

## PAPER – 2: BUSINESS LAW, ETHICS & COMMUNICATION

### PART – I: ANNOUNCEMENTS STATING APPLICABILITY & NON-APPLICABILITY FOR NOVEMBER, 2016 EXAMINATION

#### I. Applicability for Nov 2016 examinations

The study material (July 2015 edition), practice manual (April 2016 edition) along with the “Supplementary Study Paper 2016” for Paper 2: Business Law, Ethics and Communication (Relevant for students appearing in November 2016 and May 2017 examinations) is relevant for November 2016 examinations. The Supplementary Study Paper 2016 contains all relevant amendments/ circulars/ notifications etc. in the Business and the Company law part made from 1<sup>st</sup> May 2015 to 30<sup>th</sup> April, 2016 and the same is reproduced here for reference of the students:

#### The Negotiable Instruments Act, 1881

The Negotiable Instruments (Amendment) Act, 2015 received the assent of the president on 26<sup>th</sup> December, 2015 and has been notified in the Official Gazette on 29<sup>th</sup> December, 2015 by the Ministry of Law and Justice.

This is an Act further to amend the Negotiable Instruments Act, 1881 (N.I. Act, 1881) and shall be deemed to have come into force on the 15<sup>th</sup> day of June, 2015.

The N.I. Act, 1881 defines promissory notes, cheques and specifies penalties for bouncing of cheques, and other violations. It does not however specify the jurisdiction of courts where cheque bouncing cases may be filed.

The Amendment Act, 2015 modifies the definition of a cheque in electronic form given in section 6, and clarifies the appropriate area of jurisdiction of courts by amendment in cognizance of offences in section 142 and through insertion of a new section 142A dealing with the transfer of pending cases related to the dishonour of cheques.

#### Key Highlights of the Negotiable Instruments (Amendment) Act, 2015:

##### 1. Amendment in the definition of cheque given under section 6 of the N.I. Act, 1881

(i) Explanation I, for clause (a) in the Principal Act, deals with the following definition-  
**(a) “Cheque in the electronic form”** - Under the Negotiable Instruments Act, 1881, this was defined as a cheque containing the exact mirror image of a paper cheque and generated, written and signed in a secure system using a digital signature (with /without biometric signature) and asymmetric crypto system.

This above definition has been amended and substituted with the following namely -  
**“Cheque in the electronic form”**-means a cheque drawn in electronic form by using any computer resource, and signed in a secure system with a digital signature (with /without biometric signature) and asymmetric crypto system or electronic signature, as the case may be;

(ii) After the Explanation II in the principal Act, the following explanation shall be inserted, namely-

**“Explanation III—**For the purposes of this section, the expressions " asymmetric crypto system", "computer resource", "digital signature", "electronic form" and "electronic signature" shall have the same meanings respectively assigned to them in the Information Technology Act, 2000.”

**2. Amendment of section 142 (Cognizance of offences)-** In the principal Act, section 142 shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely-

“(2) The offence under section 138, which deals with the dishonour of cheque, shall be inquired into and tried only by a court within whose local jurisdiction,—

- (a) **if the cheque is delivered for collection through an account**, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or
- (b) **if the cheque is presented for payment by the payee or holder in due course**, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

**Explanation—** For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.”

**3. Insertion of new section 142A- Validation for transfer of pending cases -** Section 142A is the new insertion in the Act. All cases of cheque bouncing which were pending in any court, before the Act came into force, will be transferred to a court with the appropriate jurisdiction.

**“142A (1)** Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or direction of any court, all cases transferred to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, shall be deemed to have been transferred under this Act, as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1) and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

**This sub-section deals with respect to filing of subsequent complaints-** The payee has filed a complaint against the drawer in a court with the appropriate jurisdiction, all subsequent complaints against that person regarding cheque bouncing will be filed in the same court. This will be irrespective of the mode of presentation of cheque.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Act, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, before which the first case was filed and is pending, as if that sub-section had been in force at all material times.

**This sub-section deals with where more than one case filed by the same payee against the same drawer before different courts-** If more than one case is filed by the same payee against the same drawer before different courts, the case will be transferred to the court with the appropriate jurisdiction before which the first case was filed.

**4. Repeal and Savings-**(1) The Negotiable Instruments (Amendment) Second Ordinance, 2015, which was promulgated in September 22, 2015, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act.

[Refer Page 2.6 & Page 2.36 of the Study material (July 2015 edition)]

### The Payment of Bonus Act, 2015

The Payment of Bonus (Amendment) Act, 2015 is an Act further to amend the Payment of Bonus Act, 1965. The Act received the assent of the President on the 31<sup>st</sup> December, 2015, and published in the Official gazette on 1<sup>st</sup> January 2016 by Ministry of Law and Justice. It shall be deemed to have come into force on the 1<sup>st</sup> day of April, 2014.

#### Highlights to the Payment of Bonus (Amendment) Act, 2015

**1. Amendment in Section 2(13)-**Section 2(13) of the Payment of Bonus Act, 1965 (i.e., Principal Act) states the definition of "employee" who is eligible for bonus.

As per the Principal Act, Employee means any person (other than an apprentice) employed –On a salary or wage **not exceeding ₹ 10,000 per mensem** in any industry, to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work, for hire or reward, whether the terms of employment be express /implied.

As per the **Payment of Bonus (Amendment) Act, 2015**, the eligibility limit for payment of bonus has been enhanced from **₹ 10, 000 to ₹ 21,000 per mensem**.

**2. Amendment in Section 12-** Section 12 of the Payment of Bonus Act, 1965 deals with the calculation of bonus with respect to certain employees. According to the Principal Act, where the salary or wage of an employee exceeds ₹ 3,500 per mensem, the bonus payable to such employee under Section 10 or, as the case may be, under Section 11, shall be calculated as if his salary or wage were only ₹ 3,500 per mensem.

This section have been incorporated by the Payment of Bonus (Amendment) Act, 2007 w.e.f. from 1.04.2006.

As per the **Payment of Bonus (Amendment) Act, 2015**, calculation ceiling for the bonus has been raised. For the words “3,500 rupees” at both the places where they occur, the words “7,000 rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher” shall respectively be substituted;

Further, **Explanation** have been inserted at the end of this section, namely:—

‘**Explanation.**—For the purposes of this section, the expression “**scheduled employment**” shall have the same meaning as assigned to it in clause (g) of section 2 of the Minimum Wages Act, 1948.’

**3. Amendment in section 38 –** Section 38 of the Payment of Bonus Act, 1965 deals with power to make rules. The Principal Act empowers the Central Government to make rules for the purpose of giving effect to the provisions of this Act. Since the said section does not provide for the previous publication of the rules.

As per the **Payment of Bonus (Amendment) Act, 2015**, an enabling provision providing for the previous publication for the purpose of inviting objections and suggestions in tune with the other legislations pertaining to welfare of labour have been inserted.

As of that, section 38 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely

“(1) The Central Government may, subject to the condition of previous publication, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

[Refer Page 3.4, page 3.19 & page 3.28 of the Study material (July 2015 edition)]

### The Companies Act, 2013

The Companies (Amendment) Act, 2015 and other relevant legislative amendments:

1. Vide Notification **G.S.R.349(E)**, dated 1<sup>st</sup> May 2015, the Central Government through the enforcement of the **Companies(Incorporation) Amendment Rules, 2015**, hereby inserted relevant Rule 7A and Rule 36 to the Companies (Incorporation) Rules, 2014 in exercise of the power conferred by sections 3, 4, 5 and 7, read with section 469 sub-section (1) & (2) of the Companies Act, 2013.

