignation to ROC.

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2017 - Nov [4] (a) (ii) (A) Mr. Vinay Kumar, applied for the first time for allotment of a Directors Identification Number (DIN) on 1st November, 2016 as he is planning to incorporate a private limited company in Form No. DIN - 3 under the Companies Act, 2013. The status of his DIN applications presently is showing as “Put Under Resubmission”. He seeks your guidance as to whether his application has been rejected and is he required to obtain a fresh DIN. Advise. (2 marks)

Answer:

Provision:

- **As per Rule 10 of the Companies (Appointment and Qualifications of Directors) Rules, 2014**, if any application in DIR-3 has been made for allotment for DIN and application shows status of “Put Under Resubmission” then applicant is not required to obtain a fresh DIN. But applicant can submit additional documents for rectifying DIN application within a period of fifteen days from the date on which it is marked as Resubmission.

Present Case:

- Mr. Vinay Kumar’s DIN applicant in form DIR-3 shows status of “Put Under Resubmission” so, Mr. Vinay Kumar is not required to make a fresh application and his application is not rejected. But he shall require to reply, for following queries within fifteen days from the date on which it is marked as Resubmission. For e.g.:
 - Proof of Identity residence is not enclosed or expired.
 - Proof of Date of Birth is not enclosed.
 - Supporting documents are not properly attested.
 - Non-submission of affidavit (if required).
- On resubmitting with the additional documents same DIN will be approved, if documents are found in correct order as per marked in resubmission.

2018 - May [6] (a) Mr. Bond and Mr. James were appointed as Directors of James bond Ltd. at the AGM held on 30th September, 2017 by a single resolution. State the relevant provisions of the Companies Act, 2013 and identify is it possible to appoint the above Directors by a single resolution?

(4 marks)

Answer:

According to Sec. 162 of the Companies Act, 2013, at a general meeting of a Company, a motion for the appointment of two or more persons as Directors of the Company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.

A resolution moved in contravention of above shall be void, whether or not any objection was taken when it was moved.

A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment.

In the instant case, it is not possible to appoint Mr. Bond and Mr. James as Directors of James Bond Ltd. by a single resolution.

Or

According to Sec. 184(1) of the Companies Act, 2013 every Director shall disclose his concern or interest in any Company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed:

- (a) At the First meeting of the Board in which he participates as a director, and
- (b) Thereafter, at the first meeting of the Board in every financial year, or
- (c) Whenever there is any change in the disclosures already made, then at the first Board meeting held after such change.

Consequences of non-disclosure [Sections 184(3) and 184(4)]:

- (a) **Voidable at the option of company:** A contract or arrangement entered into by the company without disclosing or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.
- (b) **Penalty:** If a director of the company contravenes the provisions of section 184, such director shall be liable to a penalty of one lakh rupees.

— Space to write important points for revision —

2019 - Nov [6] (b) Mr. Thangavel is a Director in 7 Companies with a DIN (Director Identification Number) allotted to him. Again, another DIN was inadvertently allotted to him which was never used for filing any document with any Authority. He desires to surrender the second DIN and keep all his directorship with the first DIN. Advise him the procedure to be followed under the provisions of the Companies Act, 2013 and the Rules made thereunder for surrendering the second DIN inadvertently obtained by him. (4 marks)

Answer:

Thus in light of above provision.

Mr. Thangavel require to follow following procedure for surrender of second DIN

According to Rule 11 of the Companies (Appointment and Qualification of Directors) Rules, 2014: The Central Government or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director may, upon being satisfied on verification of particulars or documentary proof attached with the application received along with fee as specified from any person, cancel or deactivate the DIN in case on an application made in Form DIR-5 by the DIN holder to surrender his DIN along with declaration that the said DIN has never been used for filing of any document with any authority, the Central Government may deactivate such DIN.

Mr. Thangavel shall require to make an application to Rocin Form DIR 5 indicating DIN that he shall never indicated such DIN to any document and such DIN has never been used for filling of any document with any authority.

On the application made by Mr. B, Central Government shall verify e-records and thereafter deactivate the DIN.

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PRACTICAL QUESTIONS

2010 - May [1] (a) Mr. Sachin was appointed as an additional Director of Conservative Finance Ltd. w.e.f. 1st October, 2009, in a casual vacancy by way of a circular resolution passed by the Board of Directors. The next annual general meeting of the company was due on 31st March, 2010, but the same was not held due to delay in the finalisation of the accounts. Some

of the shareholders of the company have questioned the validity of the appointment of Mr. Sachin and his continuation as additional director beyond 31st March, 2010. Advise the company on the complaints made by the shareholders. (5 marks)

Answer :

Additional Director :

- The Board may appoint the additional directors in pursuance of the provisions of **Sec.161 (1) of the Companies Act, 2013.**
- The Board may, in its discretion appoint the additional directors whenever it deems fit.
- The appointment of additional directors can be made by the Board either by passing a resolution at a Board meeting or by passing a resolution by circulation.
- An additional director holds office upto the date of next AGM. A director appointed as an additional director vacates his office, at the latest, on the date of the next annual general meeting or the last date on which AGM should have been held and cannot continue as a director thereafter on the ground that the meeting was not or could not be called within the time prescribed [Krishna Prasad Pilani v Colaba Land and Mills Co. (1959) 29 comp Case 273: Departmental circular No. 8/3(260)/63-PR, dated 5.2.1963].

Conclusion :

- (i) The appointment of Mr. Sachin is valid as per Sec. 161(1) of the Companies Act, 2013
- (ii) Mr. Sachin cannot continue as a director after the last date on which annual general meeting should have been held i.e. 31st March, 2010.

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2010 - May [4] (b) Mr. Ravindranathan is holding the post of Director in three companies out of which Goodluck Colours Limited is one. For the financial year ended on 31st March, 2009, Goodluck Colours Limited failed to pay interest on loans taken from a financial institution and also failed to repay the matured deposits. On 1st June, 2009 Mr. Ravindranathan accepting the post of Additional Director in Soma Footwear Limited, submitted a declaration that

the disqualification specified in Sec. 164 of the Companies Act, 2013 is not applicable in his case. Decide whether the declaration submitted by Mr. Ravindranathan to Soma Footwear Limited is in order. (5 marks)

Answer :

Disqualification for appointment of Directors

Provision:

As per Sec. 164(2) of Companies Act, 2013 a director of a company shall be disqualified from being appointed as a director in any other company, if the company of which he is already a director :

- (i) has not filed Financial Statements or Annual Returns for any continuous three financial years; or
- (ii) fails to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend declared and such default continues for one year or more;

Shall be not Ineligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so:

Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.

In the present case, Good luck Colours Limited has committed the following defaults:

- (i) Failure to pay interest on loans taken from a financial institution for the financial year ended on 31st March, 2009:
However, such failure does not attract the disqualification under Sec. 164(2) as the disqualification is said to be incurred only if the default relates to re-payment of public deposits, and not on non-payment of interest on 'loans' obtained from a financial institutions.
- (ii) Failure to repay the matured deposits on due date for the financial year ended on 31st March, 2009.

Default in repayment of matured deposits or interest thereon would result in applicability of Sec. 164(2) only if such default continues for one year or more. In the absence of any information, it may be assumed that such fault has not continued for one year, as on 1st June, 2009.

Accordingly, none of the directors of Goodluck Colour Limited are disqualified under Sec. 164(2). Hence, Mr. Ravindranathan can be appointed as an additional director of Soma Footwear Limited on 1st June, 2009, and so the declaration given by Mr. Ravindranathan is in order.

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2010 - Nov [4] (a) In ABC Ltd. three Directors were to be appointed. The item was included in agenda for the Annual General Meeting scheduled on 30th September, 2010, under the category of 'Ordinary Business'. All the three persons as proposed by the Board of Directors were elected as Directors of the company by passing a 'single resolution' avoiding the repetition (multiplicity) of resolution. After the three directors joined the Board, certain members objected to their appointment and the resolution. Examine the provisions of Companies' Act, 2013 and decide.

Whether the contention of the members shall be tenable and whether both the appointment of Directors and the 'single resolution' passed at the Company's Annual General Meeting shall be void. (4 marks)

Answer :

Appointed directors must be voted individually:

According to **Sec. 162(1) of the Companies Act, 2013**, two or more directors of a company cannot be elected as directors by a single resolution. Thus, each director shall be appointed by a separate resolution unless the meeting first agreed that the appointment shall be made by a single resolution and no vote has been cast against such agreement.

As per Sec. 162(2) a resolution moved in contravention of this provision shall be void, whether or not objection thereto was raised at the time it was so moved.

Further as per Sec 162(3) a motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as motion for his appointment.

Principle of Proportional Representation for appointment of Directors:

According to **Sec. 163(1) of the Companies Act, 2013**, the articles of a company may adopt the principle of proportional representation for appointing not less than two third of the total number of directors, whether by

a single transferable vote or by a system of cumulative voting or otherwise. In such a case, appointments will be so made once in every three years and interim casual vacancies will be filled in conformity with the provisions of Sec. 161(4).

Present Case: Appointment will be void under Sec. 162 unless the motion is preceded by an unanimous resolution, authorising appointment of two or more directors by a single resolution.

— Space to write important points for revision —

2014 - Nov [2] (a) Referring to the provision of the Companies Act, 2013, examine the validity of the following:

- (ii) Mr. P who is not qualified to be appointed as an independent director is appointed by the Board of Directors of XYZ Company Limited, for an independent director, as an alternate director. (2 marks)

Answer:

According to first proviso to Sec. 161(2) of the Companies Act, 2013, no person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act.

In the present case, Mr. P who is not qualified to be appointed as an independent director, as an alternate director. Thus, the said appointment by the Board of Directors of XYZ Company Limited; for an independent director, as an alternate director is not valid.

— Space to write important points for revision —

2014 - Nov [2] (a) Referring to the provision of the Companies Act, 2013, examine the validity of the following:

- (iii) On the request of bank providing financial assistance the Board of Directors of PQR Limited decides to appoint on its Board Mr. Peter, as nominee director. Articles of Association of the company do not confer upon the Board of Directors any such power. Further, there is no agreement between the company and the bank for any such nomination. (3 marks)

Answer:**Provision Sec. 161(3) of the Companies Act 2013** contains:

Subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by Central Government or State Government by virtue of its shareholding in a Government Company.

Present Case:

In the present case, the AOA do not confer any such power upon BOD but do not also restrict it from doing so. Thus, the appointment of Mr. Peter as nominee director shall be valid assuming that Board is not prohibited by the articles to appoint a nominee director.

— Space to write important points for revision —

2015 - Nov [3] (a) (i) 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. (4 marks)

Answer:**Provision:**

Sec. 439 of the Companies Act, 2013 provides that offences under the Act shall be non-cognizable. As per this section:

1. Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in Sec. 212(6) shall be deemed to be non-cognizable within the meaning of the said Code.

2. 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 of the Registrar, a shareholder *or a member* (Inserted by Companies (Amendment) Act, 2017) of the company, or of a person authorized by the Central Government in that behalf.

Present Case:

Thus, in the given case, the court shall not initiate any *suo moto* action against the director Mr. X without receiving any complaint in writing of the Registrar of Companies, a shareholder of the company *or a member* (Inserted by Companies (Amendment) Act, 2017) of a person authorized by the Central Government in this behalf.

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2015 - Nov [3] (b) Queens Limited is a company listed at Bombay Stock Exchange. Company's Articles empower the Board of Directors to appoint additional director. The Board of Directors, therefore, appoints Mr. K, as the additional director. It may, however, be pointed out that earlier, the proposal to appoint Mr. K, as a director on the Company's Board was rejected by the members at the company's Annual General Meeting.

