

**MOCK TEST PAPER 2**

**INTERMEDIATE (NEW): GROUP – I**

**PAPER – 2: CORPORATE AND OTHER LAWS**

*Question No.1 is compulsory*

*Attempt any **Four** questions out of the remaining **Five** questions*

**Time Allowed – 3 Hours**

**Maximum Marks – 100**

1. (a) Mr T has transferred 1000 shares of Perfect Ltd. to Ms. K. The company has refused to register transfer of shares and does not even send a notice of refusal to Mr. T or Ms. K respectively within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company for such refusal? **(6 Marks)**
- (b) Mars Ltd. declared and paid dividend in time to all its equity holders for the financial year 2016-17, except in the following two cases:
- (i) Mrs. Sheetal, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheetal about this discrepancy.
- (ii) Dividend amount of ` 50,000 was not paid to Mr. Piyush, deceased, in view of court order restraining the payment due to family dispute about succession.
- You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends. **(6 Marks)**
- (c) Mr. Dhannaseth delivers a rough blue sapphire to a jeweller, to be cut and polished. The jeweller carries out the job accordingly. However, now Mr. Dhannaseth refuses to make the payment and wants his blue sapphire back. The jeweller denies the delivery of goods without payment. Examine whether the jeweler can hold blue sapphire. Give your answer as per the provisions of the Contract Act, 1872. **(4 Marks)**
- (d) As per the provisions of the Companies Act, 2013, a whole time Key Managerial Personnel (KMP) shall not hold office in more than one company except its subsidiary company at the same time. Referring to the Section 13 of the General Clauses Act, 1897, examine whether a whole time KMP can be appointed in more than one subsidiary companies? **(4 Marks)**
2. (a) (i) The Auditor of the company (other than government company) has resigned on 31<sup>st</sup> December, 2017, while the Financial year of the company ends on 31st March, 2018. Discuss as per the provisions of the Companies Act, 2013, how the auditor will be appointed in this case.
- (ii) A company includes the following shareholders also:
- (I) Bank of Baroda (A Nationalized Bank) holding 12% of the subscribed capital in the company.
- (II) National Insurance Company Limited (carrying on General Insurance Business) holding 10% of the subscribed capital in the company.
- (III) Maharashtra State Financial Corporation (A Public Financial Institution) holding 8% of the subscribed capital in the company.

Advise the company, whether the provisions related to 'appointment of auditor in case of government company' are applicable to it. Discuss in the light of the provisions of the Companies Act, 2013. **(6 Marks)**

- (b) State the provisions of the Companies Act, 2013 in relation to 'Power of Tribunal to Call Meetings of Members, etc'. **(6 Marks)**
- (c) (i) On a Bill of Exchange for ₹ 1 lakh, X's acceptance to the Bill is forged. 'A' takes the Bill from his customer for value and in good faith before the Bill becomes payable. Discuss with reasons whether 'A' can be considered as a 'Holder in due course' and whether he (A) can receive the amount of the Bill from 'X'. Give your answer as per the Negotiable Instruments Act, 1881. **(4 Marks)**
- (ii) Manoj draws a cheque in favour of Meera, a minor. Meera endorses the same in favour of Sheila. The cheque is dishonoured by the bank on grounds of inadequate funds.
- Discuss as per the provisions of the Negotiable Instruments Act, 1881 whether Meera is liable. **(4 Marks)**
3. (a) Explain the concept of "Shelf Prospectus" in the light of Companies Act, 2013. What is the law relating to issuing and filing of such prospectus? **(6 Marks)**
- (b) The directors of Ninja Ltd. having a paid-up capital of Rs. 1500 crores have approached you to state them the provisions of the Companies Act, 2013 and rules thereunder, regarding which companies are required to constitute CSR Committee? Also, state the composition of CSR Committee. **(6 Marks)**
- (c) State the meaning of 'Affidavit' as per the provisions of the General Clauses Act, 1897. **(4 Marks)**
- (d) Explain the rule of 'beneficial construction' while interpreting the statutes quoting an example. **(4 Marks)**
4. (a) (i) At a General meeting of a XYZ Limited, a matter was to be passed by a special resolution. Out of 40 members present, 20 voted in favour of the resolution, 5 voted against it and 5 votes were found invalid. The remaining 10 members abstained from voting. The Chairman of the meeting declared the resolution as passed.
- With reference to the provisions of the Companies Act, 2013, examine the validity of the Chairman's declaration.
- (ii) Annual General Meeting of MRF Limited is convened on 28<sup>th</sup> December, 2017. Mr. Jai, who is a member of the company, approaches the company on 28<sup>th</sup> December, 2017 and demands inspection of proxies lodged with the company. Explain the legal position as stated under the Companies Act, 2013 in this regard. **(8 Marks)**
- (b) State the provisions of the Companies Act, 2013 regarding the persons responsible to maintain books of accounts of a company. **(4 Marks)**
- (c) Explain the principles of "Grammatical Interpretation" and "Logical Interpretation" of a Statute. What are the duties of a court in this regard? **(6 Marks)**
- (d) Financial Year and Calendar Year are same. Discuss as per the provisions of the General Clauses Act, 1897. **(2 Marks)**
5. (a) Raj, who is a resident of New Delhi, sent a transfer deed, for registration of transfer of shares to the company at the address of its Registered Office in Mumbai. He did not receive the shares