- (i) **“Rule 7A. Penalty-** If a One Person Company (OPC) or any officer of such company contravenes any of the provisions of rules related to the formation and nomination by the subscriber/member of One Person Company, the OPC or any officer of such company shall be punishable with fine which may extend to 5000 rupees and with a further fine which may extend to 500 rupees for every day after the first offence during which such contravention continues.”
- (ii) **“Rule 36.Integrated process for incorporation-**
- (1) For the purpose of simplifying the filing of forms for incorporation of a company, the integrated process shall apply with effect from 1st May, 2015.
  - (2) For the purposes of sub-rule(1), the application for allotment of Director Identification Number (DIN) upto 3 Directors, reservation of a name, incorporation of company and appointment of Directors of the proposed company shall be filed in Integrated Form No. INC-29, for One Person Company, Private company, Public Company and producer company, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, along with the fee of rupees two thousand in addition to the registration fee as specified in Companies (Registration of Offices and Fees) Rules, 2014.
  - (3) For the purposes of filing Integrated Incorporation form, the particulars of maximum of 3 directors shall be allowed to be filled in INC-29 and allotment of DIN of maximum of 3 proposed directors shall be permitted in Form INC-29 in case of proposed directors not having approved DIN.
  - (4) The promoter or applicant of the proposed company shall propose only one name in e-form No. INC-29.
  - (5) The promoter or applicant of the proposed company may prepare Memorandum of Association as per templates in Form INC-30 and may opt for templates of Articles of Association in Form INC-31 in accordance with the provisions of rule 13 for preparation of Memorandum of Association and Article of Association.
  - (6) The promoter or the applicant shall sign and witness, the Memorandum of Association and Articles of Association in the forms downloaded from the portal of the Ministry of Corporate Affairs and scanned legibly and attach to e-form INC-29 in accordance with the provisions of rule 16 for preparation of Memorandum of Association and Articles of Association.
  - (7) The facility to file Integrated application for incorporation in Form INC-29 is available as an option to the process for separate applications for allotment of Director Identification Number, reservation of name and Incorporation of a company as provided in these rules.

- (8) For an application filed using the Integrated process of incorporation as provided in this rule, the provisions of sub clause (i) of sub-section (5) of section 4 of the Act and rule 9 of these rules shall not apply.
- (9) A company using the provisions of this rule may furnish verification of its registered office under sub-section (2) of section 12 of the Act by filling e-Form INC -29 in which case the company shall attach along with such e-Form INC-29, any of the documents referred to in sub-rule (2) of rule 25.
- (10) The requirement of filing e-Form INC-28 may be dispensed with if, the proposed company maintains its registered office at the given correspondence address.
- (11) The Registrar within whose jurisdiction the registered office of the company is proposed to be situated shall process INC-29 including application for allotment of DIN.
- (12)
  - (a) Where the Registrar, on examining e-form INC-29, finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the defects and re-submit the e-form within fifteen days from the date of such intimation given by the Registrar.
  - (b) After the resubmission of the document, if the registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days to remove such defects or deficiencies.
  - (c) In case, the Registrar is of the opinion that the document is defective or incomplete in any respect after giving such two opportunities, the e-form INC-29 of the proposed company shall be rejected.
- (13) The Certificate of Incorporation shall be issued by the Registrar in Form No. INC-11."

[Refer Para 1.6 for Point (i), Page 6.18 for Point (ii) of the Study material (July 2015 edition)]

2. Vide Notification No. G.S.R 442(E), dated 29<sup>th</sup> May 2015, the Central Government enforced the **Companies (Incorporation) Second Amendment Rules, 2015** to further amend the Companies (Incorporation) Rules, 2014 in exercise of the powers conferred by section 7 read with section 469 sub-sections (1) & (2) of the Companies Act, 2013.

According to this Notification, a proviso has been inserted to Rule 12 to the Companies (Incorporation) Rules, 2014 which is related with the filing of application for incorporation of companies to registrar under section 7(1).

“Provided that in case pursuing of any objects of a company requires registration or approval from sectoral regulators such as RBI, SEBI, registration or approval, as the case may be, from such regulator shall be obtained by the company before pursuing such objects and a declaration in this behalf shall be submitted at the stage of incorporation of the company.”

**[Refer Para 1.6, Page 6.18, Point (ii) of the Study material (July 2015 edition)]**

3. Vide Notification No. S.O.1440(E) dated 29<sup>th</sup> May 2015 Central Government hereby appointed the 29<sup>th</sup> May 2015, as the date of enforcement of the provisions of Sections 1 to 10 and 15 to 23 of the Companies(Amendment) Act, 2015.

The Companies (Amendment) Act, 2015 was notified in the official gazette on 26<sup>th</sup> May 2015 to further amend the Companies Act, 2013.

Following are the relevant sections amended by the Companies (Amendment) Act, 2015:

Relevant Provisions of the Companies Act, 2013	Amendment by the Companies (Amendment) Act, 2015	Reference of the Page No. of the study material (July 2015 edition) covering the relevant topics
In definition of private company given in section 2(68)	The words “of one lakh rupees or such higher paid-up share capital” shall be omitted;	Page 6.7
In definition of public company given in section 2(71)	In sub-clause (b), the words “of five lakh rupees or such higher paid-up capital,” shall be omitted.	Page 6.8
Effect of Registration given in section 9	The words “and a common seal” shall be omitted	Page 6.20
Section 11 dealt with commencement of business	Omitted	Page 6.22

Registered office of the company given in section 12	In sub section(3), for clause(b), the following clause shall be substituted, namely- “(b)Having its name engraved in legible characters on its seal, if any,”	Page 6.23
Execution of bills of exchange, etc. given in section 22	(i) in sub-section (2),— (a) for the words “under its common seal”, the words “under its common seal, if any,” shall be substituted; (b) the following proviso shall be inserted, namely:— “Provided that in case a company does not have a common seal, the authorisation under this sub-section shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.”; (ii) in sub-section (3), the words “and have the effect as if it were made under its common seal” shall be omitted.	Page 6.78
Certificate of shares given in section 46	In sub-section (1), for the words “issued under the common seal of the company”, the words “issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary” shall be substituted.	Page 6.92



<p>Acceptance of deposits from public by certain companies given in section 76</p>	<p>After section 76, the following new section shall be inserted, namely:—</p> <p>"76A. Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or contravention of the conditions prescribed under section 73 or section 76 or rules made thereunder or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73,—</p> <p>(a) the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees; and</p> <p>(b) every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both:</p>	<p>Page 6.65</p>
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	Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447."	
Resolutions and agreements to be filed in section 117	In sub-section (3),— (i) in clause (g), the word "and" occurring at the end shall be omitted; (ii) after clause (g), the following proviso shall be inserted, namely:— "Provided that no person shall be entitled under section 399 to inspect or obtain copies of such resolutions; and".	Page 6.160

4. Ministry Vide **Notification G.S.R. 466 (E) dated 5<sup>th</sup> June 2015**, directed that certain provisions of the Companies Act, 2013 shall not apply or shall apply with certain exceptions, modifications and adaptation to the **companies covered under section 8** of the Companies Act, 2013.

Following are the sections which are influenced by this Notification:

Relevant Provisions of the Act	Amendment through the Notification	Reference of the Page No. of the study material (July 2015 edition) covering the relevant topics
"Private company" given under section 2(68)	The requirement of having minimum paid-up share capital shall not apply.	Page 6.7

"Public company" given under section 2(71)	The requirement of having minimum paid-up share capital shall not apply.	Page 6.8
Provision related to Annual General Meeting(AGM) covered under section 96(2)	In sub-section (2), after the proviso and before explanation, the following proviso shall be inserted- Provided further that the time, date and place of each AGM are decided upon before-hand by the Board of Directors having regards to the directions, if any, given in this regards by the company in its general meeting.	Page 6.128
Provision related to notice of meeting given in section 101(1)	For the words "twenty one days", the words "fourteen days" shall be substituted.	Page 6.135
"Minutes" given in section 118	Shall not apply as a whole except that minutes may be recorded within 30 days of the conclusion of every meeting in case of companies where articles of association provide for confirmation of minutes by circulation.	Page 6.166

5. Ministry Vide **Notification G.S.R. 463 (E) dated 5<sup>th</sup> June 2015**, directed that certain provisions of the Companies Act, 2013 shall not apply or shall apply with certain exceptions, modifications and adaptation to a **Government company**.