Examining the provisions of the Companies Act, 2013, answer the following:

- (i) Whether Mr. K's appointment as additional director by the Board of Directors is valid?
- (ii) Whether the Company's Annual General Meeting can appoint Mr. K as the additional director when the proposal to appoint comes before the meeting for the first time?
- (iii) In case the AGM of the company is not held within the stipulated time, decide whether Mr. K who was appointed by the Board as additional director, for the first time, can continue to act as a director?

(8 marks)

Answer:

Provision:

As per Sec. 161(1) of Companies Act, 2013.

- (A) The AOA of a company may confer upon its BOD the power to appoint any person as an additional director at any time.

- (B) A person, who fails to get appointed as a director in a general meeting of the company cannot be appointed as an additional director in the same company.
- (C) Additional director shall hold office up to the date of the next AGM or the last date on which the AGM should have been held, whichever is earlier.

Present Case:

- (i) **Invalid:** Mr. K's appointment as additional director by the Board is not valid as Mr. K was rejected by the members before appointed as additional director. No, additional director is appointed if he was rejected for appointment as director.
- (ii) The power to appoint additional directors vests with the BOD and not with the members of the company. The only condition is that the Board must be conferred such power by the articles of the company. Therefore, in the present case, the company's AGM cannot appoint Mr. K. as the additional director when the proposal to appoint comes before the meeting for the first time because the company's Articles empower the Board of Directors to appoint additional director.
- (iii) Mr. K who was appointed by the Board as additional director, shall hold office till the AGM, At AGM he is removed and has to vacate the office. However, if the AGM is not held then the last day at which the AGM is to be held would be the last day for Mr. K as additional director.

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2015 - Nov [5] (a) A and B were appointed as first directors on 4th April, 2014 in Sun Glass Ltd. Thereafter, C, D and E were appointed as directors on 6th July, 2014 and F, G and H were also appointed as directors on 7th August, 2014 in the company. In the Annual General Meeting (AGM) of the company held after the above appointments, A and B were proposed to be retired by rotation and reappointed as directors.

At the AGM, resolution for A's retirement and reappointment was passed. However, before the resolution for 'B' could be taken up for consideration, the meeting was adjourned. In the adjourned meeting also, the said resolution could not be taken up and the meeting was ended without passing the resolution for B's retirement and reappointment.

In the light of above and with reference to relevant provisions of the Companies Act, 2013, answer the following:

- (i) Whether proposals for retirement by rotation and reappointment of A and B only were sufficient?
- (ii) What will be the status of B as a director in the company? (8 marks)

Answer:

Provisions:

According to Sec. 152(6)(a)(i) of the Companies Act, 2013, unless the articles provide for the retirement of all directors at every AGM, not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement of directors by rotation.

Further Sec. 152(6)(c) of the Act states that at the first AGM of a public company held next after the date of the general meeting at which the first directors are appointed and at every subsequent AGM, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

Sec. 152(6)(d) further states that the directors to retire by rotation at every AGM shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

Sec. 152(7)(a) provides that if the vacancy of the director retiring by rotation, is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

Sec. 152(7)(b) further provides that if at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting unless:

- (a) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;
- (b) the retiring director has, by a notice in writing addressed to the company or its BOD, expressed his unwillingness to be so re-appointed;
- (c) he is not qualified or is disqualified for appointment;
- (d) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or
- (e) Sec. 162 is applicable to the case.

Present Case:

- (i) **The proposals for retirement by rotation and reappointment of A & B:** Rotation of one third of the directors of company shall be made at every AGM. As, A & B are first directors and total rotating directors are six and one third of six which is two. Therefore, two directors that is A, B should be removed or be reappointed. In the present case, A & B are first directors and they are required to retire on first AGM held next. And they also to be counted for rotational directors. So, proposal of retirement of rotation and reappointment of A and B are sufficient.
- (ii) According to Sec 152(6)(c), at the AGM, one-third of rotational directors shall retire from office. Thus, B shall retire at the AGM in which he was due to retire even though it was adjourned without the resolution for B's retirement could have been taken up.

Further, at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting as he does not fall in the category of any of the exceptions mentioned in Sec. 152(7)(b). Hence, B will be deemed to be re-appointed as a director in the company.

— Space to write important points for revision —

2016 - May [2] (b) On a reference made by the Central Government, the Company Law Board passed an order authorizing the Central Government to appoint its nominees as directors of Bangalore Computers Ltd., to safeguard the interest of shareholders and public interest. Referring to the provisions of the Companies Act, 2013 state the restrictions, if any, on the

number of directors and the period for which such appointment may be made. State also the action that may be taken by the Central Government with regard to the affairs of the company when such appointment of directors is made by the Central Government. (4 marks)

Answer:

As per Sec. 161(3) of Companies Act, 2013, subject to Articles of a company a board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the CG or SG by virtue of the shareholding of the company.

The Central Government (CG) is empowered to appoint its nominees as directors of a company to effectively safeguard the interest of the company or its shareholders or the public interest. If the CG wants to appoint its nominees as Directors of such a company then it has to make a reference to the Tribunal and if the Tribunal is satisfied that the affairs of the company have been conducted in a manner oppressive to any member of the company or in a manner prejudicial to the interests of the company or to public interest, it may pass an order asking the CG to appoint directors for a period not exceeding three years on any one occasion.

Any number of persons can be appointed as a nominee by CG and for such tenure as may be specified by CG.

Action taken by Central Government:

- CG selects a person to be appointed as a nominee director and it takes the charge of affairs of the company.
- All the activities are to be done with prior approval of nominee director.
- Nominee director is required to be report the CG regarding affairs of the company.

—— Space to write important points for revision ———

2016 - May [4] (b) XYZ Limited is an unlisted public company having a paid-up capital of twenty crore rupees as on 31st March, 2015 and a turnover of one hundred fifty crore rupees during the year ended 31st March, 2015. The total number of directors is thirteen.

4.38

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Referring to the provisions of the Companies Act, 2013 answer the following:

- (i) State the minimum number of independent directors that the company should appoint.
- (ii) How many independent directors are to be appointed in case XYZ Limited is a listed company? (4 marks)

Answer:

Provision

As per Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014, following class or classes of Companies shall have independent director.

- Public Companies having paid up share capital of ten crore rupees or more.
- Public Co. having turnover of hundred crore rupees or more.
- Public Company which have in aggregate, outstanding loans, debentures and deposits exceeding fifty crore rupees.
 - (i) Here company is required to appoint minimum two independent directors.
 - (ii) If this company is a listed company, then it shall have minimum one third of total no. of directors as independent director [Sec 149(4)].

Present Case:

In the present case, XYZ Limited is an unlisted public company having a paid-up capital of twenty crore rupees as on 31st March, 2015 and a turnover of one hundred fifty crore rupees during the year ended 31st March, 2015. Thus, as per the Companies (Appointment and Qualification of Directors) Rules, 2014, XYZ Limited shall have atleast two directors as independent directors.

— Space to write important points for revision —

2016 - May [7] Answer the following:

- (a) DD Ltd. is a listed company and it has been served with notice for appointment of small shareholders' director. Referring to the provisions of the Companies Act, 2013, advice on the following:
 - (i) Define the expression 'small shareholder' and specify the number of small shareholders who may serve notice on the company for a director representing them.

- (ii) Is it possible to appoint a person, who does not hold any share in the company, as small shareholders' director?
- (iii) What is the tenure of small shareholders' director and whether he can be re-appointed as such, after expiry of his tenure? Also state whether he can be appointed as an officer of the company on expiry of his tenure as small shareholders' director. (4 marks)

Answer:

(i) **Small Shareholder:**

As per explanation to Sec. 151 of the Companies Act, 2013, small shareholders means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

Number of small shareholders who may serve notice on company for a director representing them:

Not less than one thousand small shareholders or one tenth of the total number of such shareholders whichever is lower.

- (ii) Yes, it is possible to appoint a person, who does not hold any share in the company as a small shareholder's director.
- (iii) Tenure of office of small shareholders Director is subject to Sec. 152 of the companies Act, 2013. Small shareholder director can be appointed for the tenure for not more than 3 consecutive years, he can not be reappointed after expiry of his tenure.
No, such person can not be appointed as an officer of the company on expiry of his tenure as small shareholder's director.

— Space to write important points for revision —

2016 - Nov [1] {C} (d) Referring to the provisions of the Companies Act, 2013, examine the following:

- (ii) Mr. Intelligent, was appointed as a small shareholder's director of XYZ Limited, which is in the business of Oil refining. Subsequently, A Limited and B Limited have also appointed him as small shareholder's director. Is the appointment valid? (2 marks)

Answer:

Appointment of Small Shareholder's Director

Provision:

As per Rule 7(8) of the Companies (Appointment and Qualification of Directors) Rules, 2014, read with Sec. 151 of the Companies Act, 2013, where any person appointed as small shareholder's director then he shall not held office as small shareholder's director in more than 2 companies and also another company in which he is appointed as small shareholder's director shall not be engaged in same competitive business.

Present Case:

In this case, XYZ Ltd. appointed Mr. Intelligent as a small shareholder's director XYZ Ltd. is engaged in the business of Oil refining and subsequently, A Ltd. and B Ltd. have appointed, him as small shareholder's director. Mr. Intelligent has to choose between A Ltd. & B Ltd. regarding his appointment, as he can choose only one appointment out of two companies. So his appointment is valid only in one companies out of two (i.e. A Ltd. & B Ltd.) and such one company shall not be in some competitive business with XYZ limited. (i.e. it shall be engaged in other than business of Oil refining.)

— Space to write important points for revision —

2016 - Nov [4] (c) State with reference to the provisions of the Companies Act, 2013, whether the following persons can be appointed as a Director of a company.

- (i) Mr. L, who has not paid any calls in respect of any shares of the company held by him and five months have passed from the last day fixed for the payment of calls.
- (ii) Mr. G is Director of LDT Limited, who has not filed the company's annual return pertaining to the annual general meeting held in the calendar years 2014, 2015 and 2016. (4 marks)

Answer:**(i) Provision:**

As per Sec. 164(1)(f) of the Companies Act, 2013, which provide for disqualification of director, a person is disqualified for appointment as a director if he has not paid any call on shares of the company held by him and six months have elapsed from the last day fixed for payment of the call.

Present Case:

In this case, Mr. L who has not paid any calls in respect of only shares of the company held by him and five months have been passed from the last day fixed for the payment of calls. So that as per Sec. 164(1)(f), As per the provisions a person is disqualified for appointment as a director if he has not paid any call on shares of the company held by him and six months have been elapsed from the last date fixed for the payment of the call. In the present case only five months have been passed therefore Mr. L is qualified to be appointed as director.

(ii) Provision:

As per Sec. 164(2)(a), where a person who is or has been a director of a company shall be disqualified from being reappointed as a director of that company or appointed in any other company for a period of five years if the company of which he is or has been a director has not filed financial statements or annual returns for any continuous period of three financial years.

Present Case:

In this case, LDT Limited has not filed its annual returns for 2014, 2015 and 2016. So as per above provision Mr. G who has been director of the company shall be disqualified for appointment or reappointment in same company or another company for five years.

