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PAPER – 2 : BUSINESS LAWS, ETHICS AND COMMUNICATION

Question No. 1 is compulsory.

*Attempt any **five** questions from the remaining **six** questions.*

Question 1

- (a) 'X' entered into a contract with 'Y' to supply him 1,000 water bottles @ ₹ 5.00 per water bottle, to be delivered at a specified time. Thereafter, 'X' contracts with 'Z' for the purchase of 1,000 water bottles @ ₹ 4.50 per water bottle, and at the same time told 'Z' that he did so for the purpose of performing his contract entered into with 'Y'. 'Z' failed to perform his contract in due course and market price of each water bottle on that day was ₹ 5.25 per water bottle. Consequently, 'X' could not procure any water bottle and 'Y' rescinded the contract. What would be the amount of damages which 'X' could claim from 'Z' in the circumstances? What would be your answer if 'Z' had not informed about the 'Y's contract? Explain with reference to the provisions of the Indian Contract Act, 1872. (5 Marks)
- (b) "The Doctrine of Indoor Management always protects the persons (outsiders) dealing with a company." Explain the above statement. Also, state the exceptions to the above rule. (5 Marks)
- (c) State with reasons whether the following statements are correct or incorrect:
- (i) 'Fairness and Justice' are two different approaches as a source of ethical standards. (3 Marks)
- (ii) Inclusion of environmental consideration as a part of corporate strategy improves corporate performance. (2 Marks)
- (d) Explain the 'factors that lead to grapevine communication'. (5 Marks)

Answer

- (a) **BREACH OF CONTRACT: DAMAGES:** Section 73 of the Indian Contract Act, 1872 lays down that when a contract has been broken the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract to be likely to result from the breach of it.

The leading case on this point is "Hadley v. Baxendale" in which it was decided by the Court that the special circumstances under which the contract was actually made were communicated by the plaintiff to the defendant, and thus known to both the parties to the contract, the damages resulting from the breach of such contract which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from the breach of contract under these special circumstances so known and communicated.

The problem asked in this question is based on the provisions of Section 73 of the Indian Contract Act, 1872. In the instant case 'X' had intimated to 'Z' that he was purchasing water bottles from him for the purpose of performing his contract with 'Y'. Thus, 'Z' had the knowledge of the special circumstances. Therefore, 'X' is entitled to claim from 'Z' ₹ 500/- at the rate of 0.50 paise i.e. 1000 water bottles x 0.50 paise (difference between the procuring price of water bottles and contracted selling price to 'Y') being the amount of profit 'X' would have made by the performance of his contract with 'Y'.

If 'X' had not informed 'Z' of 'Y's contract then the amount of damages would have been the difference between the contract price and the market price on the day of default. In other words, the amount of damages would be ₹ 750/- (i.e. 1000 water bottles x 0.75 paise).

- (b) **DOCTRINE OF INDOOR MANAGEMENT (THE COMPANIES ACT, 2013):** According to the "doctrine of indoor management" the outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly. They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more. They are fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles. This doctrine is a limitation of the doctrine of "constructive notice" and popularly known as the rule laid down in the celebrated case of *Royal British Bank v. Turquand*. Thus, the doctrine of indoor management aims to protect outsiders against the company.

Exceptions: In the following circumstances an outsider dealing with the company can not claim any relief on the ground of "indoor management":

1. Knowledge of irregularity: Where a person dealing with a company has actual or constructive notice of the irregularity as regards internal management, he can not claim the benefit under the rule of indoor management. (*T.R. PRATT (Bombay) Ltd. v. E.D. Sasson & Co. Ltd.*)
2. Negligence: Where a person dealing with a company could discover the irregularity if he had made proper inquiries, he can not claim the benefit of the rule of indoor management. The protection of this rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry (*Anand Bihari Lal v. Dinshaw & Co.*), (*Under-Wood v. Bank of Liver Pool*).
3. Act void ab initio and forgery: Where the acts done in the name of a company are void ab initio, the doctrine of indoor management does not apply. The doctrine applies only to irregularities that otherwise might affect a genuine transaction.