Following are the sections which are influenced by this Notification:

Relevant Provisions of the Act	Amendment through the Notification	Reference of the Page No. of the study material (July 2015 edition) covering the relevant topics
Provision related to Memorandum given in section 4(1)(a)	Words "in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company' shall be omitted in the case of Government company.	Page 6.25

Provision related to transfer and transmission of securities in section 56(1)	After the given proviso, following provisos shall be inserted- <b>Provided</b> further the provisions of this sub-section, in so far as it requires a proper instrument of transfer, to be duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee, shall not apply with respect to bonds issued by a Government company, provided that an intimation by the transferee specifying his name, address, and occupation, if any, has been delivered to the company along with the certificate relating to the bond; and if no such certificate is in existence, along with the letter of allotment of the bond: <b>Provided</b> also that the provisions of this sub-section shall not apply to a Government company in respect of the securities held by nominees of the government.	Page 6.95
"Declaration in respect of beneficial interest in any share" given in section 89	Shall not apply	Page 6.121
"Investigation of beneficial ownership of shares in certain cases" under section 90	Shall not apply	Page 6.123
Provision related to AGM under section 96(2)	For the words "some other places within city, town, or village in which the registered office of the company is situate", the words "such other place as the Central Government may approve in this behalf" shall be substituted.	Page 6.128

6. Ministry Vide **Notification G.S.R. 465 (E) dated 5<sup>th</sup> June 2015**, directed that certain provisions of the Companies Act, 2013 shall not apply or shall apply with certain exceptions, modifications and adaptation to a **Nidhis**.

Following are the sections which are influenced by this Notification:

Relevant Provisions of the Act	Amendment through the Notification	Reference of the Page No. of the study material (July 2015 edition) covering the relevant topics
Provision related to service of documents covered under section 20(2)	Shall apply subject to modification, that the documents may be served only on members who holds shares of more than ₹ 1000 in face value or more than 1% of the total paid up share capital of the nidhis whichever is less.	Page 6.39
Provisions related to private placement under section 42, except sub-section(1), explanation(II) to Sub-section (2), sub-sections (4),(6),(8), (9) & (10)	Shall not apply	Page 6.59
"Voting rights" given in section 47	Shall apply subject to modification that no member shall exercise voting rights on poll in excess of 5% of total voting rights of equity shareholders.	Page 6.84
"Further issue of share capital" covered in section 62	Shall not apply	Page 6.84
Provision related to Restriction on purchase by company or giving of loans by it for purchase of its shares given in section 67(1)	Shall not apply, when share are purchased by the company from a member on his ceasing to be a depositor or borrower and it shall not be considered as reduction of capital under section 66 of the Companies Act, 2013.	Page 6.67

7. Ministry Vide **Notification G.S.R. 464 (E) dated 5<sup>th</sup> June 2015**, directed that certain provisions of the Companies Act, 2013 shall not apply or shall apply with certain exceptions, modifications and adaptation to a **Private company**.

Following are the sections which are influenced by this Notification:

Relevant Provisions of the Act	Amendment through the Notification	Reference of the Page No. of the study material (July 2015 edition) covering the relevant topics
"Kinds of share capital" given in section 43 and "Voting rights" under section 47	Shall not apply where memorandum/ articles of private company so provides.	Page 6.80 and page 6.84
Provisions related to further issue of share capital given under section 62(1)(a)(i)& (2)	Shall apply with following modifications: Following proviso has been inserted under clause (a), sub-clause (i)- Provided that notwithstanding anything contained in this sub-clause and sub-section (2) of this section, in case 90% of the members of a private company have given their consent in writing or in electronic mode, the periods lesser than those specified in the said sub-clause or sub-section shall apply.	Page 6.84
Provisions related to further issue of share capital given under section 62(1)(b)	For the words "Special resolution", the words "ordinary resolution" shall be substituted.	Page 6.84
"Restriction on purchase by company or giving of loans by it for purchase of its shares" given in section 67	Shall not apply to private companies- (i) In whose share capital no other body corporate has invested and money;	Page 6.67

	(ii) If the borrowings of such company from banks/financial institutions/anybody corporate is less than twice its paid up share capital/ 50 crore rupees, whichever is lower; and (iii) Such company has no default in repayment of such borrowings subsisting at the time of making transactions under this section.	
Provisions related to prohibition on acceptance of deposits from public under section 73(2)(a) to 73(2)(e)	Shall not apply to a private company which accepts from its members monies not exceeding 100% of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the registrar in such manner as may be specified.	Page 6.63
Provisions related to notice of meeting, statement annexed with the notice, quorum, chairman of meetings, proxies, restrictions on voting rights, voting by show of hands and demand for poll covered under sections 101- 107 & 109	Shall apply unless otherwise specified in respective sections or articles of the company provide otherwise.	Page 6.134 to page 6.156
Provisions related to resolutions and agreements to be filed given in section 117(3)(g)	Shall not apply	Page 6.161

8. Vide General Circular No. 09/2015 dated 18<sup>th</sup> June 2015, clarification has been issued by the Ministry on repayment of deposits accepted by the companies before

the commencement of the Companies Act, 2013 under section 74 of the said Act and filing of the prosecutions against defaulting companies.

Government vide removal of difficulties(second)order, dated 2nd June 2014 and removal of difficulties(Fourth)order, dated 6th June 2014 has clarified that the CLB has been empowered to exercise the powers of the NCLT under section 73(4) and section 74(2) of the Companies Act, 2013 till it is constituted.

Thus, depositor is free to file an application under section 73(4) with the CLB if the company fails to make repayment of deposits accepted by it. Further the company may also file application under section 74(2) with CLB seeking extension of time in making repayment of deposits accepted by it before the commencement of the provisions of the said Act.

Also clarified that there is no bar on the registrar of companies for filing of prosecution against a company if such company fails to make repayment of deposits accepted by it under the provisions of the companies Act, 1956 or Companies Act, 2013, subject to the terms and conditions for which the deposits had been accepted.

**[Refer Page 6.64 of the study material (July 2015 edition)]**

9. Vide **Notification G.S.R. 669(E), dated 28 August, 2015**, the Central Government hereby enforced the Companies (Management and Administration) Amendment Rules, 2015 further to amend the Companies (Management and Administration) Rules, 2014, namely-

In rule 23, in sub-rule (1) for the words "not more than five lakh rupees", the words 'not less than five lakh rupees' shall be substituted.

**[Refer Page 6.159 of the study material (July 2015 edition)]**

10. Vide **Notification No. G.S.R. 695(E) dated 15<sup>th</sup> September 2015**, in exercise of the powers conferred by section 73 and 76 read with section 469 sub-sections (1) & (2) of the Companies Act, 2013, Central Government further amended the Companies (Acceptance of Deposits) Rules, 2014 by the enforcement of **the Companies(Acceptance of Deposits) Second Amendment Rules, 2015**.

In clause(c), for sub-clause(viii), the following shall be substituted, namely-

"(viii) any amount received from the person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the private company:



Provided that the director of the company or relative of the director of the private company, as the case may be, from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report;"

**[Refer Page 6.62 of the study material (July 2015 edition)]**

11. Vide **Notification No. G.S.R. 841(E), dated 6<sup>th</sup> November 2015** Central Government enforced the Companies (Share Capital and Debentures) Third Amendment Rules, 2015 to further amend the Companies (Share Capital and Debentures) Rules, 2014.

In the Companies (Share Capital and Debentures) Rules, 2014, in rule 18, in sub-rule (1), in clause (a) for sub-clause (iii) following sub-clauses shall be substituted, namely:

"(iii) infrastructure Debt Fund Non-Banking Financial Companies' as defined in clause (b) of direction 3 of Infrastructure Debt Fund Non-Banking Financial Companies (Reserve Bank) Directions, 2011;

(iv) Companies permitted by a Ministry or Department of the Central Government or by Reserve Bank of India or by the National Housing Bank or by any other statutory authority to issue debentures for a period exceeding ten years".