certificates even after the expiry of four months from the date of dispatch of transfer deed. He lodged a criminal complaint in the Court at New Delhi. Determine, under the provisions of the Companies Act, 2013, whether the Court at New Delhi is competent to take action in the said matter? **(7 Marks)**

- (b) A general meeting of PQR limited was held on 14.12.2017. Mr. Kamal who is a shareholder of PQR Limited did not receive the notice of the said meeting. He has contended that the proceedings of the said meeting are invalid as he has accidentally not received the notice of the meeting. Discuss in the light of the provisions of the Companies Act, 2013. **(5 Marks)**
- (c) State the differences between a sub-agent and a substituted agent? **(5 Marks)**
- (d) Mayank engages Babloo as a clerk to collect money for him. But Babloo fails to account for some of his receipts, and Mayank in consequence calls upon him to furnish security for his duly accounting. Amrit gives his guarantee for Babloo's duly accounting. Mayank does not acquaint Amrit with Babloo's previous conduct. Babloo afterwards makes default. Decide in the light of the provisions of the Contract Act, 1872, whether the guarantee is valid. **(3 Marks)**
6. (a) Mr. Hitesh has made multiple applications to Useful Ltd. in different names for acquiring securities. State the provisions of the Companies Act, 2013 in relation to punishment for Personation for Acquisition, etc., of Securities. **(6 Marks)**
- (b) Anant Limited wants to accept deposit from its members. They have approached you to list to them the provisions of the Companies Act, 2013 as to when can the company accept deposit from its members. **(6 Marks)**
- (c) Rajnish gives his umbrella to Megha during rainy season to be used for two days during Examinations. Megha keeps the umbrella for a week. While going to Rajnish's house to return the umbrella, Megha accidentally slips and the umbrella is badly damaged. Discuss as per the provisions of the Contract Act, 1872, who bear the loss of the damaged umbrella and why? **(3 Marks)**
- (d) Explain what is 'presentment for acceptance', as per the provisions of the Negotiable Instruments Act, 1881. **(5 Marks)**

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**SUGGESTED ANSWERS/HINTS**

1. (a) The problem as asked in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal.

In the present case the company has committed the wrongful act of not sending the notice of refusal of registering the transfer of shares.

Under section 58 (4), if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal.

Section 58 (5) further provides that the Tribunal, while dealing with an appeal made under sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order—

- (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
- (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;

In the present case Ms. K can make an appeal before the tribunal and claim damages..

- (b) (i) Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to her.

In the given situation, the company has failed to communicate to the shareholder Mrs. Sheetal about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.

- (ii) Section 127, inter-alia, provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law.

In the present circumstance, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession. Hence, there will not be any liability on the company and its Directors etc..

- (c) According to section 170 of the Indian Contract Act, 1872, where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Thus, in accordance with the purpose of bailment if the bailee by his skill or labour improves the goods bailed, he is entitled for remuneration for such services. Towards such remuneration, the bailee can retain the goods bailed if the bailor refuses to pay the remuneration. Such a right to retain the goods bailed is the right of particular lien. He however does not have the right to sue.