4. Acts outside the scope of apparent authority: If an officer of a company enters into a contract with a third party and if the act of the officer is apparently beyond the scope of his authority, the company is not bound (Kreditbank Cassel v. Schenkers Ltd.).
- (c) (i) **INCORRECT:** The given statement “Fairness and Justice” are two different approaches as a source of ethical standards is incorrect.

Aristotle and other Greek philosophers have contributed the idea that all equals should be treated equally. Today we use this idea to say that ethical actions treat all human beings equally or if unequally, then fairly based on some standard that is defensible. We pay people more based on their harder work or the greater amount that they contribute to an organization, and say that is fair. But there is a debate over CEO salaries that are hundreds of times larger than the pay of others; may ask whether the huge disparity is based on a defensible standard or whether it is the result of an imbalance of power and hence is unfair.

- (ii) **CORRECT:** Inclusion of environmental consideration as a part of corporate strategy improves corporate performance is a correct statement.

Environmental consideration is a part of corporate strategy, which means incorporating environmental issues in the process of developing a product, in new investments and in the organizational set up. A good environmental practice improves corporate performance. In many industries it has been found that environmental friendly practices have resulted in more saving; for example the process of recycling the waste. Thus, environmental considerations play a key role in corporate strategy. Markets of new millennium will be able to create wealth if they respond to the challenges of sustainable development, as unsustainable products will become obsolete.

(d) **FACTORS LEADING TO GRAPEVINE COMMUNICATION**

The grapevine becomes active when the following factors are present:

1. Feeling of uncertainty or lack of sense of direction when the organization is passing through a difficult period.
2. Feeling of inadequacy or lack of self confidence on the part of the employee, leading to the formation of groups.
3. Formation of a coterie or favoured group by the manager, giving other employees a feeling of insecurity or isolation. People operating in such circumstances will be filled with all sorts of ideas and will share them with like minded companions, at whatever level they may be. Mostly they find them at their own level, but other levels are not barred. This type of communication is being seriously studied by psychologists and management experts.

Question 2

- (a) Explain the meaning of 'Quasi-Contracts'. State the circumstances which are identified as quasi contracts by the Indian Contract Act, 1872. (8 Marks)
- (b) What are the 'United Nations Guidelines Themes' on consumer protection? (4 Marks)
- (c) Explain the types of Groups in an organization which play an important role in solving the difficult problems in the organization. (4 Marks)

Answer

- (a) **QUASI-CONTRACTS: MEANING; FEATURES; IDENTIFIED CIRCUMSTANCES (SECTIONS 68 TO 72 OF THE INDIAN CONTRACT ACT, 1872):**

MEANING AND SALIENT FEATURES: Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. These are known as "quasi-contracts" as they create some obligations as in the case of regular contracts. Quasi-contracts are based on the principles of equity, justice and good conscience. The salient features of quasi-contracts are: Firstly, such a right is always a right to money and generally, though not always, to a liquidated sum of money; Secondly, it does not arise from any agreement between the parties concerned but the obligation is imposed by law and; Thirdly, the rights available are not against all the world but against a particular person or persons only, so in this respect it resembles to a contractual right.

CIRCUMSTANCES IDENTIFIED AS QUASI-CONTRACTS:

1. Claim for necessaries supplied to persons incapable of contracting: Any person supplying necessaries of life to persons who are incapable of contracting is entitled to claim the price from the other person's property. Similarly, where money is paid to such persons for purchase of necessaries, reimbursement can be claimed.
2. Right to recover money paid for another person: A person who has paid a sum of money which another person is obliged to pay, is entitled to be reimbursed by that other person provided that the payment has been made by him to protect his own interest.
3. Obligation of person enjoying benefits of non-gratuitous act: Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered.
4. Responsibility of finder of goods: A person who finds goods belonging to another person and takes them into his custody is subject to same responsibility as if he were a bailee.

5. Liability for money paid or thing delivered by mistake or by coercion: A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.

In all the above cases contractual liability arises without any agreement between the parties.