**[Refer Page 6.104 of the study material (July 2015 edition)]**

12. Vide **Notification No. G.S.R. 99(E), dated 22<sup>nd</sup> January, 2016**, Central Government hereby makes the amendments in rule 36 sub-rule (12) to further amend the Companies (Incorporation) Rules, 2014. Rule 36 deals with the Integrated process for incorporation which was notified vide Notification no. **G.S.R.349(E), dated 1<sup>st</sup> May 2015**.

"(i) After sub-clause (b), the following shall be inserted-

'(ba) After the re-submission of the documents and on completion of second opportunity, if the registrar still finds that the documents are defective or incomplete, he shall give third opportunity to remove such defects and deficiencies;'

Provided that the total period for re-submission of documents shall not exceed a total period of 30 days.

(ii) In sub-clause(c), for the words 'three opportunities' shall be substituted."

**[Refer Para 1.6, Page 6.18, Point (ii) of the Study material (July 2015 edition)]**

II. Non-Applicability of the following relevant sections of the Companies Act, 2013 for November 2016 examinations

S.No.	Section No.	Section title
1.	Section 48	Variation of shareholders' right
2.	Section 66	Reduction of share capital
3.	Section 75	damages for fraud
4.	Section 97	Power of tribunal to call AGM
5.	Section 98	Power of Tribunal to call meetings of members, Etc.
6.	Section 99	Punishment for default in complying with provisions of sections 96 to 98

**PART – II : QUESTIONS AND ANSWERS**

**QUESTIONS**

**PART – A: BUSINESS LAWS**

**The Indian Contract Act, 1872**

1. (a) Examine what is the legal position, as to the following:
  - (i) Mohit offered to sell his land to Neha for ₹ 12,80,000/-. Neha replied purporting to accept the offer and enclosed a cheque for ₹ 80,000/-. She also promised to pay the balance of ₹ 12,00,000/- in monthly installments of ₹ 50,000/- each.
  - (ii) Aditya offered to sell his house to Babban for ₹ 10,00,000/-. Babban replied that he can accept the house for only ₹ 8,00,000/-. Aditya rejected Babban's counter offer to buy the house for ₹ 8,00,000/-. Babban later changed his mind and is now willing to buy the house for ₹ 10,00,000/-.
- (b) Red Shirt Textile enters into a contract with Retail Garments Show Room for supply of 1,000 pieces of Cotton Shirts at ₹ 300 per shirt to be supplied on or before 31<sup>st</sup> December, 2015. However, on 1<sup>st</sup> November, 2015 Red Shirt Textile informs Retail Garments Show Room that it is not willing to supply the goods as the price of cotton shirts in the meantime has gone upto ₹ 350 per shirt. Examine the rights of Retail Garments Show Room in this regard.
2. (a) Do the following statements amount to involvement of fraud?

- (i) Where the vendor of a piece of land told a prospective purchaser that, in his opinion, the land can support 2000 heads of sheep whereas, in truth, the land could support only 1500 sheep.
  - (ii) X bought shares in a company on the faith of a prospectus which contained an untrue statement that one Z was a director of the company. X had never heard of Z and the untrue statement of Z being a director was immaterial from his point of view. Can X claim damages on grounds of fraud?
- (b) Mr. N is employed as a cashier on a monthly salary of ₹ 2,000 by XYZ bank for a period of three years. 'A' gave surety for N's good conduct. After nine months, the financial position of the bank deteriorates. Then N agrees to accept a lower salary of ₹ 1,500/- per month from Bank. Two months later, it was found that N has misappropriated cash since the time of his appointment. What is the liability of A?

#### **The Negotiable Instruments Act, 1881**

- 3. A draws and B accepts the bill payable to C or order, C endorses the bill to D and D to E, who is a holder-in-due course. From whom E can recover the amount? Examining the right of E, state the privileges of the holder-in-due course provided under the Negotiable Instruments Act, 1881.
- 4. Who will exercise jurisdiction for filing of complaints under Section 138 of the Negotiable Instruments Act, 1881 as amended by the Negotiable Instruments (Amendment) Act, 2015. Explain.

#### **The Payment of Bonus Act, 1965**

- 5. Mr. Eager joined as supervisor on monthly salary of ₹ 13,400 on 1. 02. 2016 and resigned from his job on 29. 02. 2016. The company declared a bonus of 20% to all eligible employees and paid it on time. Mr. Eager knowing the facts made a claim to HRD, which in turn rejected the claim. Examine the validity in the light of the provisions of the Payment of Bonus Act, 1965.
- 6. During the financial year 2014-2015 Mr. Ram who was a temporary employee in Ayurved Products Limited and was drawing a salary of ₹ 6000/- per month. On the basis of charge of violent behavior within the premises of the company, he was prevented from working in the company for 60 days pending inquiry. Since there was no adverse conclusion against him, he was reinstated in the service with back salary. He worked for the remaining ten months in that financial year and thereafter resigned from the service. Afterwards, when bonus was paid to other employees, the company refused to pay bonus to Mr. Ram. Decide, whether Mr. Ram will be entitled to bonus under the provisions of the Payments of Bonus Act, 1965?

#### **The Employees' Provident Funds and Miscellaneous Provisions Act, 1952**

- 7. An employee of a limited company filed a claim for provident fund settlement with the Provident Fund Commissioner. However, he did not get any settlement from the authority

even after six months. Referring to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 what course of action an authority should have taken in this respect.

8. Explain briefly the mode of recovery that may be followed by the recovery officer under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 for recovering the amount due from an employer.

#### **The Payment of Gratuity Act, 1972**

9. Asma who was an employee of Aron Publishing Limited, retired on 1st January 2015 after 30 years of continuous service. The company did not pay the amount of gratuity to Asma till the end of December 2015. Now, Asma claims the amount of gratuity along with interest. Decide, under the Payment of Gratuity Act, 1972, whether Asma will succeed in his claim?
10. An employee, working in an establishment which is governed by the Payment of Gratuity Act, 1972, committed a theft in the course of his employment. And consequently his services was terminated. State in this connection, whether the gratuity payable to him shall be wholly or partly forfeited.

#### **The Companies Act, 2013**

11. John, an assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Companies and agreed with each to hold a block of investment as an agent for them. The dividend and interest income received by the companies was handed back to John as a pretended loan. This way, John divided his income into three parts in a bid to reduce his tax liability.

Decide, for what purpose the three companies were established? Whether the legal personality of all the three companies may be disregarded.

12. (a) Explain in the light of the provisions of the Companies Act, 2013, the circumstances under which a subsidiary company can become a member of its holding company.  
(b) With reference to the Companies Act, 2013, examine the position of the following with regard to membership in a company:
  - (i) Partnership Firm
  - (ii) An Insolvent
13. A company wants to get registered with the Registrar of companies. As a Chartered Accountant advise as to how it can get itself incorporated as per the Integrated Process of Incorporation under the provisions of the Companies Act, 2013.
14. The object clause of the Memorandum of Association of Miranda Private Ltd, Kolkata authorized it to do trading in fruits and vegetables. The company, however, entered into a Partnership with Mr. Karan and traded in steel and incurred liabilities to Mr. Karan. The company, subsequently, refused to admit the liability to Karan on the ground that the deal

was 'Ultra Vires' the company. Examine the validity of the company's refusal to admit the liability to Karan. Give reasons in support of your answer.

15. Mr. Ashok, the transferee, acquired 250 equity shares of KPMC Limited from Mr. Deepak, the transferor. But the signature of Mr. Deepak, the transferor, on the transfer deed was forged. Mr. Ashok after getting the shares registered by the company in his name, sold 150 equity shares to Mr. Sanjay on the basis of the share certificate issued by KPMC Limited. Mr. Ashok and Mr. Sanjay were not aware of the forgery. State the rights of Mr. Deepak, Ashok and Sanjay against the company with reference to the aforesaid shares.