Where the bailee delivers the goods without receiving his remuneration, he has a right to sue the bailor. In such a case the particular lien may be waived. The particular lien is also lost if the bailee does not complete the work within the time agreed.

Hence, in the given situation the jeweller is entitled to retain the stone till he is paid for the services he has rendered.

- (d) Section 203(3) of the Companies Act, 2013 provides that whole time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. With respect to the issue that whether a whole time KMP of holding company be appointed in more than one subsidiary companies or can be appointed in only one subsidiary company.

It can be noted that Section 13 of General Clauses Act, 1897 provides that the word 'singular' shall include the 'plural', unless there is anything repugnant to the subject or the context. Thus, a whole time key managerial personnel may hold office in more than one subsidiary company as per the present law.

2. (a) (i) The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the AGM in case of a company other government company. Under section 139 (8)(i) any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within 30 days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.
- (ii) According to section 139(5) of the Companies Act, 2013, in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

In the given case as the total shareholding of the three institutions adds up to 30% of the subscribed capital of the company it is not a government company. Hence, the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.

- (b) According to section 98 of the Companies Act, 2013,
- (1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company, the Tribunal may, either *suomotu* or on the application of any director or member of the company who would be entitled to vote at the meeting,—
- (a) order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and
- (b) give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company:

Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

- (2) Any meeting called, held and conducted in accordance with any order made under sub-section (1) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.
- (c) (i) According to section 9 of the Negotiable Instruments Act, 1881 'holder in due course' means any person who for consideration becomes the possessor of a promissory note, bill of exchange or cheque if payable to bearer or the payee or endorsee thereof, if payable to order, before the amount in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

As 'A' in this case *prima facie* became a possessor of the bill for value and in good faith before the bill became payable, he can be considered as a holder in due course.

But where a signature on the negotiable instrument is forged, it becomes a nullity. The holder of a forged instrument cannot enforce payment thereon. In the event of the holder being able to obtain payment in spite of forgery, he cannot retain the money. The true owner may sue on tort the person who had received. This principle is universal in character, by reason where of even a holder in due course is not exempt from it. A holder in due course is protected when there is defect in the title. But he derives no title when there is entire absence of title as in the case of forgery. Hence 'A' cannot receive the amount on the bill.

- (ii) According to section 26 of the Negotiable Instruments Act, 1881, every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Thus, a minor may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself.

Here in this case, Meera being a minor may draw, endorse, deliver and negotiate the instrument so as to bind all parties except herself. Therefore, Meera is not liable. Sheila can, thus, proceed against Manoj.

3. (a) **Shelf Prospectus:** Section 2 (70) of the Companies Act, 2013 defines a "Prospectus" and includes a red herring prospectus and a shelf prospectus within the definition of "Prospectus". Further the explanation to section 31 of the Companies Act, 2013 defines a shelf prospectus as a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

Section 31 of the Act states that any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

However, under section 31 (2), a company shall be required to file an information memorandum on all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or any previous offer of securities and the succeeding offer of securities and such other changes as may be prescribe, with the Registrar

within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

Section 31 (3) states that where an information memorandum is filed every time an offer of securities is made, such memorandum together with the shelf prospectus shall be deemed to be the prospectus.

Since, a shelf prospectus is a prospectus; hence it must comply with all the provisions of Section 26 of the Act which lays down the matters to be included in a prospectus and filing of the same with the Registrar. It must also comply with the other relevant and applicable sections of the Act to a prospectus.

**(b) Which Company is required to constitute CSR committee:**

Every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013 having its branch office or project office in India, having

- (1) net worth\* of rupees 500 crore or more, or
- (2) turnover of rupees 1000 crore or more or
- (3) a net profit of rupees 5 crore or more

during any financial year shall constitute a Corporate Social Responsibility Committee of the Board.

However, the net worth, turnover or net profit of a foreign company shall be computed in accordance with balance sheet and profit and loss account of such company as prepared in accordance with the provisions of section 381(1)(a) and section 198 of the Act.