2017 - May [1] {C} (b) Mr. Abhi was appointed as an additional director of Pioneer Limited on 14th March, 2016. The annual general meeting of the company was scheduled to be held on 29th September, 2016 but due to heavy rains and floods all records of the company were destroyed. In order to rebuild the records, the company approached the Registrar of Companies for extension of time for holding the annual general meeting till 30th December, 2016. In the light of the Companies Act, 2013 advise Mr. Abhi, who was appointed as additional director during the year. (4 marks)

Answer:

Provision:

As per Sec. 161(1) of the Companies Act, 2013, the additional director shall hold office upto the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

Again as per the third provision to the Sec. 96 of the Companies Act, 2013, Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

Present Case:

In present case, the AGM was scheduled on 29th September, 2016 but was not held on that date and last date on which AGM should have been held is 30th September, 2016. So, Mr. Abhi can hold the office after 30th September, 2016, as the company have sought the extension for holding AGM till 30th December, 2016.

— Space to write important points for revision —

2017 - May [1] {C} (c) The composition of the Board of Directors of a listed company as on 31-03-2017 comprised of (i) Mr. A, Director, (ii) Mr. B, Director (iii) Mr. C, Director (iv) Mr. D, Director, (v) Mrs. E, Independent Director, (vi) Mr. F, Independent Director and (vii) Mr. G, Independent Director.

Mr. D & Mrs. E vacated their office of Director on 15-03-2017.

You are required to examine with reference to the provisions of the Companies Act, 2013 and what course of action would you suggest which can be taken up by the Company in this regard? (4 marks)

Answer:

Provision:

As per 2nd Proviso to Sec. 149(1) of the Companies Act, 2013, at least one woman director shall be on the Board of such class or classes of companies as may be prescribed under Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014.

Any intermittent vacancy of a women director shall be filled-up by the Board at the earliest but not later than immediate next Board Meeting or three months from the date of such vacancy whichever is later. [2nd Proviso to Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014].

Rule 3 of the Companies (Appointment and Qualification of Director) Rules, 2014, provides that the following class of companies shall appoint at least one woman director:

- (1) every listed company;
- (2) every other public company having:
 - (A) paid-up share capital of one hundred crore rupee or more; or
 - (B) turnover of three hundred crore rupee or more.

The provision of Sec. 149(4) provides that every listed company shall have at least 1/3rd of the total number of Directors as Independent Directors.

Present Case:

So, in present situation since the only woman director Mrs. E is vacating her office, one new woman director is required to be appointed.

After new woman director is being appointed the requirement under Sec. 149(4) of Independent director is also to be fulfilled.

Note: As per suggested issued by ICAI, it claims a clerical error in the question i.e. date of vacation of office to be read as 15.4.2017 rather than 15.3.2017.

Accordingly the **alternate answer** is as follows:

As per provisions of Sec. 149(1) and 149(4), listed company as stated above, shall have at least one women director and one-third of the total number of directors as independent directors in the Board. However, on 15 - 4 - 2017, total number of directors left were five due to vacation of Mr. D and Mrs. E.

As per the requirement of the above sections, there is compliance of Sec. 149(4) as one third of the total number of directors comprises of $(1/3 \times 5) = 1.6$ rounded off as two, which complies with the minimum requirement of two independent directors in the board, however, pertaining to women director, Board have to fill up the intermittent vacancy at the earliest but not later than immediate next board meeting or three months from the date of such vacancy whichever is later.

— Space to write important points for revision —

2017 - May [6] (a) Examine the following with reference to the provisions of the Companies Act, 2013:

- (i) Mr. Narayan, a Director of KPR Limited who is proceeding on a long foreign tour, appointed Mr. Shankar as an alternate director to act for him during his absence. The Articles of the company provide for appointment of alternate directors. Mr. Narayan claims that he has a right to appoint an alternate director. (2 marks)
- (ii) The Board of Directors of Sakthi Limited decides to appoint on its Board, Mr. Ravi as a nominee director upon the request of a bank which has extended a long term financial assistance to the company. The Articles of Association of the company do not confer upon the Board any such power. Also, there is no formal agreement between the company and the bank for any such nomination. (2 marks)

Answer:

- (i) **According to Sec. 161(2) of the Companies (Amendment) Act, 2017**, the Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person not being a person holding any alternate directorship

for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India.

Present case:

Hence, the BOD of KPR Ltd. may appoint a person, not being a person holding any alternate directorship for any other director in the company, to act as an alternate director for a director during his absence, as:

- (a) The Articles of KPR Limited provides for appointment of alternate director.
- (b) Mr. Narayan, director of company is proceeding for a long foreign tour.

However, the power to appoint alternate director lies with the Board of Directors and not with the director himself. Hence, Mr. Narayan cannot himself appoint alternate director.

So, Mr. Narayan's claim that he has a right to appoint an alternate director is not valid.

- (ii) **According to Sec. 161(3) of the Companies Act, 2013.** Nominee Director can be appointed by the Board subject to the articles of a company.

Present Case: The Board of Directors of Sakthi Limited cannot appoint alternate director as the Articles of Associations of the company do not confer upon **BOD** any such power to appoint nominee director.

—— Space to write important points for revision ———

2017 - Nov [1] {C} (a) Mr. Vikram, a director of M/s Tubelight Limited has made default in filing of annual accounts and annual returns with Registrar of Companies for a continuous period of 3 financial years ending on 31st March, 2016. Examine the validity of the following under the Companies Act, 2013:

- (i) Whether Mr. Vikram can continue to be a director of M/s Tubelight Limited (defaulting company) and also M/s Green Light Limited, where he is also a director? Also state whether he can be re-appointed as director in these two companies.

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- (ii) What would your answer be in case Mr. Vikram is a nominee director of a Public Financial Institution?
- (iii) What would be your answer in case the defaulting company (i.e. M/s. Tubelight Limited) is a private limited company? (4 marks)

Answer:

Provision:

According to Sec. 164(2) of the Companies Act, 2013, a person who is or has been a director of a company which:

- (a) has not filed the financial statements or annual returns for any continuous three financial year; or
- (b) has failed to repay the deposits accepted by it or pay interest thereon on due date or redeem its debenture on due date or pay interest due thereon or pay any dividends declared and such failure continues for one year or more.

Shall not be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the company fails to do so.

Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.

As per Sec. 167(1) (a) of the Companies Act, 2013, the office of a director shall become vacant in case he incurs any of the disqualifications specified under Sec. 164(2) of the Companies Act, 2013.

Provided that where he incurs disqualification as per Sec. 164(2), the office of director shall become vacant in all the Companies other than the company which is in default under that sub section.

Present Case:

In given case, M/s. Tubelight Ltd. has made default in filing of annual accounts and annual returns with ROC for a continuous period of three financial year ending on 31st March, 2016.

So company has defaulted under Sec. 164(2), so consequences are as follows:

- (i) Here, Mr. Vikram is a director of M/s. Tubelight Limited and M/s. Greenlight Limited. M/s. Tubelight Limited did not file financial statements for three years ended on 31st March, 2016. So this, constitutes disqualification under Sec. 164(2) but, Mr. Vikram will not incur disqualification for a period of six months.

Provided that where he incurs disqualification as per Sec. 164(2), the office of director shall become vacant in all the Companies other than the company which is in default under that sub section.

Since, Mr. Vikram has attracted disqualification under Sec. 164(2) of the Companies Act, 2013, he cannot continue to be director of M/s. Greenlight Ltd., has to vacate office of Greenlight Ltd. immediately.

Mr. Vikram is not eligible to be reappointed in those two companies for five years.

- (ii) Nominee director is a director as appointed by Public Financial Institution as per Sec. 161(3), so disqualification under Sec. 164(2) shall not applied to nominee director. Nominee director can not be removed by disqualification as per Sec. 164(2), so if Mr. Vikram is a nominee director then he continue to be the director of both the companies.

- (iii) **In case Tubelight Limited is a Private Limited Company:** As per Ministry of Corporate Affairs Notification No. 463(E) and 464(E) dated 5th June 2015, provision of Sec. 164(2) shall not be applicable to a private company.

So, if M/s. Tubelight Limited is a private company then, Mr. Vikram a director of M/s. Tubelight Limited shall not be disqualified under Sec. 164(2), because provisions of Sec. 164 shall not applied to M/s. Tubelight Pvt. Ltd. So Mr. Vikram can continue to hold office in both the companies, M/s. Tubelight Ltd. & M/s. Greenlight Ltd.

Alternate Answer:

According to Sec. 164(3), a private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sec. (1) and (2) of Sec. 164.

Thus, in this case the answer would be same as above i.e. Mr. Vikram has to vacate his office of directorship from Tubelight Limited and Green Light Limited and cannot be reappointed in both the companies for a period of five years from the date on which the said company incurs the default.

— Space to write important points for revision —

2017 - Nov [2] (a) (i) Referring to the provisions of the Companies Act, 2013, examine the validity of the following appointment of Directors:

- (A) Brown Limited, having a turnover of ₹ 60 crores in the financial year 2016-17 appoints Ms. Rose as the women director on 1st March, 2017. Ms. Rose already holds directorship in twelve companies including ten public companies. She is whole time Cost Accountant in practice.
- (B) Ms. Jasmine holds directorship in eight public companies including managing directorship in two companies and directorship in six companies. In addition, she also holds alternate directorship in three companies and independent directorship in three subsidiary companies of Brown Limited. (4 marks)

Answer:

Provision:

As per Sec. 165(1) of the Companies Act, 2013 no person after commencement of this Act, shall hold office as a director including alternate directorship in more than twenty Companies.

Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Explanation to Sec. 165(1) clarifies that for reckoning the limit of public companies in which a person can be appointed as director, i.e. ten, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

Present Case:

- (A) **In this case, Ms. Rose**, already holds position as director in twelve companies including ten public companies. Now she is appointed as director in Brown Ltd., a public company. As she already holds directorship in ten public companies, she cannot accept position as director in Brown Ltd. even though limit of twenty directorship does not exceeds as per Sec. 165.
- (B) **Ms. Jasmine holds** directorship in eight public companies. In addition she also holds alternate directorship in three companies. So that total directorship counts eleven assuming that alternate directorship position is also in a public company. So Ms. Jasmine holds position as director in eleven public companies and now she takes directorship as independent director in three subsidiary company of Brown Limited, a public company. So as per Sec. 165, subsidiary or holding of public company shall be deemed as public company. So, she already holds position as director in public company she cannot be appointed as director in subsidiary of Brown Limited.

— Space to write important points for revision —

2018 - May [1] {C} (a) CTC Limited is an unlisted public company having a paid up capital of ₹ 100 crores as on 31st March, 2017. The company made a turnover of ₹ 300 crores for the financial year ended 31st March, 2017. The Articles of Association of the company provides for payment of sitting fee to Directors for each Board Meeting/Committee thereof subject to a maximum of ₹ 40,000 per meeting. The Board of Directors is comprised of Independent Directors and Women Directors also. The Company is having 7 directors in its Audit Committee. Shri PKV, working as Financial Advisor of the company, was designated as Chief Financial Officer from 1st April, 2015. He retired from service on superannuation on 31st March, 2016. He is in receipt of monthly pension of ₹ 80,000 from the company. It is proposed to appoint Shri PKV as Independent Director of the Company. The Board of Directors proposes to fix sitting fee of ₹ 50,000 per meeting to Independent Director and ₹ 30,000 per meeting to Woman Director, taking into consideration their experience and qualification.

In the light of the provisions of the Companies Act, 2013, advise the Board of Directors in the following matters:

- (1) Appointment of Mr. PKV as Independent Director.
- (2) Fixing sitting fee of ₹ 50,000 to Independent Director and ₹ 30,000 to Woman Director.
- (3) Minimum number of Independent Directors.
- (4) Maximum sitting fee to a Director.