#### **PART – B: ETHICS**

16. State the objectives of the Central Consumer Protection Council in India.
17. What is the difference between 'Morals' and 'Ethics'?
18. What reasons force a marketing executive to adopt ethical practices in marketing? Explain.
19. Write note on:
- (i) Harassment at workplace.
  - (ii) Ecological ethics
20. Explain the reasons for unethical behaviour among finance and accounting professionals.

#### **PART – C: COMMUNICATION**

21. Write Short Notes On:
- (a) Advantages of Ethical Communication
  - (b) Organization Values
22. Explain the functions of interpersonal communication.
23. "Once the process of consensus building has begun, mediators try to assist the parties in their efforts to generate a creative resolution of differences". Examine this statement and also state in brief the process which should be followed by mediators to resolve the differences between the parties.
24. The Board of Safe Investments Pvt. Ltd., appoint and authorize Mr. Alok giving powers to sell and sign transfer deeds for transfer of shares and debentures by executing an instrument of the "Power of Attorney". Draft such instrument of "Power of Attorney".
25. Symphony Ltd. wants to hold its Annual General Meeting on 5<sup>th</sup> August, 2016 to discuss the matters relating to ordinary business. Draft a notice in brief for calling Annual General Meeting of its shareholders.

## SUGGESTED ANSWERS/HINTS

1. (a) To conclude a contract between the parties, the acceptance must be communicated in some perceptible form. Any conditional acceptance or acceptance with varying or too deviant conditions is not acceptance. Such conditional acceptance is a counter proposal and has to be accepted by the proposer, if the original proposal has to materialize into a contract. Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him. If he does not have the knowledge, there can be no acceptance. The acceptance must relate specifically to the offer made. Then only it can materialize into a contract. With the above rules in mind, we may note that the following is the solution to the given problems:
- (i) It is not a valid acceptance and no contract can come into being. Here, Mohit offered to sell his land to Neha for ₹ 12,80,000/-. Neha replied purporting to accept the offer but enclosed a cheque for ₹ 80,000/- only. She promised to pay the balance of ₹ 12,00,000 by monthly installments of ₹ 50,000.
- The facts of the given situation are similar to the case of *Neale vs. Merret*. Thus, applying the above judgement to the given situation, Neha cannot enforce her acceptance because it was not an unqualified one.
- (ii) In the given situation Aditya offered to sell his house to Babban for ₹ 10,00,000/-, to which Babban replied that he can pay ₹ 8,00,000 for it. Consequently, the offer of Aditya is rejected by Babban as the acceptance is not unqualified. But when Babban later changes his mind and is prepared to pay ₹ 10,00,000/-, it becomes a counter offer and it is up to Aditya whether to accept it or not. This problem is similar to the facts of *Union of India v. Bahulal* case.
- In the light of decided case law, in the given situation, when Babban later changes his mind and is prepared to pay ₹ 10,00,000/-, it becomes a counter offer and it is up to Aditya whether to accept it or not.
- (b) In the given problem Red Shirt Textile has indicated its unwillingness to supply the cotton shirts on 1<sup>st</sup> November 2015 itself when it has time upto 31<sup>st</sup> December 2015 for performance of the contract of supply of goods. It is therefore called anticipatory breach of contract. Thus, Retail Garments showroom can claim damages from Red Shirt Textile immediately after 1<sup>st</sup> November, 2015, without waiting upto 31<sup>st</sup> December 2015. The damages will be calculated at the rate of ₹ 50 per shirt i.e. the difference between ₹ 350/- (the price prevailing on 1<sup>st</sup> November) and ₹ 300/- the contracted price.
2. (a) (i) The problem is based on the facts of the case *Bisset vs Wilkinson* (1927). In the given problem the vendor says that in his opinion the land could support 2000

heads of sheep. This statement is only an opinion and not a representation and hence cannot amount to fraud.

- (ii) The problem is based on the facts of the case *Smith vs Chadwick* (1884). In the problem though the prospectus contained an untrue statement, however, that untrue statement was not the one that induced X to purchase the shares. Hence, X cannot claim damages.
  - (b) According to section 133 of the Indian Contract Act, 1872, if any variance is made without surety's consent, in terms of the contract between the principal debtor and creditor, it discharges the surety as to transaction subsequent to the variance. In the instant case A is liable as a surety for the loss suffered by the bank due to misappropriation of cash by N during the first nine months but not for misappropriations committed after the reduction in salary.
3. Section 36 of the Negotiable Instruments Act, 1881 describes the liabilities of prior parties to the holder in due course. This section says that a holder in due course has privilege to hold every prior party to a negotiable instrument liable on it until the instrument is duly satisfied. Here, the holder in due course can hold all the prior parties liable jointly and severally. Prior parties includes the maker or drawer, the acceptor and endorsers. Accordingly, in the given problem, E, a holder in due course can recover the amount from all the prior parties i.e., D & C (the endorsers), B (acceptor) and A (the drawer).

**Privileges of a "Holder in Due Course":** According to the provisions of the Negotiable Instruments Act, 1881, a holder in due course has the following privileges:-

- i. A person signing and delivering to another a stamped but otherwise inchoate instrument is debarred from asserting, as against a holder in due course, that the instrument has not been filled in accordance with the authority given by him, the stamp being sufficient to cover the amount (Section 20).
- ii. In case a bill of exchange is drawn payable to drawer's order in a fictitious name and is endorsed by the same hand as the drawer's signature, it is not permissible for acceptor to allege as against the holder in due course that such name is fictitious (Section 42).
- iii. In case a bill or note is negotiated to a holder in due course, the other parties to the bill or note cannot avoid liability on the ground that the delivery of the instrument was conditional or for a special purpose only (Sections 42 and 47).
- iv. The person liable in a negotiable instrument cannot set up against the holder in due course the defences that the instrument had been lost or obtained from the former by means of an offence or fraud or for an unlawful consideration (Section 58).
- v. No maker of a promissory note, and no drawer of a bill or cheque and no acceptor of a bill for the honour of the drawer shall, in a suit thereon by a holder in due

course be permitted to deny the validity of the instrument as originally made or drawn (Section 120).

- vi. No maker of a promissory note and no acceptor of a bill payable to order shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity to endorse the same (Section 121).
4. According to section 142(2) of the Negotiable Instrument Act, 1881, the offence under section 138, which deals with the dishonour of cheque, shall be inquired into and tried only by a court within whose local jurisdiction,—
- (a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or
  - (b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.— For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.

5. Under section 8 of the Payment of Bonus Act, 1965 an employee is entitled for bonus in an accounting year if he has worked in the establishment for not less than thirty working days in that year. Under section 2 (13), an employee is defined to include an employee drawing a salary of less than ₹ 21,000 per month.

In the given case, Mr Eager was an eligible employee within the meaning of the term under section 2 (13) but became ineligible to receive bonus as he worked in the accounting year only for 29 days and hence will not be entitled to receive bonus.

6. As per Section 9 of the Payment of Bonus Act, 1965, an employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for -
- (a) fraud; or
  - (b) riotous or violent behavior while on the premises of the establishment; or
  - (c) theft, misappropriation or sabotage of any property of the establishment.

The above provision involves the following legal process:

- (i) When an employee is charged for any of the above acts, an inquiry is essential;
- (ii) The allegedly guilty employee is suspended for the period of the inquiry till submission of the inquiry report. In case he is found guilty, he may be dismissed or reinstated after warning but without wages for the period of suspension. On the other hand if he is found innocent, he will have to be reinstated with back wages as per the various labour laws including the Industrial Disputes Act.



(iii) It makes no difference whether the employee is temporary or permanent

It is clear from the above provision that if an employee is reinstated with back wages, it means he did not commit the disqualifying act and hence his disqualification does not arise. Therefore, he is entitled to receive bonus for the full year. [*Gammon India Ltd. Vs. Niranjan Das (1984)*].