- (b) **UN GUIDELINES: CONSUMER PROTECTION:** The United Nations Guidelines Themes on consumer protection call upon Governments to develop, strengthen and maintain a strong consumer policy and provide for enhanced protection of consumers by enunciating various steps and measures consisting around eight themes (UNCTAD, 2001). These eight themes are as follows:

1. Physical safety;
2. Economic interests;
3. Standards;
4. Essential goods and services;
5. Redress;
6. Education and information;
7. Specific areas concerning health; and
8. Sustainable consumption

- (c) **TYPES OF GROUPS IN ORGANIZATION:** There may be following types of group in an organization:

1. Self directed teams: Autonomous and self regulated groups of employees empowered to make decisions.
2. Quality Circles: “Quality Circle” has been defined as “a group of workers from the same area who usually meet for an hour each week to discuss their quality problems, investigate causes, recommend solutions and take corrective actions when authority is in their purview”. In other words, “Quality Circle” is a small group to perform voluntarily quality control activities within their work area.
3. Committees: Committees in an organization are of various types i.e. (a) Standing Committee, which is permanent in nature and highly empowered; (b) Advisory Committee, comprises of experts in particular fields; (c) Adhoc Committee, set up for a particular purpose and dissolved when the goal is achieved.
4. Task Force: Task force is like a Committee but it is usually temporary. Task force has wide power to take action and properly fix responsibility for investigation, results and proper implementation of decisions.

Question 3

- (a) (i) Explain the 'time limit for payment of bonus' to the employees in different circumstances under the provisions of the Payment of Bonus Act, 1965. (4 Marks)
- (ii) 'N' is employed in ABC Limited, a seasonal establishment. The factory was in operation from 1st March to 30th June during the financial year 2014-15. Though, 'N' was not in continuous service during this period, he had worked for 95 days. Referring to the provisions of the Payment of Gratuity Act, 1972, decide whether 'N' is entitled to gratuity. (4 Marks)
- (b) What is meant by 'Corporate Governance'? State the 'measures of Corporate Governance' with reference to Indian companies. (4 Marks)
- (c) State with reasons whether following statements are correct or incorrect.
- (i) Rumours and gossips are synonymous.
- (ii) Lying breaks down the trust between individuals. (2 + 2 = 4 Marks)

Answer

- (a) (i) **TIME LIMIT FOR PAYMENT OF BONUS:** Section 19 of the Payment of Bonus Act, 1965 prescribes the time limit for the payment of bonus under the following conditions:
- Under Section 19 (1) (a) of the said Act, where the dispute is between the employer and the employees regarding the payment of bonus and such dispute is under reference to the prescribed authority, the employer is bound to pay his employee bonus in cash within one month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute.
 - Under Section 19 (1) (b) of the said Act, in all other cases, the payment of bonus is to be made within a period of 8 months from closing of the accounting year.
But this period of 8 months may be extended up to a maximum of 2 years by the Appropriate Government or by any authority prescribed by the Appropriate Government only on an application to it by the employer and is satisfied that sufficient reasons exist for granting extension. Moreover, the extension can be made only by an order.
- (ii) **PAYMENT OF GRATUITY TO SEASONAL EMPLOYEE:** Sub-section 3 of Section 2A of the Payment of Gratuity Act, 1972 provides that where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually

worked for not less than seventy-five percent of the number of days on which the establishment was in operation during such period.

In the given problem, “N” has worked for 95 days in ABC Limited, and as per the above provision, “N” has worked for more than 75 % of number of days on which the establishment was in operation i.e. 75 % of 120 days (1st of March to 30th June) = 90 days. Therefore, “N” shall be entitled for gratuity.

(b) MEANING AND MEASURES OF CORPORATE GOVERNANCE :

MEANING: “Corporate governance is about promoting corporate fairness, transparency and accountability. It is concerned with the structures and processes for decision-making, accountability, control and behavior at the top level of organizations. It influences how the objectives of an organization are set and achieved, how risk is monitored and assessed and how performance is optimized.

MEASURES: In general, corporate governance measures include appointing non-executive directors, placing constraints on management power and ownership concentration, as well as ensuring proper disclosure of financial information and executive compensation. Many companies have established ethical and/or social responsibility committees on their Boards to review strategic plans, assess progress and offer guidance on social responsibilities of their business. In addition to having committees and Boards, some companies have adopted guidelines governing their own policies around such issues like board diversity, independence, and compensation. Indian companies are also required to comply with Clause 49 of the listing agreement.