Assuming CTC Ltd. is a Government Company, what will be your advise in the matter of appointment of Mr. PKV as Independent Director.

(8 marks)

Answer:

- **According to the Rule - 4 of the Companies (Appointment and Qualification of Directors) Rules 2014**, the following class or classes of companies shall have at least 2 directors as independent directors.

- (1) the public companies having paid up share capital of ten crore rupees or more; or
- (2) the public companies having turnover of one hundred crore rupees or more;
- (3) the public companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.

However, in lose a company covered under the above rule is required to appoint a higher number of independent directors due to composition of its audit committee, such higher number of independent directors shall be applicable to it.

As per **Sec. 177(2) of the Companies Act, 2013**, the audit committee shall consist of a minimum of three directors with independent directors forming a majority.

- As per **Sec. 149(6) of Companies Amendment Act, 2017**, a person who has or had no pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent of his total income or such amount as may be prescribed with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

- As per **Sec. 197 (5) of the Companies Act, 2013**, a director may receive remuneration by way of fee for attending meetings of the Board or committee thereof or for any other purpose whatsoever as may be decided by the Board. Such sitting fees shall not exceed ₹ 1 Lakh per meeting of the Board or committee thereof, [As per the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014]. However, for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fees payable to other directors. So that company can pay sitting fee to independent directors and women director differently.

Present Case

- In light of above provisions of the Companies Act, 2013 advice given to Board of Directors of CTC Ltd. in following manner.
 1. CTC Ltd. wants to appoint Mr. PKV as independent director. Mr. PKC was working as financial adviser in the company, was designated as Chief Financial officer during 2015-16. As per **Sec. 149(6)**, as discussed above, Mr. PKC was in pecuniary relationship with the company during 2 immediately preceding financial year. However the amount of transaction is not clearly given in the question.
Therefore MR. PKC will be eligible if his transaction does not exceed ten percent of his total income or such amount as may be prescribed.
 2. As per **Sec. 197(5)**, the company can pay sitting fees to directors to attend meeting upto one lakh rupees per director per meeting. However, the company can pay sitting fees to Independent Director and women director differently. In this case Articles of the company provides for payment of sitting fee to Directors for each Board meeting/committee thereof subject to maximum of forty thousand rupees.
Now, company want to pay sitting fee of fifty thousand rupees to Independent Director and thirty thousand rupees to women Director. So company can validly pay sitting fee to Independent and woman director different. But, here the CTC Ltd. Shall require to pass

resolution for making alteration in Articles of Association of the Company to increase limit for payment of sitting fee to Independent Director of fifty thousand rupees. As it is within limit of one lakh, the company can pay sitting fee to directors upto one lakh.

3. **In light of provisions of Sec. 177(2) read with Rule 4 of the companies (Appointment and Qualification of Directors) Rules, 2014**, Minimum number of director shall be two independent director. However, for the purpose of composition of audit committee, the company shall have majority of its directors as independent director. So in this case, the audit committee of the company comprises of Seven directors. So, here minimum number of independent directors shall be four independent directors.
 4. The company can pay maximum sitting fee to a director upto one lakh rupees subject to the company shall require to make alteration in Articles of Association for increase in sitting fee.
- If CTC Ltd. would have a government company, then the company can validly appoint a director with pecuniary relationship with the company. As provision of **Sec. 149(6)**, for not appointing a director with pecuniary relationship shall only be applied to non-government company.
 - In this case, if CTC Ltd. is a government company, the company can validly appoint Mr. PKV as independent director of the company.

— Space to write important points for revision —

2018 - Nov [1] {C} (a) The Board of Directors of M/s. Diya Steels and Aluminium Limited, a listed Company having a paid up equity share capital of ₹ 15 crores and preference share capital of ₹ 1 crore and 1100 small shareholders holding equity shares, seeks your advice on the following:

- (i) Is it mandatory for the Company to appoint a Director to represent Small Shareholders?
- (ii) If the Company decides to appoint such a Director, the procedure to be followed by the Company for such appointment and the tenure for which such appointment can be made.

- (iii) Whether such a Director be considered as an Independent Director?
- (iv) When does a person appointed as a small shareholders Director vacate his office?

Advise suitably in the light of the provisions of the Companies Act, 2013 and the rules framed thereunder. (8 marks)

Answer:

- (i) **According to Sec. 151 of the Companies Act, 2013**, a listed company may have one director elected by such small shareholders in such manner and on such terms and such conditions as may be prescribed. Here, small shareholders means a shareholder holding shares of nominal value of not more than ₹ 20,000 or such other sum as may be prescribed.

So, it is not mandatory for M/s. Diya steels and Aluminium Ltd., a listed company to appoint a director to represent small shareholders.

- (ii) **Procedure for Appointment of Director**

The Companies (Appointment and Qualification of Directors) Rules, 2014 provides for the procedure for appointment of small shareholders' director According to which :

- (i) A listed company, may upon notice of not less than
 - (a) One thousand small shareholders; or
 - (b) One - tenth of the total number of such shareholders, whichever is lower, have a small shareholders' director elected by the small shareholders.

However, a listed company may opt to have a director representing small shareholders *suo motu* and in such a case the provisions of sub-rule (2), given below, shall not apply for appointment of such director.

- (ii) The small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall leave a notice of their intention with the company at least 14 days before the meeting under their signature specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director.

However, if the person being proposed does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice.

- (iii) The notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders' director stating :
- (a) his Director Identification Number
 - (b) that he is not disqualified to become a director under the Act; and
 - (c) his consent to act as a director of the company.
 - M/s. Diya steels and Aluminium Ltd. shall after the completion of above procedures pass a resolution for appointment of small shareholders' Director at general meeting.
 - Such directors' tenure as small shareholders' director shall not exceed a period of three consecutive years.

(iii) **Director as an Independent Director.**

Yes, small shareholders' Director shall be considered as an independent director subject to, his being eligible under Sec. 149(6) and his giving a declaration of his independence in accordance with Sec. 149(7) of the Act.

(iv) **Vacation of office by small shareholder Director.**

A person appointed as small shareholders' director shall vacate the office if :

- (a) the director incurs any of the disqualifications specified in Sec. 164;
- (b) the office of the director becomes vacant in pursuance of Sec. 167;
- (c) the director ceases to meet the criteria of independence as provided in Sec. 149(6).

———— Space to write important points for revision —————

2018 - Nov [5] (a) VGP Ltd. is a listed public Company with a paid up capital of ₹ 100 crores as on 31st March, 2018. Mrs. Jasmine, who was one of the promoters of PDS Ltd. (a Joint Venture Company of VGP Ltd.), was appointed as Woman Director on the Board of VGP Ltd. VGP Ltd. has the following proposals :

- (1) To remove Mr. Z, an Independent Director who was re-appointed for a second term.
- (2) To appoint Mr. N, a nominee Director in the Board as an Independent Director.
- (3) To appoint Mrs. Jasmine as an Independent-cum-Woman Director.

With reference to the relevant provisions of the Companies Act, 2013, examine:

- (i) The validity the above proposals and the appointment of Woman Director already made.
- (ii) Whether Mr. N, can be appointed as an Independent Director of PDS Ltd. ?
- (iii) Is an Independent Director entitled for stock option? (8 marks)

Answer:

Provision:

- (i) **As per second proviso to Sec. 149(1)**, the listed company or such other company as is prescribed (under Rule 3) shall have at least one woman director.

Rule 3 of the Companies (Appointment and Qualification of Directors) Rules 2014, provides that the following class of companies shall appoint at least one woman director.

- (1) Every listed company.
- (2) Every other public company having :
 - (A) paid up share capital of one hundred crore rupees or above;
 - or
 - (B) turnover of three hundred crore rupees or more.

Present Case:

Here, VGP Ltd. is a listed company shall require to appoint at least one woman director. Mrs. Jasmine, who was one of the promoters of PDS Ltd. (a joint venture company of VGP Ltd.) appointed as woman director of VGP Ltd. Which is valid by law.

The answers to the proposals shall be given as follows:

- (1) Mr. Z, an independent director who was re-appointed for a second term can be removed by following procedures as per Sec. 169 of the Companies Act, 2013.
- (2) As per Sec. 149(6), Mr. N, a nominee director in the Board cannot be appointed as Independent Director.
- (3) Mrs. Jasmine can be appointed as an independent -cum-woman director because Joint Venture is out of the purview of the disqualification.

Provision:

- (ii) **As per Sec. 149(6) of the Companies Act, 2013**, any person who neither himself nor any of his relatives holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed can be appointed as an independent director in the company.

Present Case:

Here, Mr. N, who was a nominee director in the Board of VGP Ltd. cannot be appointed as an Independent director as per Sec. 149 (6).

- (iii) **As per Sec. 149 (9)**, an independent director shall not be entitled for stock option.

Provided that if a company has no profit or its profits are inadequate an independent director may receive remuneration, exclusive of any fees payable under Sec. 197(5) in accordance with provisions of schedule V [Inserted by Companies (Amendment) Act, 2020].

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2018 - Nov [6] (Or) (a) ABC Limited is an unlisted public Company having a paid up equity share capital of ₹ 20 Crores and a turnover of ₹ 150 Crores as on 31st March, 2018. The total number of Directors on the Board is 13. Referring to the provisions of the Companies Act, 2013 answer the following:

- (i) The minimum number of Independent Directors that the Company should appoint.
- (ii) How many Independent Directors are to be appointed in case ABC Limited is a listed Company? (4 marks)

Answer:

- (i) **According to Sec. 149(4) of the Companies Act, 2013**, every listed public company shall have at least one-third of the total number of directors as independent directors.

Any fraction contained in such one-third numbers shall be rounded off as one.

According to Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following class or classes of the companies shall have at least 2 directors as independent directors :

- (1) the Public Companies having paid up share capital of 10 crore rupees or more; or
- (2) the Public Companies having turnover of 100 crore rupees or more; or
- (3) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits exceeding 50 crore rupees.

Present Case:

In the present case, ABC Ltd. is an unlisted public company having paid up capital of ₹ 20 crores as on 31st March, 2018 and a turnover of ₹ 150 crores during the year ended 31st March, 2018. Thus, as per the Companies (Appointment and Qualification of Directors) Rules, 2014, ABC Ltd. shall have at least 2 directors as independent directors.

- (ii) **According to Sec. 149(4) of the Companies Act, 2013**, every listed Public Company shall have at least one-third of the total number of directors as independent directors.
- **In the present case**, ABC Ltd. is a listed company and the total number of directors is 13. Hence, in this case, ABC Ltd. shall have at least 5 directors ($1/3$ of 13 is 4.33 rounded as 5) as independent directors.
 - The explanation to Sec. 149(4) specifies that any fraction contained in such one-third number shall be rounded off as one.
 - As the explanation to Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 specifies that for the purpose of the assessment of the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, their existence on the last date of latest audited financial statements shall be taken into account.
 - In the present case, it is mentioned that paid up capital of ABC Ltd. is ₹ 20 crore on 31st March, 2018 and turnover is ₹ 150 crore during the period ended 31st March, 2018. So, it is assumed that 31st March, 2018 is the last date of latest audited financial statements.