Therefore, refusal of company is not valid and Mr. Ram will be entitled to the bonus under the Payment of Bonus Act, 1965.

7. The Provident Fund "claims" complete in all respects submitted along with the requisite documents are required to be settled and the benefit amount paid to the beneficiaries within 30 days from the date of its receipt of the complete "claims" by the Commissioner.

If there is any deficiency in the claim, the same shall be recorded in writing and communicated to the applicant within 30 days from the date of receipt of such application.

In case the Commissioner fails without sufficient cause to settle a claim complete in all respects within 30 days, the Commissioner shall be liable for the delay beyond the said period and penal interest at the rate of 12% per annum may be charged on the benefit amount and the same may be deducted from the salary of the Commissioner.

8. Section 8 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF & Misc Provisions Act, 1952) deals with the Mode of recovery of moneys due from employers. Under section 8B (1) of the EPF & Misc Provisions Act, 1952 where any amount is an arrear under section 8 of EPF & MP Act, 1952 the authorised officer may issue to the Recovery Officer a certificate under his signature specifying the amount of arrears. The Recovery Officer, on receipt of such certificate shall proceed to recover the amount specified therein from the establishment or as the case may be, the employer by one or more of the modes mentioned below:
- (a) attachment and sale of the movable or immovable property of the establishment or, as the case may be, the employer;
  - (b) arrest of the employer and his detention in prison;
  - (c) appointing a receiver for the management of the movable or immovable properties of the establishment or, as the case may be, the employer;

The attachment and sale of any property under section 8B shall first be effected against the properties of the establishment. Where such attachment and sale is insufficient for recovery the whole of the amount of arrears specified in the certificate, the Recovery Officer may then take proceedings against the property of the employer for recovery of the whole or any part of such arrears.

Under section 8B(2) it is further provided that the authorised officer may issue a certificate under section 8B(1) notwithstanding the fact that proceedings for recovery of the arrears by any other mode have been taken.

Further, according to section 8E, notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of the amount, the authorised officer may grant time for the payment of the amount, and thereupon the recovery officer shall stay the proceedings until the expiry of the time so granted.

9. As per the provisions of section 4(1) of the Payment of Gratuity Act, 1972, gratuity shall be payable to an "employee" (defined in section 2(e) of the Act) on the termination of his employment after he has rendered continuous service for not less than 5 years –
- ◆ On his superannuation or
  - ◆ On his retirement or resignation or
  - ◆ On his death or disablement due to accident or disease;

Further, as per the provisions of section 7(3), the employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person as gratuity, whether the application for the payment of gratuity has been given or not by the employee.

Section 8 of the Act deals with Recovery of gratuity – If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act.

Applying the above provisions of law to the question, Asma will succeed and the company Aron Publishing Limited, is required to pay gratuity along with interest.

10. **Reduction and forfeiture of Gratuity:** Under Section 4(6)(a) of the Payment of Gratuity Act, 1972, in the case of damage, loss or destruction of property of employer, due to the willful omission or negligence of the employee, the amount of gratuity to the extent of loss or damage shall be forfeited by the employer.

Further, under section 4(6)(b), the gratuity payable to an employee may be wholly or partially forfeited, where the services of an employee are terminated on the ground of:

- (i) riotous or disorderly conduct or act of violence; or
- (ii) committing an offence involving moral turpitude in the course of his employment.

Theft is an offence involving moral turpitude and consequently, if the services of an employee had been terminated for committing theft in the course of his employment, the

gratuity payable to him under the provisions of the Act shall be wholly forfeited in view of Section 4(6)(b)(ii). [*Bharat Gold Mines Ltd. Vs Regional Labour Commissioner (Central), (1987) 70 FJR 11 (Kern.)*].

11. The House of Lords in *Salomon Vs Salomon & Co. Ltd.* laid down that a company is a person distinct and separate from its members, and therefore, has an independent separate legal existence from its members who have constituted the company. But under certain circumstances the separate entity of the company may be ignored by the courts. When that happens, the courts ignore the corporate entity of the company and look behind the corporate façade and hold the persons in control of the management of its affairs liable for the acts of the company. Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, the courts have discretion to disregard the corporate entity and tax the income in the hands of the appropriate assessee.
  - (1) The fact of the case says that the three companies were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the façade of the assessee himself. Therefore, the whole idea of Mr. John was simply to split his income into three parts with a view to evade tax. No other business was done by the company.
  - (2) Therefore, the legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability. It carried on no other business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to hand them over to the assessee as pretended loans. The same was upheld in *Re Sir Dinshaw Maneckji Petit* AIR 1927 Bom.371 and *Juggilal vs. Commissioner of Income Tax* AIR (1969) SC (932).
12. (a) In accordance with the provisions of Section 19 of the Companies Act, 2013, a subsidiary company cannot either by itself or through its nominees hold any shares in its holding company and no holding company shall allot or transfer its shares to any subsidiary companies. Any such allotment or transfer of shares in a company to its subsidiary is void. The section however does not apply where:
  - (i) the subsidiary company holds shares in its holding company as the legal representative of a deceased member of the holding company, or
  - (ii) the subsidiary company holds such shares as a trustee, or
  - (iii) the subsidiary company was a shareholder in the holding company even before it became its subsidiary.
- (b) **Position of the following with regard to membership in a company:**
  - (i) **Partnership Firm:** Section 2 (55) of the Companies Act 2013 defines a member as a subscriber to the memorandum of association whose name is entered in the Register of Members following the incorporation of the company, every other person who agrees in writing to become a member of the company

and whose name is entered in the register of members of the company and any person holding shares in a company and whose name is entered as the beneficial owner in the records of the depository.

A partnership firm may therefore hold shares in a company provided its name appears in the register of members of the company. However, as a firm is not a legal entity it will be able to hold shares in the individual names of partners as joint shareholders. However, this will not apply to a "Limited Liability Partnership". (*Ganesh Das Ram Gopal v. R.G. Cotton Mills Ltd.*)

Under section 8 (3) of the Companies Act 2013, a firm may be a member of a company incorporated under section 8 i.e. a company formed as a charitable or social venture.

- (ii) **An Insolvent:** An insolvent may be a member of a company. So long as his name appears in the register of members, he is a member and is entitled to vote even though his shares vest in the Official Assignee or Receiver. (*Morgan v. Gray*).

13. The Ministry of Corporate Affairs vide Notification G.S.R. 349(E), dated 1st May 2015, through the enforcement of **the Companies (Incorporation) Amendment Rules, 2015**, inserted Rule 36 to the Companies (Incorporation) Rules, 2014 in exercise of the power conferred by sections 3, 4, 5 and 7, read with section 469 sub-section (1) & (2) of the Companies Act, 2013.

As per Rule 36:

- (1) For the purpose of simplifying the filing of forms for incorporation of a company, the integrated process shall apply with effect from 1st May, 2015.
- (2) For the purposes of sub-rule (1), the application for allotment of Director Identification Number (DIN) upto 3 Directors, reservation of a name, incorporation of company and appointment of Directors of the proposed company shall be filed in Integrated Form No. INC-29, for One Person Company, Private company, Public Company and producer company, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, along with the fee of ₹ 2,000 in addition to the registration fee as specified in Companies (Registration of Offices and Fees) Rules, 2014.
- (3) For the purposes of filing Integrated Incorporation form, the particulars of maximum of 3 directors shall be allowed to be filled in INC-29 and allotment of DIN of maximum of 3 proposed directors shall be permitted in Form INC-29 in case of proposed directors not having approved DIN.
- (4) The promoter or applicant of the proposed company shall propose only one name in e-form No. INC-29.
- (5) The promoter or applicant of the proposed company may prepare Memorandum of Association as per templates in Form INC-30 and may opt for templates of Articles

of Association in Form INC-31 in accordance with the provisions of rule 13 for preparation of Memorandum of Association and Article of Association.