(c) (i) The given statement “Rumour and gossip are synonymous” is INCORRECT.

Rumours and gossip seem to be an inevitable part of everyday corporate life. Even though rumours and gossip often travel through the same network, there is a distinction between the terms. RUMOURS TEND TO FOCUS ON EVENTS AND INFORMATION, WHEREAS GOSSIP FOCUSES ON PEOPLE. Even though managers usually treat the information as “yet to be confirmed”, it may cloud judgments about the employee. The information has a way of creeping into performance evaluations and promotion decisions, even if unintended.

(ii) The given statement “Lying breaks down the trust between individuals” is CORRECT.

A lie is a false statement intended to deceive. Of all the ethical dilemmas, lying would appear to be the least morally perplexing. Most would agree that “one ought not to lie”. Yet lies in business are more common than many would care to admit. Lying break down the trust between individuals, shaking the foundation of ethical communication.

Question 4

- (a) Board of Directors of PQR Limited wants to create a 'Debenture Redemption Reserve (DRR)' for the redemption of debentures issued by the company under the provisions of the Companies Act, 2013. Explain the provisions of the Companies (Share Capital and Debenture) Rules, 2014 in this regard. (8 Marks)
- (b) Explain the meaning of 'Sustainable Development'? State the special responsibilities of the industries that are based on natural resources. (4 Marks)
- (c) Write short notes on:
- (i) The Press Communique
 - (ii) The Press Notes (4 Marks)

Answer

- (a) **DEBENTURE REDEMPTION RESERVE ACCOUNT (SECTION 71 OF THE COMPANIES ACT, 2013; COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014):**

Where debentures are issued by a company under Section 71 of the Companies Act, 2013, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.

As per the Companies (Share Capital and Debentures) Rules, 2014, the company shall create a Debenture Redemption Reserve for the purpose of redemption of debentures, in accordance with the conditions given below:

- (a) The Debenture Redemption Reserve shall be created out of the profits of the company available for payment of dividend;
- (b) The company shall create Debenture Redemption Reserve (DRR) in accordance with the following conditions :
 - (i) No DRR is required for debentures issued by All India Financial Institutions (AIFIs) regulated by Reserve Bank of India and Banking Companies for both public as well as privately placed debentures. For other Financial Institutions (FIs) within the meaning of clause (72) of Section 2 of the Companies Act, 2013, DRR will be as applicable to NBFCs registered with RBI.
 - (ii) For NBFCs registered with RBI under Section 45-1A of the RBI (Amendment) Act, 1997, the adequacy of DRR will be 25% of the value of debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008, and no DRR is required in the case of privately placed debentures.
 - (iii) For other companies including manufacturing and infrastructure companies the adequacy of DRR will be 25% of the value of debentures issued through public

issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and also 25% DRR is required in the case of privately placed debentures by listed companies. For unlisted companies issuing debentures on private placement basis, the DRR will be 25% of the value of debentures.

The Companies (Share Capital and Debentures) Rules, 2014 issued by the Ministry of Corporate Affairs (MCA) on 27th March, 2014, required companies to create debenture redemption reserve (DRR) equivalent to atleast fifty per cent of the amount raised through the debenture issue. Subsequently, the rules published in the Official Gazette on 3rd April, 2014 (effective from 1st April, 2014), changed the above requirement for creation of DRR.

The Gazette Rules exempt certain companies from creation of DRR and in case of other companies, reduce the percentage of DRR from 50% to 25% of the value of debentures.

- (c) Every company required to create Debenture Redemption Reserve shall on or before 30th day of April in each year, as the case may be, a sum which shall be not less than 15%, of the amount of its debentures, maturing during the year ending on 31st day of March of the next year, in any one or more of the following methods, namely:
- (i) in deposits with any scheduled bank, free from any charge or lien;
 - (ii) in unencumbered securities of the Central Government or any State Government;
 - (iii) in unencumbered securities mentioned in sub-clauses (a) to (d) and (ee) of Section 20 of the Indian Trust Act, 1882;
 - (iv) in unencumbered bonds issued by any other company which is notified under sub-clause (f) of Section 20 of the Indian Trust Act, 1882;
 - (v) the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above: Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below 15% of the amount of the debentures maturing during the year ending on the 31st day of March of that year.
- (d) in case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule.
- (e) the amount credited to the Debenture Redemption Reserve shall not be utilised by the company except for the purpose of redemption of debentures.