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2019 - May [1] {C} (a) Two (2) out of Ten (10) directors on the board of XYZ Limited have retired by rotation at an Annual General Meeting. These two (2) vacancies or place of retiring directors is not filled up and the meeting has also not expressly resolved '*not to fill the vacancy*'. Since the AGM could not complete its business, it is adjourned to a later date. Neither place of retiring directors could be filled up at this adjourned meeting nor did the meeting expressly resolve '*not to fill the vacancy*'. Analyse & apply relevant provisions of the Companies Act, 2013 and decide:

- (i) Whether in such a situation the retiring directors shall be deemed to have been reappointed at the adjourned meeting?
- (ii) What will be your answer in case at the adjourned meeting, the resolutions for reappointment of these directors were lost?
- (iii) Whether such directors can continue in case the directors do not call the Annual General Meeting? (8 marks)

Answer:

In accordance with the provision of the Companies Act, 2013, as contained in Sec. 152 (7) (a) which provides that if at the annual general meeting at which a director retires and the vacancy is not so filled up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned to same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

Sec. 152 (7) (b) further provides that if at the adjourned meeting also, the place of the retiring is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless at the adjourned meeting or at the previous meeting a resolution for the re-appointment of such directors was put and lost or has given a notice in writing addressed to the company and the Board of Directors expressing his desire not to be re-elected or he is disqualified.

Therefore, in the given circumstances answer to the questions as asked shall be:

- (i) In the first case, applying the above provisions, the retiring directors shall be deemed to have been re-appointed.
- (ii) In the second case, where the resolutions for the reappointment of the retiring directors were lost, the retiring directors shall not be deemed to have been re-appointed.
- (iii) Sec. 152 (6) (C) states that $\frac{1}{3}^{\text{rd}}$ of the rotational directors shall retire at every AGM. They retire at the AGM and at its conclusion. Hence, they will as soon as the AGM is held. Further, as per Sec. 96 (dealing with annual general meeting) of the Companies Act, 2013, every company other than a One Person Company shall in each year hold an Annual General Meeting. Hence, it is necessary for the company to hold the AGM, whereby these directors will be liable to retire by rotation.

Further Sec. 97 states that, if any default is made in holding the annual general meeting of a company under Sec. 96, the Tribunal may, on the application of any member of the company, call, or direct the calling of,

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an annual general meeting of the company. Such general meeting shall be deemed to be an annual general meeting of the company under this Act.

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2019 - May [6] (a) M/s. Bright Motors (P) Limited at the Annual General Meeting (AGM) held on 30.09.2016 appointed Mr. Anmol as a Non-Executive Director on the board of the company for a period of three years. On 2nd October, 2017 Mr. Anmol suffered a severe heart failure and expired. The board of directors of the company on 16th October, 2017 appointed Mr. Prateek to fill the casual vacancy so created. The appointment of Mr. Prateek was made for a term of three years by the board. Subsequently at the AGM held on 29-09-2018. Mr. Prateek's appointment was not proposed or approved as the board was of the view that it is not required. But the CFO of the company is of the opinion that the board of directors have contravened the provisions of the Companies Act, 2013 in respect of non-approval of the appointment of Mr. Prateek and his office tenure. Decide. (4 marks)

Answer:

As per Sec. 161(4) of the Companies Act, 2013, in the case of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy in the default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board which shall be subsequently approved by members in the immediate next general meeting.

Any person so appointed shall hold office only upto the date up to which the director in whose place he is appointed would have been held office if it had not been vacated.

Present case: Since in this case, Mr. Anmol, non-executive director of M/s. Bright Motors (P) Ltd. expired on 2nd October, 2017, and such casual vacancy filled up by Board of Directors on 16th October, 2017, by appointing Prateek. So Mr. Prateek shall hold office for remaining unexpired term of Mr. Anmol and not for 3 years. M/s. Bright Motors (P) Ltd. has not ratified the appointment of Mr. Prateek in general meeting.

CFO of the Company is correct, M/s. Bright Motors(P) Ltd. has contravened the provisions of Sec. 161(4) of the Companies Act, 2013.

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2019 - May [6] (b) Mr. Dhruv is a Director of M/s. LT Limited and XT Limited respectively. M/s. LT Limited did not file its financial statements for the year ended 31st March 2016, 2017 & 2018 respectively with the Registrar of Companies (ROC) as mandated under the Companies Act, 2013. M/s. LT Limited also did not pay interest on loans taken from a public financial institution from 1st April 2017 and also failed to repay matured deposits taken from public on due dates from 1st April 2017 onwards.

Answer the legality of the following in the light of the relevant provision of the Companies Act, 2013:

- (i) Whether Mr. Dhruv is disqualified under Companies Act, 2013 and if so, whether he can continue as a Director in M/s LT Limited? Further can he also seek reappointment when he retires by rotation at the AGM of M/s. XT limited scheduled to be held in September 2019?
- (ii) Mr. Dhruv is proposed to be appointed as an Additional Director of M/s. MN Limited in June 2019. Is he eligible to be appointed as an Additional Director in M/s. MN Limited? Decide. (4 marks)

Answer:

As per Sec. 164(2) of the Companies Act, 2013, no person who is or has been director of a company which:

- (a) has not filed financial statements or annual returns for any continuous period of 3 financial years; or
- (b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due there on or pay such any dividend declared and such failure to pay or redeem continues for 1 year or more; shall not be eligible to be re-appointed as a director of that Company or appointed in other Company for period of 5 years from the date on which the said company fails to do so.
 - (i) In this case, as per the above provisions Mr. Dhruv is disqualified under the Companies Act, 2013 but he can continue to be director of M/s LT Ltd.

Since, Mr. Dhruv is disqualified to be appointed as a director for 5 years, he cannot seek reappointment when he retires by rotation at the AGM of M/s. XT Ltd. scheduled to be held in September 2019.

- (ii) Mr. Dhruv is not eligible to be appointed as an additional director in M/s. MN Ltd.

— Space to write important points for revision —

2019 - Nov [1] {C} (a) You are the CFO and in-charge of legal compliances of a large multinational company in India. The Board of Directors of the Company are broad based and comprise of competent directors who are Indian as well as Foreign Nationals. Mr. 'X', who is a Director (Business Development) on the Board is very often on business tour abroad. He approached you and wants to know from you the regulatory provisions of the Companies Act, 2013 relating to appointment of Alternate Directors. Analyse the following situations and advise suitably, Mr. X referring to the provisions of the Companies Act, 2013.

- (a) To how many directors can a person be appointed as an alternate director and how many votes does he have in one Board Meeting?
- (b) If the original director joins the Board Meeting through video conferencing without returning to India, then, can the alternate director appointed in his place attend the same board meeting? If yes, whose presence and vote will be counted?
- (c) In case of a private company, where an alternate director is appointed in place of a non-executive director whose term is indefinite, then, what will be the tenure of such alternate director, provided the original director does not return to India for a longer period say 3-4 years?
- (d) Can an Executive Director/Whole Time Director/Managing Director appoint alternate directors? (8 marks)

Answer:

As per Sec. 161(2) of the Companies Act, 2013, the Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person to act as an alternate director in place of another director (original director) during his absence for a person of not less than 3 months from India.

According to Section 165, no person shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time. However, the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Present Case:

- (a) This provisions further provides that a person appointed as an alternate director to one of the directors cannot extend his role by acting as an alternate director to another.
- Therefore, here, a person who is appointed as alternate director for Mr. X cannot be appointed as alternate director for another director. Such alternate director shall have one vote in one Board Meeting.
- (b) There is no legal precedence whether original director joins the Board Meeting through video conferencing without returning to India then, alternate director can join the board meeting. So, original director and alternate director both can attend the same Board Meeting.
- Where alternate director and original director both are attending Board Meeting then, only original director's presence and vote will be counted.
- (c) **Sec. 161(2) of the Companies Act, 2013**, provides that an alternate director shall not hold office for a period longer than that permissible to the original director in whose place he has been appointed, and shall vacate the office, if and when the original director returns to India.
- In this case, a private company in which such alternate director is appointed, then the tenure of alternate director shall be that of director or when he return to India.
- (d) **Sec. 161(2)**, gives powers to Board of Directors of the company as authorised by its articles or by a resolution passed by the company in general meeting to appoint an alternate director.
- So, alternate director shall be appointed by the Board of Directors. Therefore, an Executive Director/ Whole Time Director/ Managing Director cannot by themselves appoint alternate directors.

— Space to write important points for revision —

2019 - Nov [6] (a) Mr. 'K' is a small shareholder director in M/s KGP Tyres Limited from 1st April 2018 and in M/s VSR Cotton Mills Limited from 1st April 2019, in compliance with the relevant provisions of the Companies Act, 2013. M/s KGP Tyres Limited has not paid interest on the public deposits due from 1st July 2018. In the light of the information given above, examine the following under the provisions of the Companies Act 2013.

- (i) Whether the office of Mr. 'K', small shareholder director, shall become vacant in M/s KGP Tyres Limited and M/s VSR Cotton Mills Limited?
- (ii) If yes, state the period from which the office of the directorship shall become vacant. (4 marks)

Answer:

Sec. 151 of the Companies Act, 2013 provides that a person appointed as small shareholders director shall require to vacate the office if he incurs any of disqualification specified in Section 164.

Further, Sec. 164(2) of the Act provides that a person who is or has been a director of a company which has failed to repay deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for 1 year or more, shall be not eligible to be reappointed as a director of that company or appointed in other company for a period of 5 years from the date on which the said company fails to do so.

Present Case:

In this case, Mr. K is a small shareholder director in M/s. KGP Tyres Ltd. from 1st April, 2018 and in M/s. VSR Cotton Mills Ltd. from 1st April, 2019. M/s. KGP Tyres Ltd. has not paid interest on public deposits from 1st July, 2018.

Therefore, in light of the above provisions the office of small shareholder director i.e. Mr. K shall become vacate from 1st July, 2019 in M/s. VSR Cotton Mills Ltd.

Such vacation of office effected from 1st July, 2019 and shall continue for Mr. K for a period of 5 years.

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2019 - Nov [6A] (Or) (a) Mr. 'R' holds directorship in 10 Public Companies and 11 Private Companies as on 31.05.2019. One of the above Private Company is a dormant Company. Apart from the dormant Company, on 30.06.2019 a Private Company (in which Mr. R is holding directorship) has become a subsidiary of a Public Company.

In the light of the provisions of the Companies Act, 2013 examine and decide:

- (i) The validity of holding directorship of Mr. 'R' with reference to number of directorship as on 31.05.2019 and as on 30.06.2019.
- (ii) Whether a Company has power to specify any lesser number of Companies in which a director of the Company may act as a director?
(4 marks)

Answer:

As per Sec. 165(1) of the Companies Act, 2013, no person, after the commencement of this Act, shall hold office as director, including any alternate directorship, in more than 20 companies at the same time.

As per proviso to Section 165(1) out of limit of 20; maximum number of public companies in which a person can be appointed as a director shall not exceed 10.

Private Companies that is either holding subsidiary company of a public company shall be included in reckoning the limit of public companies in which such person can be appointed as a director.

As per Explanation – II of Section 165, for reckoning the limit of directorships of 20 companies, the directorship in a dormant company shall not be included.

In this case, in light of above provisions:

- (i) As on 31.05.2019 Mr. R is holding directorship in 10 public companies and 11 private companies including one dormant company so that total number of directorship is 20, as dormant company directorship is not counted.

Therefore, as on 31.05.2019, directorship hold by Mr. R is well within the limit of Section 165.

As on 30.06.2019 one private company in which Mr. R is holding directorship has become a subsidiary of a public company, and such

company shall be counted for 10 public companies as per the above provision. Therefore as on 30.06.2019, number of directorship remains 20, but public company in which Mr. R holding directorship has become 11.