\*"Net worth" [Section 2(57)] means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

**Composition of CSR Committee:**

- (a) The CSR Committee shall be consisting of three or more directors, out of which at least one director shall be an independent director.
- (b) An unlisted public company or a private company which is not required to appoint an independent director shall have its CSR Committee without such director.
- (c) A private company having only two directors on its Board shall constitute its CSR Committee with two such directors.
- (d) With respect to a foreign company covered as above, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under section 380(1)(d) of the Act and another person shall be nominated by the foreign company.
- (e) The Board's report under sub-section (3) of section 134 shall disclose the composition of the CSR Committee

- (c) According to section 3(3) of the General Clauses Act, 1897, 'affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

There are two important points derived from the above definition:

1. Affirmation and declaration,
2. In case of persons allowed affirming or declaring instead of swearing.

The above definition is inclusive in nature. It states that Affidavit shall include affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.

- (d) Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the Heydon's case. This rule enables, consideration of four matters in constituting an act:

- (1) what was the law before making of the Act,
- (2) what was the mischief or defect for which the law did not provide,
- (3) what is the remedy that the Act has provided, and
- (4) what is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it. If the object of any enactment is public safety, then its working must be interpreted widely to give effect to that object. Thus in the case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions.

However, it has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning [*CIT v. Sodra Devi (1957) 32 ITR 615 (SC)*].

4. (a) (i) Under Section 114(2) of the Companies Act, 2013, for a valid special resolution to be passed at a meeting of members of a company, the following conditions need to be satisfied:
- (1) The intention to propose the resolution, as a special resolution must have been specified in the notice calling the general meeting or other intimation given to the members;
  - (2) The notice required under the Companies Act must have been duly given of the general meeting;
  - (3) The votes cast in favour of the resolution (whether by show of hands or electronically or on a poll, as the case may be) by members present in person or by proxy or by postal ballot are not less than 3 times the number of votes, if any, cast against the resolution by members so entitled and voting.

Thus, in terms of the requisite majority, votes cast in favour have to be compared with votes cast against the resolution. Abstentions or invalid votes, if any, are not to be taken into account.

Accordingly, in the given problem, the votes cast in favour (20) being more than 3 times of the votes cast against (5), and presuming other conditions of Section 114(2) are satisfied, the decision of the Chairman is in order.

- (ii) Under section 105 (8) of the Companies Act, 2013 every member entitled to vote at a meeting of the company or on any resolution to be moved thereat, shall be entitled during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at anytime during the business hours of the company. Provided not less than 3 days' notice in writing of the intention to inspect is given to the company.

In the given case, Mr. Jai who is a member approaches the company on 28<sup>th</sup> December and demands inspection of proxies lodged with the company. Based on the above provisions since prior notice of 3 days had not been given by Mr. Jai to the company for inspecting the proxies, the company may refuse inspection of proxy forms

- (b) As per Section 128 (6) of the Companies Act, 2013 the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc. shall be:
- (i) Managing Director,
  - (ii) Whole-Time Director, in charge of finance
  - (iii) Chief Financial Officer
  - (iv) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

- (c) **Principles of Grammatical Interpretation and Logical Interpretation:** In order to ascertain the meaning of any law/ statute the principles of Grammatical and Logical Interpretation is applied to conclude the real meaning of the law and the intention of the legislature behind enacting it.

Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law, whereas Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature.

**Application of the principles in the court-** In all ordinary cases, the grammatical interpretation is the sole form allowable. The court cannot delete or add to modify the letter of the law. However, where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness, the court is under a duty to travel beyond the letter of law so as to determine the true intentions of the legislature. So that a statute is enforceable at law, however, unreasonable it may be. The duty of the court is to administer the law as it stands rather it is just or unreasonable.

However, if there are two possible constructions of a clause, the courts may prefer the logical construction which emerges from the setting in which the clause appears and the circumstances in which it came to be enacted and also the words used therein.

- (d) According to section 3(21) of the General Clauses Act, 1897, financial year shall mean the year commencing on the first day of April.

The term Year has been defined under Section 3(66) as a year reckoned according to the British calendar. Thus as per General Clauses Act, Year means calendar year which starts from January to December.