(b) **SUSTAINABLE DEVELOPMENT – MEANING OF; RESPONSIBILITIES OF INDUSTRIES:**

MEANING OF SUSTAINABLE DEVELOPMENT: Literally sustainable development refers to maintaining development over time. It may be defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs. A nation or society should satisfy its requirements – social, economic and others – without jeopardizing the interest of future generations.

SPECIAL RESPONSIBILITIES OF INDUSTRIES BASED ON NATURAL RESOURCES: Industries that are based on natural resources, like minerals, timber, fiber and foodstuffs etc. have a special responsibility for:

- (1) adopting practices that have built-in environmental consideration;
- (2) introducing processes that minimize the use of natural resources and energy, reduce waste and prevent pollution; and
- (3) making products that are “environment-friendly”, with minimum adverse impact on people and ecosystem.

(c) (i) **THE PRESS COMMUNIQUE:** The press communiqués are issued when some important government decisions or announcements are made such as cabinet appointments, conclusion of the foreign dignitaries’ visits, international agreement, etc. The press communiqué is formal in character. It carries the name of the ministry or department and the place, the date at the bottom left-hand corner of the release. Generally, the press is expected to reproduce the press communiqué without any substantial change. No heading or sub-heading is given on press communiqués.

(ii) **THE PRESS NOTE:** The press notes are less formal in character. They are issued on important matters, e.g. raising or lowering of tariff rates etc. The press note also carries the name of the ministry or department concerned and the place and date at the bottom left-hand corner. Heading or sub-heading are given in the press notes.

Question 5

- (a) (i) *What is meant by ‘Sans Recours Endorsement’ of a bill of exchange? How does it differ from ‘Sans Frais Endorsement’?* (4 Marks)
- (ii) *‘P’, a major and ‘Q’, a minor executed a promissory note in favour of ‘R’, Examine with reference to the provisions of the Negotiable Instruments Act, 1881, the validity of the promissory note and whether it is binding on ‘P’ and ‘Q’.* (4 Marks)
- (b) *Explain the concept of ‘electronic voting system’ as provided by the Companies Act, 2013.* (4 Marks)
- (c) *Explain the ‘threats faced by an accounting and finance professional adhering to ethical principles’ at the time of performing his professional duties.* (4 Marks)

Answer**(a) (i) SANS RECOURSE: SANS FRAIS (THE NEGOTIABLE INSTRUMENTS ACT, 1881):**

SANS RECOURSE: By adding the words 'Sans Recourse' after the endorsement the endorser declines to accept any liability on the instrument of any subsequent party. Sometimes, when an endorser who so excludes his liability as an endorser afterwards becomes the holder of the same instrument. In such a case, all intermediate endorsers are liable to him.

SANS FRAIS: These words when added at the end of the endorsement, indicate that no expenses should be incurred on account of the bill.

DIFFERENCE: Any endorser can exclude personal liability by endorsing "sans recourse" i.e. without recourse. However, "Sans Frais" endorsement, indicate that no expenses should be incurred on account of the bill.

(ii) LIABILITY OF A MINOR: According to Section 26 of the Negotiable Instruments Act, 1881, every person competent to contract (according to the law to which he is subject to) has capacity to bind himself and be bound by making, drawing, accepting, endorsing delivering and negotiating an instrument. A party having such capacity may himself put his signature or authorize some other person to do so.

A minor may draw, endorse, deliver and negotiate an instrument so as to bind all the parties except himself. A minor may be a drawer where the instrument is drawn or endorsed by him. In that case he does not incur any liability himself although other parties to the instrument can be made liable and the holder can receive payment from any other party thereto.

Therefore, in the instant case, the promissory note is valid and it is binding on 'P' but not on 'Q', a minor.

(b) VOTING THROUGH ELECTRONIC MEANS: According to Section 108 of the Companies Act, 2013, the Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means. According to the rules provided on voting through electronic means:

- (1) Every listed company or a company having not less than one thousand shareholders, shall provide to its members facility to exercise their right to vote at general meeting by electronic means.
- (2) A member may exercise his right to vote at a general meeting by electronic means and the company may pass any resolution by electronic voting system in accordance with the provisions of this rule.