- (6) The promoter or the applicant shall sign and witness, the Memorandum of Association and Articles of Association in the forms downloaded from the portal of the Ministry of Corporate Affairs and scanned legibly and attach to e-form INC-29 in accordance with the provisions of rule 16 for preparation of Memorandum of Association and Articles of Association.
  - (7) The facility to file integrated application for incorporation in Form INC-29 is available as an option to the process for separate applications for allotment of Director Identification Number, reservation of name and Incorporation of a company as provided in these rules.
  - (8) A company using the provisions of this rule may furnish verification of its registered office under sub-section (2) of section 12 of the Act by filling e-Form INC -29 in which case the company shall attach along with such e-Form INC-29, any of the documents referred to in sub-rule (2) of rule 25.
  - (9) The Registrar within whose jurisdiction the registered office of the company is proposed to be situated shall process INC-29 including application for allotment of DIN.
  - (10) (a) Where the Registrar, on examining e-form INC-29, finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the application to remove the defects and re-submit the e-form within fifteen days from the date of such intimation given by the Registrar.
  - (b) After the resubmission of the document, if the registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days to remove such defects or deficiencies.
  - (c) In case, the Registrar is of the opinion that the document is defective or incomplete in any respect after giving such two opportunities, the e-form INC-29 of the proposed company shall be rejected.
  - (11) The Certificate of Incorporation shall be issued by the Registrar in Form No. INC-11.
14. In terms of section 4(1)(c) of the Companies Act, 2013, the powers of the company are limited to:
- (i) Powers expressly given in the "Objects Clause" of the Memorandum (which is popularly known as 'express' power), or conferred by the Companies Act, or by any other statute and
  - (ii) powers reasonably incidental or necessary to the company's main objects (termed as "Implied' powers).

The Act further provides that the acts beyond the powers of a company are ultra vires and void and cannot be ratified even though every member of the company may give his consent [*Ashbury Railway Carriage Company Vs Richee*]

The objects clause enables the shareholders, creditors or others to know what its powers are and what is the range of its activities. The objects clause therefore is of fundamental importance to the shareholders, creditors and every other person who deals with the company in any manner what so ever. A company being an artificial legal person can act only within the ambit of the powers conferred upon it by the Memorandum through the "Objects Clause".

Every person who enters into a contractual relationship with a company on any matter is presumed to be aware of its objects and is supposed to have examined the Memorandum of Articles of the company to ensure proper contractual agreement. If a person fails to do so, it is entirely at his own peril.

It is also pertinent to note that the objects of a company may be changed by following the provisions for the change of Memorandum as laid out in section 13 of the said Act.

Miranda Pvt. Ltd is authorised to trade directly on fruits and vegetables. It has no power to enter into a partnership for iron and steel with Mr. Karan. Such act cannot be treated as being within either the 'express' or 'implied' powers of the company. Mr Karan who entered into partnership is deemed to be aware of the lack of powers of Miranda Pvt. Ltd. In the light of the above, Mr. Karan cannot enforce the agreement or liability against Miranda Pvt. Ltd under the Companies Act, 2013. Mr. Karan should be advised accordingly.

However, under the Indian Contract Act, 1872 where a person derives any benefit either in the absence of a contract or under a void agreement, will be liable to make a reasonable payment for the value of such benefit.

15. According to Section 46(1) of the Companies Act, 2013, a share certificate once issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary, specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares. Therefore, in the normal course the person named in the share certificate is for all practical purposes the legal owner of the shares therein and the company cannot deny his title to the shares.

However, a forged transfer is a nullity. It does not give the transferee (Mr. Ashok) any title to the shares. Similarly any transfer made by Mr. Ashok (to Mr. Sanjay) will also not give a good title to the shares as the title of the buyer is only as good as that of the seller.

Therefore, if the company acts on a forged transfer and removes the name of the real owner (Mr. Deepak) from the Register of Members, then the company is bound to restore the name of Mr. Deepak as the holder of the shares and to pay him any dividends which he ought to have received (*Barton v. North Staffordshire Railway Co. 38 Ch D 456*).

In the above case, therefore, Mr. Deepak has the right against the company to get the shares recorded in his name. However, neither Mr. Ashok nor Mr. Sanjay have any rights against the company even though they are bona fide purchasers.

However, since Mr. Deepak seems to be the perpetrator of the forgery, he will be liable both criminally and for compensation to Mr. Ashok and Mr. Sanjay.

16. The objectives of the Central Consumer Protection Council in India are to promote and protect the rights of the consumers such as:-
- (i) the right to be protected against the marketing of goods and services which are hazardous to life and property;
  - (ii) the right to be informed about the quality, quantity, potency, purity, standard and price of goods/services so as to protect the consumer against unfair trade practices;
  - (iii) the right to be assured, whichever possible, access to a variety of goods and services at competitive prices;
  - (iv) the right to be heard and to be assured that consumers interest will receive due consideration at appropriate terms;
  - (v) the right to seek redressal against unfair trade practices;
  - (vi) the right to consumer education.
17. **Moral vs. Ethics:** Following are the points of difference between Ethics and Moral:
- (i) The word 'Ethics' is derived from Ancient Greek 'éthikos' meaning 'character'. The word 'moral' is derived from Latin 'mos' meaning 'custom'.
  - (ii) Character is the essence of values and habits of a person or group. It severs the analysis and employment of concepts such as right and wrong, good and evil and acting with responsibility. Moral is defined as relating to principles of right and wrong.
  - (iii) Character is a personal attitude, while custom is defined by a group over a period of time. For example People have character, Societies have custom.
  - (iv) Morals are accepted from an authority (such as cultural, religious etc.) while ethics are accepted because they follow from personally accepted principles. An ethical view might be based on an idea of personal property that should not be taken without social consent. Moral norms can usually be expressed as general rules and statements such as 'always tell the truth'.
  - (v) Morals work on smaller scale than ethics, more reliably, but by addressing human needs for belonging and emulation, while ethics has a much wider scope.
18. **Pragmatic reasons for maintaining ethical behaviour:** Marketing executives should practice ethical behaviour because it is morally correct. To maintain ethical behaviour in marketing, the following positive reasons may be useful to the marketing executives:

1. **To reverse declining public confidence in marketing:** Sometime misleading package labels, false claim in advertisement, phony list prices, infringement of trademarks pervert the market trends and such behaviour damages the marketers' reputation. To reverse this situation, business leaders must demonstrate convincingly that they are aware of their ethical responsibility and will fulfil it. Companies must set high ethical standards and enforce them. Moreover, it is in management's interest to be concerned with the well-being of consumers, since they are the lifeblood of a business.
2. **To avoid increase in government regulation:** Business apathy, resistance, or token responses to unethical behaviour increase the probability of more governmental regulation. The governmental limitations may also result from management's failure to live up to its ethical responsibilities. Moreover, once the government control is introduced, it is rarely removed.
3. **To retain power granted by society:** Marketing executives wield a great deal of social power as they influence markets and speak out on economic issues. However, there is a responsibility tied to that power. If marketers do not use their power in a socially acceptable manner, that power will be lost in the long run.
4. **To protect the image of the organisation:** Buyers often form an impression of an entire organisation based on their contact with one person. That person represents the marketing function. Sometimes, a single sales clerk may pervert the market opinion in relation to that company which he represents.

Therefore, the ethical behaviour in marketing may be strengthened only through the behaviour of the marketing executives.

19. (i) **Harassment at workplace:** Harassment is "tormenting by subjecting to constant interference or intimidation". Law prohibits harassing acts and conduct that "creates an intimidating hostile or offensive working environment," which could be a term or condition of an individual's employment, either explicitly or implicitly or such conduct which has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. Another type of harassment is sexual harassment – situations in which an employee is coerced into giving in to another employee's sexual demands by the threat of losing some significant job benefit, such as a promotion, raise or even the job. Sexual harassment is prohibited and an employer is held responsible for all sexual harassment engaged in by employees, "regardless of whether the employer knew or should have known" the harassment was occurring and regardless of whether it was "forbidden by the employer."
- (ii) **Ecological Ethics:** The problem of pollution and other environmental issues can best be framed in terms of our duty to recognize and preserve the ecological systems within which we live. An ecological system is an interrelated and interdependent set of organisms and environments, such as a lake, in which the fish



depend on small aquatic organisms, which in turn live off decaying plant and fish waste products. Since the various parts of an ecological system are interrelated, the activities of one of its parts will affect all other parts. Business and all social firms are parts of a larger ecological system.