Thus, we can see Financial year starts from first day of April but Calendar Year starts from first day of January. Hence, Financial year and Calendar year are not same.

5. (a) **Jurisdiction of Court, now Tribunal, the Companies Act, 2013:** According to Section 56 (4) of the Companies Act, 2013 every company, unless prohibited by any provision of law or of any order

of court, Tribunal or other authority, shall deliver the certificates of all shares transferred within a period of one month from the date of receipt by the company of the instrument of transfer.

Further under section 56 (6) Where any default is made in complying with the provisions of sub-sections (1) to (5) of section 56 (which deals with transfer and transmission of shares), the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees

The jurisdiction binding on the company is that of the state in which the registered office of the company is situated. Hence, in the given case the Delhi court is not competent to take action in the matter.

**(b)** Under section 101 (3) of the Companies Act, 2013 “Notice” of every meeting of the company shall be given -

- (i) to every member of the company, legal representative of any deceased member, or the assignee of an insolvent member;
- (ii) to every director of the company;
- (iii) to a auditor or auditors and,

The private company, which is not, a subsidiary of a public company may prescribe, by its Articles, persons to whom the notice should be given.

Any accidental omission or the non receipt of notice by any member or other person entitled to such notice shall not invalidate the proceedings in the meeting [Section 101 (4)].

In the given case, Mr. Kamal has accidentally not received the notice of the meeting, thus, it will not invalidate the proceedings of the general meeting held on 14.12.2017.

**(c)** Both a sub-agent and a substituted agent are appointed by the agent. But, however, the following are the points of distinction between the two.

1. A sub-agent does his work under the control of agent but a substituted agent works under the instructions of the principal.
2. The agent not only appoints a sub-agent but also delegates to him a part of his own duties. The agent does not delegate any part of his task to a substituted agent.
3. Privity of contract is established between a principal and a substituted agent. But there is no privity of contract between the principal and the sub-agent.
4. The sub-agent is responsible to the agent alone and is not generally responsible to the principal. But a substituted agent is responsible to the principal and not to the original agent who appointed him.
5. The agent is responsible to the principal for the acts of the sub-agent, but he is not liable for those of the substituted agent, provided he has taken due care in selecting him.
6. In the case of a substituted agent, the agent's duty ends once he has named him, but in the case of a sub-agent the agent remains answerable for the acts of the sub-agent as long as sub-agency continues.

**(d)** According to section 143 of the Indian Contract Act, 1872, any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.

In the given question, Mayank does not acquaint Amrit with Babloo's previous conduct. Thus, the guarantee is invalid.

**6. (a)** According to Section 38 of the Companies Act, 2013,

(1) Any person who—

- (i) makes or abets making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; or
- (ii) makes or abets making of multiple applications to a company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; or
- (iii) otherwise induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name,

shall be liable for action under section 447.

(2) The provisions of sub-section (1) shall be prominently reproduced in every prospectus issued by a company and in every form of application for securities.

(3) Where a person has been convicted under this section, the Court may also order disgorgement of gain, if any, made by, and seizure and disposal of the securities in possession of, such person.

(4) The amount received through disgorgement or disposal of securities under sub-section (3) shall be credited to the Investor Education and Protection Fund.

**(b)** A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely:—

- (i) issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;
- (ii) filing a copy of the circular along with such statement with the Registrar within 30 days before the date of issue of the circular;
- (iii) depositing such sum which shall not be less than fifteen per cent. of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;
- (iv) providing such deposit insurance in such manner and to such extent as may be prescribed;
- (v) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and
- (vi) providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company:

Where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as “unsecured deposits” and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

- (c) According to section 161 of the Indian Contract Act, 1872, if, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

In the given case, Megha shall have to bear the loss since he failed to return the umbrella within the stipulated time and Section 161 clearly says that where a bailee fails to return the goods within the agreed time, he shall be responsible to the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part.

- (d) According to section 61 of the Negotiable Instruments Act, 1881, a bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default. If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to drawee at a particular place, it must be presented at that place, and if at the due- date for presentment he cannot, after reasonable search, be found thereon, the bill is dishonoured.

When authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.