The expression "voting by electronic means" or "electronic voting system" means a secured system based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, such that the

entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate cyber security.

The expression "secured system" computer hardware, software and procedure that:

- (a) are reasonably secure from unauthorized access and misuse;
- (b) provide a reasonable level of reliability and correct operation;
- (c) are reasonably suited to performing the intended functions; and
- (d) adhere to generally accepted security procedures.

(c) THREATS FACED BY ACCOUNTING AND FINANCE PROFESSIONALS: The dynamic environment in which businesses operate today may usher a broad range of circumstances because of which compliance of the fundamental principles may potentially be threatened. Such threats may be classified as follows:

- (1) SELF-INTEREST THREATS, which may occur as a result of the financial or other interests of a finance and accounting professional or of an immediate or close family member;
- (2) SELF-REVIEW THREATS, which may occur when a previous judgment needs to be re-evaluated by the finance and accounting professional responsible for that judgment;
- (3) ADVOCACY THREATS, occur when a professional promotes a position or opinion to the point that subsequent objectivity may be compromised;
- (4) FAMILIARITY THREATS, occur when a finance and accounting professional has close relationships in the work environment and such relationships impair his selfless attitude towards work;
- (5) INTIMIDATION THREATS, occur when a professional may be prohibited from acting objectively by threats, actual or perceived.

Question 6

- (a) *Explain the conditions and the manner in which a company may issue depository receipts in a foreign country under the Companies (Issue of Global Depository Receipts) Rules, 2014.* (8 Marks)
- (b) *State whether the following statements are correct or incorrect:*
 - (i) *Agency coupled with interest is irrevocable.*
 - (ii) *Depositing of ornaments in a bank locker is a bailment.*
 - (iii) *Deferred shares also called founder's shares.*
 - (iv) *Debentures with voting rights can be issued only, if permitted by the Articles of Association.* (1 x 4 = 4 Marks)

- (c) *What is meant by 'Emotional Intelligence'? Explain the 'Self-Awareness and Self-Management Personal Competencies' associated with emotional intelligence. (4 Marks)*

Answer

- (a) **ISSUE OF DEPOSITORY RECEIPTS IN FOREIGN COUNTRY:** Section 41 of the Companies Act, 2013 is a newly added provision according to which a company may issue Global Depository Receipts to transact business with a depository mode in any foreign country. As per the law contained in the said Section, a company may, after passing a special resolution in its general meeting, issue depository receipts in any foreign country.

The Companies (Issue of Global Depository Receipts) Rules, 2014, provide the conditions and the manner in which a company may issue depository receipts in a foreign country.

CONDITIONS FOR ISSUE OF DEPOSITORY RECEIPTS:

- (1) **PASSING OF RESOLUTION:** The Board of Directors of the company intending to issue depository receipts shall pass a resolution authorizing the company to do so.
- (2) **APPROVAL OF SHAREHOLDERS:** The company shall take prior approval of its shareholders by a special resolution to be passed at a general meeting.
- (3) **DEPOSITORY RECEIPTS SHALL BE ISSUED BY AN OVERSEAS DEPOSITORY BANK:** The depository receipts shall be issued by an overseas depository bank appointed by the company and the underlying shares shall be kept in the custody of a domestic custodian bank.
- (4) **COMPLIANCE WITH ALL THE PROVISIONS, SCHEMES, REGULATIONS ETC.:** The company shall ensure that all the applicable provisions of the scheme and the rules or regulations or guidelines issued by the Reserve Bank of India are complied with before and after issue of depository receipts.
- (5) **COMPLIANCE REPORT TO BE PLACED AT THE MEETING:** The company shall appoint a merchant banker or a practicing chartered accountant or a practicing cost accountant or a practicing company secretary to ensure all the compliances relating to issue of depository receipts and the compliance report taken from such merchant banker or practicing chartered accountant or practicing cost accountant or practicing company secretary, as the case may be, shall be placed at the meeting of the Board of Directors of the company or of the committee of the Board of Directors authorised by the Board in this regard to be held immediately after closure of all formalities of the issue of depository receipts.