Therefore, as on 30.06.2019, directorship hold by Mr. R is beyond the limit of Section 165 and therefore is not valid. He shall have to vacate office from one of the public company to maintain the limit.

- (ii) **As per Sec. 165(2) of the Act**, the member of a company may by special resolution specify any lesser number of companies in which a director of the company may Act as director. Therefore, the company has power to specify lesser number of companies in which a director of the company may Act as a director but subject to special resolution passed in general meeting.

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2020 - Nov [5] (b) In the annual general meeting of XYZ Ltd. held on 28th May, 2020, while discussing on the matter of retirement and reappointment of director Mr. X, allegations of fraud of ₹ 20 lakhs in Bombay branch of the Company were marked against him by some members. This resulted into disorder and confusion in the meeting. The Chairman declared 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, examine 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. (4 marks)

Answer:

Provisions:

Section 439 (2) 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 written complaint in writing of:

- (i) the registrar
- (ii) a shareholder of the company or
- (iii) a person authorised by the Central Government in that behalf.

However, Court may take cognizance of offence relating to issue and transfer of securities and non-payment of dividend on a complaint in writing by a person authorised by the SEBI.

Present Case:

Considering the provisions of Section 439 the Court cannot initiate any *suomoto* action against the director without receiving any complaint in writing of the ROC a shareholder of the company or any of a person authorized by the CG in this behalf.

— Space to write important points for revision —

2020 - Nov [6] (a) Excel Limited is a listed Company with a turnover of ₹ 60 crores in the FY- 2016-2017. The Company appoints Ms. R as the women director on 1st March, 2017. Ms. R is already a director in twelve companies including ten public companies. Also, Ms. R is a Chartered Accountant in practice. Further, also, Ms. R, is a Director in Supreme Ltd. where she is acting in a professional capacity. Since lots of proposal for the holding of directorship in various companies are lined up before Ms. R, so in order to retain her, the Remuneration and Nomination Committee proposed to enhance the remuneration of Ms. R from 4 Lacs per month to 6 Lacs per month. However, Supreme Limited was running in losses in the last 2 years. Evaluate in the light of the given facts, the following with reference to the provisions of the Companies Act, 2013:

- (i) The validity of appointment of Ms. R in Excel Limited.
- (ii) Analyse the proposition of enhancement of remuneration of Ms. R in Supreme Ltd.

Evaluate the following cases of appointment of Director(s), with reference to the relevant provisions of the Companies Act, 2013:

- (i) Ms. Nisha was appointed as director of LMN Limited on 10th October, 2020 in place of Ms. Rachna, who resigned from her office on 31st May, 2020 six months before expiry of term of her office. LMN Limited had its Board meeting on 31st July 2020. Whether appointment of Ms. Nisha is valid?

- (ii) The Board of Directors of a Company appointed Mr. Sarvesh as an additional director on 30th July, 2020. Mr. Sarvesh continued to hold his office till 15th October, 2020. The Company had its annual general meeting on 30th October, 2020 which should have held on 30th September, 2020. Whether Mr. Sarvesh can hold office till 15th October, 2020? (4 marks)

Answer:

- (i) **Section 178 of the Companies Act, 2013** while formulating the policy of remuneration the committee shall ensure talent, motivate the director to run the company successfully, performance benchmark, balanced between fixed pay and variable pay to achieve long term as well as short term objective.

Section 165 of the Companies Act, provides maximum number of directorship that can be held by the director section states that a director can become a director in maximum 10 public companies.

Thus, as Mr. R is already appointed in 10 public companies as a director so, she can not appoint as a director.

- (ii) **As per SECTION II OF PART II OF SCHEDULE V**, Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may pay remuneration to the managerial person not exceeding the limits under (A) and (B) provided in it.

In case of a managerial person who is functioning in a professional capacity, remuneration as per item (A) may be paid, if such managerial person possesses graduate level qualification with expertise and specialised knowledge in the field in which the company operates.

Applicable conditions for payment of remuneration: The limits specified under items (A) and (B) specified in the mentioned Schedule shall apply, if payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under Section 178 (1), also by the Nomination and Remuneration Committee.

Since Ms. R is a Chartered Accountant in practice and acting in a professional capacity in Supreme Ltd. So, here as per the above provision, proposal to enhance the remuneration can be done by resolution passed by the Board. Hence, the said proposal of enhancement of remuneration of Ms. R by Nomination and Remuneration Committee in Supreme Ltd. which is a listed company is valid. Moreover, it also does not require approval of the Central Government.

Note: As the question talk about the proposal of enhancement of remuneration by Nomination and Remuneration Committee, this may lead to the understanding that Supreme Ltd. is a listed company in the said question.

OR

- (i) Section 149 (1) read with rule-3 provides that following companies need to compulsorily appoint one woman director:

The public company which is:

1. listed company or
2. having paid up share capital \geq 100 cr or
3. having turnover \geq 300 cr.

Casual vacancy arising at the place of one woman director shall be fixed by BOD not later than immediate BM or 3 months whichever is later.

Here, Ms. Rachna, who resigned from her office on 31st May, 20 and company had its board meeting on 31st July, 2020, So company need to appoint new woman director 31st July, 2020 (immediate Board meeting) or by 1st September, 2020 (three months from the date of vacancy of Ms. Rachna) whichever is later.

Hence, appointment of Ms. Nisha is not valid.

- (ii) As per section 161(1) of the Companies Act, 2013, Additional director shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

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In the instant case, Mr. Sarvesh, the additional director shall hold office upto next AGM i.e. 30th October 2020 or the last date on which the AGM should have been held i.e. 30th September, whichever is earlier. But Mr. Sarvesh continued to hold office till 15th October, 2020 which is not valid. He should hold office till 30th September, 2020.

— Space to write important points for revision —

2020 - Nov [6] (b) Eighty-two shareholders of Perish Limited, a listed Company holding shares of nominal value of ₹ 19,000 each proposed Mr. Babulal as a Director on the Board. The paid-up share capital of Perish Limited is ₹ 6.2 Crores (6,20,000 equity shares of ₹ 100 each). The Company has 800 such shareholders, who are holding shares of nominal value of ₹ 19,000 or less. Examine with reference to relevant provisions of the Companies Act 2013, whether Mr. Babulal can be appointed as a Director of Perish Limited? (4 marks)

Answer:

According to Section 151 of the Companies Act, 2013 and Rule 7 of the Companies(Appointment and Qualification of Directors) Rules, 2014, a listed company may, upon notice of not less than:

- (a) one thousand small shareholders; or
- (b) one-tenth of the total number of such shareholders,

Whichever is lower, have a small shareholders' director elected by the small shareholders. The term "small shareholders" means a shareholder holding shares of nominal value of not more than ₹ 20,000 or such other sum as may be prescribed.

In the instant case, Perish Ltd. has 800 small shareholders out of which 82 small shareholders proposed Mr. Babulal as a director on the Board. Thus, it fulfills the requirement of one-tenth of the total number of such shareholders ($800 \times 1/10 = 80$). Hence, Mr. Babulal can be appointed as a director of Perish Ltd.

— Space to write important points for revision —

2021 - Jan [6] (Or) (a) Ms. Jai Shvitha is a qualified Chartered Accountant and is known for her in-depth knowledge of Corporate and Economic Laws. She is a Woman Director in PQR Ltd. Due to her tight pre-occupation, she could not attend any Board Meetings of the Company held for a period of 12 months though she has taken leave of absence. Despite the fact that though under Section 167(1)(b) of the Companies Act, 2013 her office of directorship gets vacated, nevertheless, due to her professional competency:

- (i) The Board of PQR Ltd. wants to keep Ms. Jai Shvitha's Directorship in the Company and hence proposes to waive the event of absence and/or condone her absence from attending Board meetings.
- (ii) Ms. Jai Shvitha also wants to keep the Directorship in PQR Ltd. In the light of the relevant provisions of the Companies Act, 2013, analyse the above situations and advise the Board on the course of action that they can adopt. (4 marks)

Answer:

Provision:

According to Section 167 (1), the office of a director shall become vacant in case where he absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board.

Present Case:

- (1) Ms. Jai Shvitha is required to vacate the office of director in PQR Limited. The proposal of Board of PQR Limited to waive the event of absence or condone her absence from attending meeting is not permissible.
- (2) Ms. Jai Shvitha desires to keep the directorship in PQR Limited is also not tenable. However, the board is advised to co-opt her as an additional director in the subsequent board meeting as there is no prohibition in the Act for such co-option and reappointment.

— Space to write important points for revision —

2021 - July [1] {C} (b) The Board of Directors of the UN Ltd., which is an MNC, comprising of directors who are Indian as well as of Foreign Nationals. Mr. X, who is a Director on the Board is very often on business tour abroad. He approached you, being legal expert of the Company, to know the regulatory provisions of the Companies Act, 2013 relating to appointment of Alternate Directors.

Examine the following situations and advise, Mr. X suitably as per the provisions of the Companies Act, 2013.

- (i) Number of directors for which a person, say Mr. Y can be appointed as an Alternate Director.
- (ii) If Mr. Y is appointed as an alternate director in place of a director whose term is indefinite, then, what will be the tenure of Mr. Y?

(4 marks)

2021 - July [1] {C} (c) The Board of Directors of Blackstone Ltd. (BL) made the following appointments at its meeting held on 1st January, 2021:

- (i) Mr. Amir, a Director of its subsidiary Company, namely, Black Ruby Ltd., was appointed as General Manager on a consolidated salary of ₹ 1,75,000 per month with effect from 1st January, 2021.
- (ii) Mr. Kumar was appointed as the Production Manager on a consolidated salary of ₹ 1,50,000 per month with effect from 1st January, 2021.
- (iii) Mr. Pratap, a relative of Mr. Kumar was appointed as a Director of BL on 1st April 2021.

In the light of the provisions of the Companies Act, 2013, critically examine the following:

- (A) Whether the appointment of Mr. Amir require the approval of the shareholders of BL at a general meeting?
- (B) Does the appointment of Mr. Pratap as a Director of BL affect the continuation of Mr. Kumar as the Production Manager? (6 marks)

2021 - July [6] (b) As on 31-3-2021, Mr. K. Muthusamy is holding directorship in 4 listed Companies, 4 unlisted Public Companies and 4 Private Limited Companies. He has obtained two Director Identification Number (DINs) allotted to him inadvertently. Out of the 12 directorships, he

holds 10 with the DIN allotted to him first and the rest with the DIN allotted to him later. He wants to surrender one of his DIN, but to keep all his 12 Directorships. In the light of the relevant provisions of the Companies Act, 2013, examine the following:

- (i) Which DIN sourced by Mr. K. Muthusamy be surrendered ?
- (ii) What procedure he needs to follow and what actions will be done by the Central Government in this regard ?
- (iii) In what way can he keep all his 12 Directorships with one DIN ?