Business firms depend on the natural environment for their energy, material resources, waste disposal and that environment in turn is affected by the commercial activities of business firms. Unless business recognize the interrelationship and interdependencies of the ecological systems within which they operate and unless they ensure that their activities will not seriously injure these systems one cannot hope to deal with the problem of pollution.

Ecological ethics is based on the idea that the environment should be protected not only for the sake of human being but also for its own sake. The issue of environmental ethics goes beyond the problem relating to protection of environment or nature in terms of pollution, resource utilization or waste disposal. It is the issue of exploitive human nature and attitudes that should be addressed in a rational way. Problems like global warming, ozone depletion and disposal of hazardous waste that concern the entire world. They require international co-operation and have to be tackled at the global level.

20. The reasons which lead to unethical behaviour are as follows:

**1. Emphasis on short term results.**

This is one of the primary reasons which has led to the downfall of many companies like Enron and Worldcom.

**2. Ignoring small unethical issues.**

It is a known fact that most of the compromises we make are small but however they lead us into committing large infractions. And ignoring minor lapses, lead to bigger and more huge mistakes.

**3. Economic cycles.**

In good times, companies are relaxed in their accounting procedures or disclosures, as there is a pervasive feel-good effect. But when times of hardship follow, then the hit taken by them is almost fatal, as was proved in the Enron case. So companies need to watch out for economic cycles and be vigilant in good times as well as bad.

**4. Accounting rules.**

In the era of globalization and massive cross border flow of capital, accounting rules are changing faster than ever before. The rules have become more complex and it is difficult to identify deviations from these complex set of requirements. The complexity of these principles and rules and the difficulty associated with identifying abuse are reasons which may promote unethical behaviour.

21. (a) **Advantages of Ethical Communication:** Ethical communication promotes long-term business success and profit. However, improving profits isn't reason enough to be ethical, as soon as the cost of being ethical outweighs the benefits, ethical choices would no longer be possible. One advantage of ethics is long-term integrity. Survey reports that all employees want to work for organizations with high ethical standards. Competent people are likely to search for organizations that maintain high ethical standards. When competent people migrate toward ethical firms, everyone benefits because both competence and ethics are perpetuated.
- (b) **Organization Values:** Values are the principles and ideas that people or organizations strongly believe in and consider important. When people are in doubt about decisions, they frequently rely on deep-seated values to help them make the right choice. In organizations, reliance on shared values makes setting goals easier in the face of the competing ideas, desires, and objectives of individual employees.
- One can get a good idea about the values of an organization by examining its vision and mission statement. These statements are short descriptions of the purpose of organizations and the directions they try to take to achieve success. Many organizations post their vision and mission statements in several places so that employees know what the organization values are.
22. **Functions of Interpersonal Communication:** Interpersonal communication is important because of the following functions it achieves:
- Gaining Information:** One reason, we engage in interpersonal communication, is to gain knowledge about another individual. We attempt to gain information about others so that we can interact with them more effectively.
- Building Understanding:** Interpersonal communication helps us to understand better what someone says in a given context. Words can mean very different things depending on how they are said or in what context. **Content Messages** refer to the surface level meaning of a message. **Relationship Messages** refer to how a message is said. The two are sent simultaneously, but each affects the meaning assigned to the communication and helps us understand each other better.
- Establishing Identity:** We also engage in interpersonal communication to establish an identity based on our relationships and the image we present to others.
- Interpersonal Needs:** We also engage in interpersonal communication to express interpersonal needs. William Schutz has identified three such needs: inclusion, control, and affection.
- Inclusion is the need to establish identity with others.
  - Control is the need to exercise leadership and prove one's abilities.
  - Affection is the need to develop relationships with people. Groups are an excellent way to make friends and establish relationships.

23. **Process which should be followed by mediators to resolve the differences between the parties-** Efforts which help to generate a creative resolution are:

- (i) **Problem – solving orientation** – It is important to be constructive and maintain a problem solving orientation, even in the face of strong differences and personal antagonism. It is in every participant's best interest to behave in a fashion, they would like others to follow. Concerns or disagreement should be expressed in an unconditionally constructive manner.
- (ii) **Engage in active listening** – Participants in every consensus building process should be encouraged (indeed, instructed, if necessary) to engage in what is known as active listening.
- (iii) **Disagree without being disagreeable** – Participants in every consensus building process should be instructed to 'disagree without being disagreeable'.
- (iv) **Strive for the greatest degree of transparency possible** – To the greatest extent possible, consensus building process should be transparent. That is, the group's mandate, its agenda and ground rules, the list of participants and the groups or interests they are representing, the proposals they are considering, the decision rules they have adopted, their finances and their final report should, at an appropriate time, be open to scrutiny by anyone affected by the group's recommendations.
- (v) **Strive to invent options for mutual gain** – The goals of a consensus building process ought to be to create as much value as possible and to ensure that whatever value is created be divided in ways that take account of all relevant considerations. The key to creating value is to invent options for mutual gain.

24. **Power of Attorney to execute a deed for the transfer of shares & debentures:-**

BY THIS POWER OF ATTORNEY, Safe Investments Pvt. Ltd. (full details), the company hereby appoints Mr. Alok (full details) as Attorney of the company, to act in his name and on his behalf and to do or execute all or any of the acts or things relating to transfer of shares and debentures, that is to say:

1. To receive from.....(Full details), the transferee the sum of ₹.....(Rupees..... only) being the price agreed to be paid to the company by the said transferee for the purchase of (full description of shares and debentures) under an agreement dated.....and to give proper receipt and discharge for the same.
2. To execute a transfer deed of the said shares and debentures
3. To present the said transfer deed for registration before the proper registration authority, to admit the execution thereof, to do all acts, deeds and things which may be necessary for registering the said transfer deed.
4. To execute or to do all acts, things or deeds or assurance for the completion of the transfer of the said shares and debentures.

AND, the company DO HEREBY AGREE to ratify all acts, things, deeds or proceedings lawfully done by the said Attorney on behalf of the company and in the name of the company by virtue of this power of attorney and the same shall be binding on company in full force or effect.

IN WITNESS WHEREOF the company have executed this power at .....this.....day of.....20.....

Witness:

1 \_\_\_\_\_

Signature

2 \_\_\_\_\_

(Executant)

**25. Draft of notice for Calling Annual General Meeting:**

**Notice**

Notice is hereby given that the 3<sup>rd</sup> annual general meeting of the Symphony Ltd. will be held on Friday, the 5<sup>th</sup> of August, 2016, at the registered office of the company at 123, tower complex, Lucknow Distt. Lucknow (U.P.) at 11.00 a.m. to transact the following ordinary business:

1. To receive, consider and adopt the audited balance sheet of the company as on 31<sup>st</sup> March 2016 and the profit and loss account for the year ended and the auditor's and directors' reports there on.
2. To declare dividend for the year ending 31<sup>st</sup> March 2016.
3. To appoint a director in place of Mr. Yuvraj Sharma, who retires by rotation and being eligible, offers himself for re-appointment.
4. To appoint a director in place of Mr. Yash Singh, who retires by rotation and being eligible, offers himself for reappointment.
5. To appoint statutory auditors of the company and fix their remuneration.

Regd. Office

For and on behalf of Board of Directors.

123, Tower complex

Distt. Lucknow (U.P.)

Sd/-

Dated: .....

Chairman of the meeting  
the Board of Directors

Place : .....

Date .....