MANNER FOR ISSUE OF DEPOSITORY RECEIPTS:

- (1) The depository receipts can be issued by way of public offering or private placement or in any other manner prevalent abroad and may be listed or traded in an overseas listing or trading platform.

- (2) The depository receipts may be issued against issue of new shares or may be sponsored against shares held by shareholders of the company in accordance with such conditions as the Central Government or the Reserve Bank of India may prescribe or specify from time to time.
- (3) The underlying shares shall be allotted in the name of the overseas depository bank and against such shares, the depository receipts shall be issued by the overseas depository bank abroad.

(b) STATEMENTS: CORRECT OR INCORRECT:

- (i) **CORRECT:** Agency coupled with interest is irrevocable because the agent has interest in the subject matter of agency. Such agency cannot be terminated to cause prejudice to the interest of the agent.
- (ii) **INCORRECT:** Depositing ornaments in a bank locker is not bailment because ornaments are kept in a locker whose key are still with the owner and not with the bank. So the ornaments are still in possession of the owner though kept in a locker at the bank.
- (iii) **CORRECT:** Since deferred shares are often held by the promoters of the company, they are also called as founder's share.
- (iv) **INCORRECT:** According to Section 71 (2) of the Companies Act, 2013, no company shall issue any debentures carrying any voting rights.

(c) EMOTIONAL INTELLIGENCE: Emotional intelligence refers to the capacity of organizing your own feelings and those of others, for motivating yourself and for managing emotions well in yourself and in your relationship.

PERSONAL COMPETENCE ASSOCIATED WITH EMOTIONAL INTELLIGENCE:
PERSONAL COMPETENCE – How to manage yourself.

SELF AWARENESS:

- Emotional self awareness: Reading your own emotions and recognizing their impact, using gut sense to guide decisions.
- Accurate self assessment: Knowing your strengths and weaknesses.
- Self-confidence: A sound sense of yourself worth and capability.

SELF MANAGEMENT:

- Emotional self control: Keeping disruptive emotions and impulses under control.
- Transparency: Displaying honest and integrity; trustworthiness.
- Adaptability: Flexibility in adapting to changing situations or overcoming obstacles.
- Achievement: The drive to improve performance to meet inner standards of excellence.

- Initiative: Readiness to act and seize opportunities.
- Optimism: Seeing the upside in events.

Question 7

- (a) *An Inspector appointed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 makes an inspection at 8 a.m. (an hour before factory timings) and seeks to take copies of the "Income Tax Returns". How far under the Act is his action reasonable? (4 Marks)*
- (b) *Define the term 'Small Company' as contained in the Companies Act, 2013. (4 Marks)*
- (c) *The Annual General Meeting of KMP Limited was held on 30th April, 2015. The Articles of Association of the company is silent regarding the quorum of the General Meeting. Only 10 members were personally present in the above meeting, out of the total 2,750 members of the company. The Chairman adjourned the meeting for want of quorum. Referring to the provisions of the Companies Act, 2013, examine the validity of Chairman's decision. (4 Marks)*
- (d) *Explain the various socio-psychological factors responsible for developing negative attitude by an individual at workplace. (4 Marks)*
- (e) *State the reasons for 'resistance to change' in an organization. (4 Marks)*

Answer

- (a) **VALIDITY OF ACT OF INSPECTOR:** According to Section 13(2)(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the inspector can at any reasonable time, enter and search any establishment and require any one found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to employment of persons or the payment of wages in the establishment.

Further, under Section 13(2)(d) of the said Act, an inspector can inspect and make copies of, or take extract from any book, register or other document maintained in relation to the establishment and, when he has reason to believe that any offence under this Act has been committed by any employer, seize with such assistance as he may think fit, such book, register or other document or portions thereof as he may consider relevant in respect of that offence.

In the instant case, the inspector has sought to take copies of the "Income Tax Returns", which are not relevant documents for the purpose of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Moreover, the inspector has visited the office of establishment before the normal working hours of the office, which is not reasonable.

Hence, the action of the inspector is NOT reasonable.