(4 marks)

MULTIPLE CHOICE QUESTION

1. ABC Limited has paid-up capital of eighty five crore and turnover of rupees four hundred fifty crore as per their latest audited financial statements. Is company required to appoint women director in board to comply with Rule -3 of Companies (Appointment and Qualifications of Directors) Rules, 2014?
 - (a) Yes, at least one women director to be appointed in board
 - (b) No, as its turnover is less than five hundred crore
 - (c) Yes, only if ABC Limited is listed
 - (d) No, as paid up capital is less than hundred crore.
2. Innovative Limited is located in GIFT city, Gandhi Nagar, Gujarat. Latest audited financial statement reveals that company's turnover is rupees one thousand one hundred twenty five crore. How many women director is required to be appointed by the company?
 - (a) One
 - (b) Two
 - (c) One, must be Independent director
 - (d) Nil
3. In X Limited an intermittent vacancy of a women director arises on 15th April, 2018. The next board meeting is scheduled on 14th June, 2018. Vacancy shall be filed by not later than:
 - (a) 30th April, 2018
 - (b) 14th June, 2018

- (c) 14th July, 2018
(d) 15th May, 2018
4. In order to qualify as a resident director under sec. 149(3) of Companies Act, 2013, a person must have stayed in India for at least
- (a) One hundred eighty two days in previous financial year
(b) One hundred eighty two days in previous calendar year
(c) Ninety days in one previous calendar year or three hundred sixty days in four previous calendar days.
(d) Ninety days in one previous financial year or three hundred sixty days in four immediate previous financial days.
5. The provision of sec. 149 (3) of Companies Act, 2013 , which mandate appointment of resident director shall be applicable to specified IFSC public company:
- (a) Since incorporation itself.
(b) After five financial year.
(c) After three financial year.
(d) Other than first financial year.
6. Consider the following statements in relation to number of directors in board of companies:
- (i) A public company shall have at least three director
(ii) A private company shall have a least two director and one person company shall have at least one director
(iii) Maximum number of director can be fifteen , which further can be increased by passing special resolution
(iv) Maximum directors can be fifteen, which further can be increased by passing special resolution, but not more than twenty
(v) The maximum limit of fifteen director and their increase in limit by special resolution shall not apply to Government companies and companies covered under sec. 8

Which one option is correct?

- (a) (i), (ii), (v)
(b) (i), (ii), (iii), (iv), (v)
(c) (i), (ii), (iii), (v)
(d) (i), (ii), (v)

7. Prudent limited is having six directors in Audit Committee. How many directors should be independent director to comply with the requirement of Sec. 177(2) of Companies Act, 2013?
- (a) Four
 - (b) Three
 - (c) Two
 - (d) All directors shall be part of audit committee
8. Following details are available to MCM limited
Paid up capital = 5 crore
Turnover = 125 crore
Public deposits = 45 crore
Number of directors in board = 14
Number of directors in Audit committee = 6
Company approaches you as an expert of corporate Laws. What Shall you advice to company in order to comply Sec. 149(4) and Sec. 177(2) of Companies Act, 2013:
- (a) Company is required to appoint at least three independent directors in board
 - (b) Company is not required to appoint any independent director, as paid up capital is less than ten crore
 - (c) Company is required to appoint at least five independent directors in board
 - (d) Company is required to appoint at all six directors of audit committee as independent directors in board.
9. In X limited the vacancy of independent directors arises on 15th June, 2019. The immediate next board meeting was held on 14th October, 2019. The said intermittent vacancy should be filled by:
- (a) 14th December, 2019
 - (b) 14th October, 2019
 - (c) 14th September, 2019
 - (d) 15th September, 2019

10. Which one of the following is a disqualification to become an independent director as per sec. 149(6) of Companies Act, 2013?
- (a) A director who holds one percent voting power of the company
 - (b) A director whose relative is a partner in a firm rendering legal services to associate company and firm's turnover from this activity is 5 % of gross turnover of the firm.
 - (c) A director has held the position of KMP in subsidiary four year ago
 - (d) None of above.
11. Which one of the following item shall not be part of remuneration to independent director as per sec. 149(7) of Companies Act, 2013?
- (a) Fee under sec. 197(5)
 - (b) Stock options
 - (c) Expenses for Board and other meetings
 - (d) Commission related to as approved by Members
12. Mr. A is going to complete his second consecutive tenure (of five year) as an Independent director in Innovative Limited. Mr. A being a person of known expertise in field of company's interest. Hence, it is proposed to re -appoint him as an independent director for third consecutive tenure of five year. Company consulted you regarding proposed appointment by way of special resolution. What advise you shall offer in light of Sec. 152 and Sec. 149(10)/(11) of Companies Act, 2013?
- (a) Mr. A may be re-appointed as independent director for third consecutive tenure of five year
 - (b) Mr. A may be re-appointed as independent director for third consecutive tenure, but for tenure not exceeding three year.
 - (c) Mr. A cannot be re-appointed as independent director for third consecutive tenure. However, he shall be eligible for appointment as independent director after expiration of three years of ceasing to be independent director.
 - (d) Mr. A cannot be re-appointed as independent director for third consecutive tenure. However, he shall be eligible for appointment as independent director after expiration of five years of ceasing to be independent director.

13. Consider the following statements with respect to independent director
- (i) The provision of retirement by rotation shall not be applicable
 - (ii) The director shall be liable to act of omission or commission by the company with or without his knowledge
 - (iii) Director shall deem to have pecuniary relationship with company, if he receives profit relation commission from holding company.
 - (iv) Company and independent director shall abide by schedule VII of Companies Act, 2013. Which of the following statement (s) is/ are correct?
 - (a) (i)
 - (b) (i), (iii)
 - (c) (iv)
 - (d) (i), (ii), (iii)
14. Mr. Rohan was appointed as independent director on 15th January, 2012 for three years. He was re-appointed as an independent director on 15th January, 2015 for five years after complying requirement of Law. His term is going to be completed by 14th January, 2020. Company is in view that his services as an independent director are crucial for company's growth. Hence, it is desired that Mr. Rohan should be again re-appointed as an independent director for period of five years. Your expert advice was sought by company in regarding matter. What advise you shall offer?
- (a) Yes, company may re-appoint Mr. Rohan as independent director for five years
 - (b) Company may re-appoint Mr. Rohan as independent director ,but for period of two years only
 - (c) No, company can't re-appoint Mr. Rohan as independent director, as he required cooling period of three years after serving Two consecutive term as independent director.
 - (d) Yes, subject to permission from ministry of corporate affairs
15. ABC limited having ten thousand shareholders including two thousand five hundred "small shareholders" is not listed in any stock exchange. Three hundred small shareholders gave a notice of their intention for appointment of Mr. RAM as director to be elected by them. Company refused their request. Is refusal tenable?

- (a) Yes, as more than 10% small shareholder have given notice
 - (b) Yes, ABC being a non listed company
 - (c) No, as at least 1000 small shareholders should give notice
 - (d) No, all public companies are required to appoint at least one director elected by small shareholders
16. Consider the following statements regarding director elected by small shareholders:
- (i) He is liable to retired by rotation
 - (ii) Tenure of small shareholder's director cannot exceed five years
 - (iii) On expiry of tenure, he is eligible for reappointment
 - (iv) He can hold the position of director of small shareholder in maximum five companies. Which of the following statements are incorrect?
- (a) (i), (ii), (iii), (iv)
 - (b) (i), (iii)
 - (c) (ii), (iii), (iv)
 - (d) (iv)
17. Z limited having fourteen directors in its board, including seven as independent directors. Three out of seven independent directors are appointed in compliance with law other than Companies Act, 2013. How many directors are liable to retire by rotation at AGM?
- (a) Three
 - (b) Two
 - (c) Five
 - (d) All independent directors
18. Vacancy of Mr. Ramesh (retiring director) is not filled up in a meeting held on 2nd September, 2019, without expressly resolving not to fill the vacancy. In the adjourned meeting also, held on 9th September, 2019, vacancy was not filled, without expressly resolving not to fill the vacancy. Hence, Mr. Ramesh is deemed to be:
- (a) Disqualified
 - (b) Re-appointed without remuneration
 - (c) Re-appointed
 - (d) Not re-appointed

19. Application for allotment of DIN (director identification number) is to be made in form:
- (a) DIR-3
 - (b) DIR-5
 - (c) DIR-12
 - (d) DIR-9
20. Mr. Ram is intending to be appointed as director in ABC limited. He has downloaded DIR-3 from MCA website and filled the required particulars along with required document. He also verified the same complete form with his digital signature. But he is in confusion about from whom this form can be counter verified? Mr. Mahesh is finance manager in the company and he is a Chartered Accountant by qualification. Mr. Raju is Cost Accountant by qualification and working as Cost Controller in the company. Mr. Rohan is Assistant Manager in law department of company and he possesses LLM from recognized university. Mr. Menon is Director –Finance of the company. Mr. Rajeev is working as Company Secretary in the company. Mr. Wadhawan is managing director of the company.
- Who can digitally verify Mr. Ram's DIR-3 form?
- (a) Mr. Mahesh or Mr. Raju
 - (b) Mr. Rohan or Mr. Mahesh
 - (c) Mr. Rajeev or Mr. Menon
 - (d) Mr. Wadhawan only
21. Validity of DIN is:
- (a) Ten years
 - (b) Ten years, subject to renewal at every five years.
 - (c) Life time, subject to renewal at every five years
 - (d) Life time
22. Time limit for intimation of DIN by the director to company under sec. 156 of Companies Act, 2013 is:
- (a) One month
 - (b) Three month
 - (c) Six month
 - (d) Fifteen days

23. Robert a resident of USA is intended to be appointed to be the Board of MNC Limited in India. He contends that being a foreigner, he is not required to law DIN. His contention is:
- (a) Correct
 - (b) Incorrect
 - (c) Correct, provided article contain a clause
 - (d) Correct, but he should file an application to MCA to get exemption.
24. On the application made by Mr. Rakesh, he was allotted Director Identification numbers on 25th September, 2019. As there was a work pressure owing to financial year closing, he forgot to intimate the same number to the company. On 15th April, 2020 he intimated the number to the company . This contravention according to Sec. 159 of Company Act may attract:
- (a) Fine up to INR fifty thousand only
 - (b) Imprisonment up six month only
 - (c) (a) or (b) or both
 - (d) (c) and further fine of INR five hundred per day till contravention continue.
25. Some of the members of Z limited given notice to the company before fifteen days from general meeting of their intention to propose Mr. Azad as Director. They also deposited INR One lakh with the company. Company has five hundred members, but only four hundred members casted their vote and only fifty votes were casted in favor of resolution. Hence, Mr. Azad fails to select. Members supporting Mr. Azad now make an application for refund their money. Will they succeed?
- (a) Yes, more than ten percent vote casted in favor
 - (b) No, less than twenty five percent vote casted in favor
 - (c) No, director proposed by them not selected
 - (d) Yes, but seventy five percent amount only.
26. As per sec. 160(1) of Companies Act, 2013 in case of Nidhi companies, the amount of INR is to be deposited by members, intending a person to stand as director
- (a) One hundred
 - (b) One thousand

- (c) Ten thousand
 - (d) One lakh
27. Central government and government of Haryana holds fifty one percent and twelve percent of the paid up share capital of A limited. A government company also holds twelve percent paid up share capital of ABC limited. You, being an expert on the corporate matters are consulted by the company to ascertain the applicability of Sec. 160 of the Companies Act, 2013. What advise you shall extend to the company?
- (a) A limited being a government company, provisions of sec. 160 shall not apply
 - (b) Provision of sec. 160 shall be applicable, as entire paid-up capital is not held by central or state or central plus state government.
 - (c) Provision of sec. 160 is applicable to all government companies.
 - (d) Provision of sec. 160 is applicable only to only private companies.
28. Alok is a director in the YMA limited. He is proceeding on a foreign tour for four months. The articles of the company expressively provides for appointment of alternate director under sec. 161(2) of the Companies Act. Hence, before proceeding on tour, Alok appointed Mr. Rohan as an additional director in writing under his stamp mentioning his DIN to act as director on his place, till his return from USA. Is appointment of Rohan tenable under law?
- (a) No, Alok has no power to appoint director under sec. 161(2).
 - (b) No, as Alok is proceeding on tour abroad for a period of less than six month.
 - (c) Yes, company's article clearly provides so.
 - (d) Yes, company's article clearly provides so and tour duration is more than three months.
29. To deal with strategic mater of company's interest, Mr. Hariom, an Independent Director of the MLA Company is proceeding on tour to USA for a period of 5 months. He consulted you about appointment of director, if any, during his absence. Five names were considered for the appointment as alternate directors under sec. 161(2) of Companies Act, 2013, Mr. A, Mr. B, Mr. C, Mr. D and Mr. E.