- (b) **SMALL COMPANY:** Under Section 2 (85) of the Companies Act, 2013, "small company" means a company, other than a public company:-

- (i) having PAID-UP SHARE CAPITAL not exceeding fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or
- (ii) having TURNOVER as per its last profit and loss account not exceeding two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees.

EXCEPTIONS: This section shall not apply to:

- (A) a holding company or a subsidiary company;
 - (B) a company registered under section 8, or
 - (C) a company or body corporate governed by any special Act.
- (c) **QUORUM; CONSEQUENCES OF NO QUORUM:** Quorum means the minimum number of members who must be present in order to constitute a meeting and transact business thereat. Thus, quorum represents the number of members on whose presence the meeting of a company can commence its deliberations.

Section 103 of the Companies Act, 2013 provides the law with respect to the quorum for the meetings. The said section provides that where the Articles of the company do not provide for a larger number, there the quorum shall depend on number of members as on date of a meeting.

In case of a public company:

- (i) five members personally present if the number of members as on the date of meeting is not more than one hundred;
- (ii) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;
- (iii) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand;

shall be the quorum for a meeting of the company.

CONSEQUENCES OF NO QUORUM: If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company –

- (a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or
- (b) to such other date and such other time and place as the Board may determine; or
- (c) the meeting, if called by requisitions (under section 100), shall stand cancelled.

In the instant case, KMP Limited is a public company with total number of 2750 members, hence atleast 15 members should have been personally present in order to constitute a valid quorum for the Annual General Meeting.

Thus, the meeting shall automatically stand adjourned to the same day in the next week at the same time and place, if the quorum is not present within half –an-hour from the time appointed for holding a meeting of the company. Further, the Board of Directors may decide for such other date and such other time and place, which they may deem fit. Section 103 of the said Act itself provides for automatic adjournment of the meeting to the same day in the next week at the same time and place, rather the Chairman obviating to take a decision on the matter of the meeting. The question of validity of Chairman's decision does not arise.

(d) SOCIO-PSYCHOLOGICAL FACTORS RESPONSIBLE FOR DEVELOPING NEGATIVE ATTITUDE BY AN INDIVIDUAL AT WORK PLACE:

An ethical issue is an identifiable problem, situation or opportunity that requires a person to choose from several actions which could be evaluated as right or wrong. Values reflect enduring beliefs that one holds that influences attitude, action and the choices one make. As individuals, our values are shaped by our personal beliefs. Values developed in childhood and youth are constantly tested and on-the-job decisions reflect the employee's understanding of ethical responsibility. Various socio-psychological factors that could be responsible why individuals could develop negative attitudes or lose personal motivation are:

- (i) Negative work or life experiences.
- (ii) Employees failing to respect each others unique personalities.
- (iii) Overly aggressive financial or business targets.
- (iv) Pressures to perform and take quick decisions.

(e) RESISTANCE TO CHANGE: No matter whether a change is of major proportions or is objectively rather small, the change manager must anticipate that people in the organization are going to find reasons to resist changes. It is a basic tenet of human behavior that any belief or value that has been previously successful in meeting needs will resist change.

REASONS WHY PEOPLE RESENT OR RESIST CHANGE:

1. One major reason why people resist change is the potential for loss on a personal level. Objectively, there may be little threat, but people may act as if there is one. Some of the things people feel are at risk during change processes are:
 - Security
 - Friends and contacts
 - Money
 - Freedom
 - Pride and satisfaction

- Responsibility
 - Authority
 - Good working conditions
 - Status
2. While a feeling of threat is a primary reason why people resist change, there are other factors that can mobilize people into resisting any change from a status quo. These include:
- Change not needed – status quo is working fine
 - Proposed change does more harm than good
 - Lack of respect for person responsible for the change
 - Objectionable way of implementing the change
 - Negative attitude towards the organization before change
 - No opportunity to have input into change
 - Change perceived as implying personal criticism
 - Change simply adds more work and confusion
 - Change requires more effort to keep status quo
 - Bad timing of the change
 - A desire to challenge authority
 - Hearing about the change secondhand
3. The uncertainty principle: This states that when people are faced with ambiguous or uncertain situations, where they feel they do not know what to expect, they will resist moving into those situations.