Mr. A is already alternate director in ZMC limited. Mr. B is director in MLA limited; he is also a fellow member of member ICAI. Mr. C is practicing Cost Accountant, who is also partner in BMC & Associate and Cost Auditor of the MLA limited. Mr. D's wife is promoter of MGT limited, a subsidiary of MLA limited. Mr. E is Law graduate by qualification and provides training classes for corporate on special topics. Who can be appointed as alternate director?

- (a) Mr. A, Mr. B, Mr. E
- (b) Mr. C, Mr. E
- (c) Mr. D, Mr. E
- (d) None

30. Mr. Rampal is appointed as additional director in Bombay Limited on 17th January, 2019. The next AGM was proposed to be held on 30th August, 2019, but due to unavoidable reason beyond the control of company, meeting was Postponed to 25th September, 2019. Company's AGM was held on 25th September, 2019. On 10th September, 2019. Mr. Hari (member) challenged the directorship of Rampal contending that Mr. Rampal cannot be considered as director after 30th September, 2019. His objection is referred to Mr. Pankaj, a legal expert, who advised that, Rampal can continue as additional director till 30th September, 2019. MD of the company is not satisfied with the views of Mr. Pankaj. He referred the matter to you for determination of date of termination of directorship of Mr. Rampal. What date would you suggest?

- (a) 30th August, 2019
- (b) 10th September, 2019
- (c) 30th September, 2019
- (d) 25th September, 2019

31. On the request of Wholesome Bank Limited providing financial assistance, the Board of Directors of X Limited decides to appoint on its Board Mr. Rajeev, as nominee director under Sec. 161 (3). Articles of Association of the Company do not confer upon the Board of Director any such power. Further, there is no agreement between the company and the bank for any such nomination. Appointment of Mr. Rajeev as Nominee Director is:

- (a) Valid
 - (b) Invalid
 - (c) Valid, if at least one independent director is present in meeting
 - (d) Valid, if at least three non executive director present in meeting
32. Rakesh is appointed as director in General Meeting of Board held on 25th January, 2019 for a period of five year. He vacated the office of director owing to disqualification under section 164 of the Companies Act, 2013 on 24th March, 2019. The resulting casual vacancy was filled on 24th April, 2019 in meeting of board by appointment of Mr. Prem Prakash. Mr. Prem Prakash shall hold the office till:
- (a) 24th January, 2022
 - (b) 23rd March, 2022
 - (c) 23rd March, 2024
 - (d) 24th April, 2024
33. Ramesh and Suresh are being considered to be appointed as directors. In proceeding, first it was agreed that their appointment shall be made by single resolution. The votes casted in Favour are one thousand, vote casted against are fifteen and one hundred eighty five members absented from voting. Hence, company appoints them director. Is their appointment tenable with or without condition, if any?
- (a) Yes
 - (b) No
 - (c) Yes, only if fifteen dissented member are minor share holders
 - (d) Yes, only if both directors are being appointed as Independent director
34. Mohan, a director of X Pvt. Limited, defaulted in filling annual accounts and annual return for a continuous three financial year ended on 31st March, 2019. Mohan is also director in UT Limited. His term as a director in X Pvt. Limited is ending on 25th January, 2020 and on 20th October, 2021 in UT limited. Mohan can continue as director in UT Limited till
- (a) 31st March, 2019
 - (b) 30th April, 2019
 - (c) 25th January, 2020
 - (d) 20th October, 2021

35. Consider the following statements with respect to maximum number of directorship under sec. 165, that a person can hold
- (i) A person can hold directorship in twenty companies, excluding directorship as Alternate director.
 - (ii) Limit of twenty numbers subject to sub limit of twelve in public companies.
 - (iii) Limit is also applicable on sec. 8 companies.
 - (iv) Member of the company by passing special resolution increase the limit of twenty directorships for a person, as special case.
- Which of the following are incorrect?
- (a) (i), (iii), (iv)
 - (b) (iii), (iv)
 - (c) (i), (iv)
 - (d) (i), (iii)
36. Rohan is a director in Fresh Air Solution Limited. As he is very busy on account of his sister's marriage, he assigned his office to Prakash for a period of one month. They also executed a deed that Rohan shall pay INR two thousand five hundred through account payee cheque for that assignment, which is less than one percent of his annual remuneration, excluding seating fee. Assignment stated above is:
- (a) Valid
 - (b) Invalid
 - (c) Void
 - (d) Valid, approval from MD/Whole Time Director required
37. Mr. Radhey Shyam is a director in Z limited. He is convicted by the court of offence not involving moral turpitude and court sentenced imprisonment for 8 months. He filed the appeal against the order in High Court. Mr. Radhey Shyam claims, that he can continue his office as he filed the appeal against earlier court. His contention is
- (a) Correct
 - (b) Incorrect
 - (c) Correct, if he is Independent Director
 - (d) Correct, if he is Alternate Director

38. Eight board meeting were conducted in X limited for the calendar year 2019. Mrs. Rajani, director of the company attended only one meeting. Further, she not even made application, seeking leave of absence from board for rest meetings. Mr. Ram a special adviser of board informs to board that her office has become vacant by virtue of sec. 167 (1). Board referred matter to battery of legal expert comprising four members A, B, C and D. Their respective view are as follows:
A's View- Mr. Ram is absolutely correct.
B's View- Since, Mrs. Rajni has not absented from the all meeting during twelve months, her office shall not become vacant.
Mr. C's View- Since, Mrs. Rajani attendance is more than ten percent during twelve months; Her office shall not become vacant.
Mr. D's View – Her office shall become vacated, as her attendance is less than fifty percent during twelve months.
You were also asked to comment on the matter. You shall affirm the view of -
- (a) Mr. A
 - (b) Mr. B
 - (c) Mr. C
 - (d) Mr. D
39. Mr. Romesh is appointed as alternate director under sec. 161(2) in absence of Mr. Prince, who is on tour to Japan for hundred days and term of Mr. Prince is ending immediately after three days of his return from Japan. After 45 days from date of appointment of Mr. Romesh, it came into light that Mr. Prince incurs disqualification under sec. 164. Mr. Romesh ceases to be director on
- (a) Till return of Mr. Prince
 - (b) After Seventy Five days
 - (c) After One hundred days
 - (d) After forty five days
40. Robert a resident of USA is director in Bharat MNC limited. He resigns from his office on 15th January, 2019 owing some personal reasons. Bharat MNC limited also file DIR -12 with ROC on 27th January, 2019.

Robert wish to authorize someone in India to sign DIR -11 and file it with ROC on his behalf intimating reason of resignation. To whom he can authorize:

- (a) A Chartered Accountant in practice only
 - (b) Paul John, a resident of USA and also director in Bharat MNC
 - (c) Mr. Romesh, an Indian resident and also director in Bharat MNC
 - (d) Company Secretary in practicing only
41. The Articles of Roma Private Limited provide that the maximum number of Directors in the company shall be ten. Presently, the company is having eight directors. The Board of Directors of the said company desire to increase the number of directors to Sixteen. Advise whether under the provisions of the Companies Act, 2013 the Board of Directors can do so.
- (a) Yes, by passing Special Resolution in General Meeting
 - (b) Yes, by altering AOA and passing Special Resolution in General Meeting
 - (c) No, maximum number of director can be fifteen
 - (d) No, Pvt. Limited company cannot increase limit of maximum fifteen Director
42. Mr. A holds twelve percent share of a company and has lost confidence in the Managing Director (MD) of the company. The MD is not liable to retire by rotation and was re-appointed as MD for 5 years w.e.f. 1st April, 2018 in the last AGM of the company. Mr. A does not wants to state the reason to support the resolution for removing MD. Your advice to Mr. A shall be –
- (a) Reason is not necessary to sate in such resolution
 - (b) Reason is necessary to sate in such resolution
 - (c) At least fifteen percent shareholding is required to move such resolution for removal
 - (d) At least two members or ten percent shareholding is required to move such resolution

43. The power of appointing Additional Director can be exercised in the:
- (a) Board Meeting
 - (b) Statutory Meeting
 - (c) Either (a) or (b) above
 - (d) Annual General Meeting
44. A company is required to keep Register of Directors and KMP under Sec. 170 (1) of Companies Act at:
- (a) Registered Office
 - (b) At every Nodal Office
 - (c) Head Office
 - (d) At any other place decided by Board
45. Any changes in the Register of Directors and KMP is required to be intimated by the Company to ROC within
- (a) Seven days
 - (b) Fifteen days
 - (c) Thirty days
 - (d) Sixty days
46. Ramu is member of ABC limited. He wishes to inspect the Register Directors and KMP maintained under sec. 170 (1) of Companies Act 2013. What amount of fee he is required to pay for such inspection?
- (a) Nil
 - (b) Ten rupees
 - (c) Hundred rupees
 - (d) Ten rupees per register
47. In case of specified IFSC Private company, Return containing appointment of Directors and KMP is required to be filed with ROC within from date of appointment.
- (a) Seven days
 - (b) Fifteen days
 - (c) Thirty days
 - (d) Sixty days

48. Consider the following statements with respect to adoption of principle of adoption of propositional representation for appointment of director:
- (i) Article of company may confer for the appointment of not less two/third of director to be appointed in accordance with principle of propositional representation.
 - (ii) Such appointment may be made once in three years, whether by single transferable vote or system of cumulative voting or otherwise.
 - (iii) Single transferable voting system ensures that the board will have fair representation of minority interest.

Which of the following option is correct?

- (a) (i), (ii), (iii)
- (b) (i), (iii)
- (c) (i)
- (d) (ii), (iii)

Answer

1.	(a)	2.	(a)	3.	(c)	4.	(b)	5.	(d)
6.	(c)	7.	(a)	8.	(c)	9.	(b)	10.	(d)
11.	(b)	12.	(c)	13.	(a)	14.	(c)	15.	(b)
16.	(a)	17.	(b)	18.	(c)	19.	(a)	20.	(c)
21.	(d)	22.	(a)	23.	(b)	24.	(d)	25.	(b)
26.	(c)	27.	(b)	28.	(a)	29.	(c)	30.	(d)
31.	(b)	32.	(a)	33.	(b)	34.	(d)	35.	(a)
36.	(c)	37.	(a)	38.	(b)	39.	(d)	40.	(c)
41.	(b)	42.	(a)	43.	(d)	44.	(a)	45.	(c)
46.	(a)	47.	(d)	48.	(a)				

Table Showing Marks of Compulsory Questions

Year	16 N	17 M	17 N	18 M	18 N	19 M	19 N	20 N	21 J	21 J
Practical	2	8	4	8	8	8	8			10
Total	2	8	4	8	8	8	8			10

Abbreviations Used

AGM	Annual General Meeting
AOA	Article of Association
BOD	Board of Directors
CG	Central Government
DIN	Directors Identification Number
RO	Registered Office
SG	State Government