

TopYug Educations**CA – INTER – CORPORATE & OTHER LAWS****SUGGESTED ANSWERS for TEST 5 – Ch VIII, IX & X of Co.s Act, 2013****Answer All the questions. Each question carries 5 marks each. Duration – 50 Mins**

1. XYZ Ltd is a listed company having turnover of Rs.1200 crores during the financial year 2015-16. The CSR committee of the Board formulated and recommended a CSR project which was approved by the Board. Company finalised the project under its CSR initiatives which require funds @ 5% of average net profit of the company for last three financial years. Will such excess expense be counted in subsequent financial years as a part of CSR expenditure? Advise as per the provisions of Co.s Act, 2013.

Answer:

In terms of Section 135(5) of the Companies Act, 2013, the Board of every company to which section 135 is applicable, shall ensure that the company spends, in every Financial year at least 2 percent of average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR policy. Listed Company is one of the companies which is required to contribute towards CSR.

In the given case, Board of XYZ Ltd, a listed company has approved a CSR project which requires funds @ 5% of average net profits of the company for last 3 financial years.

Question involved is whether such excess expense be counted in subsequent financial years as part of CSR expenditure or not.

Applying above provisions in the given case, we understand that there is no provision for carry forward of excess expenditure to the next year(s). The words used in the section are 'at least'. **Therefore**, any expenditure over 2% would be considered as voluntary higher spending and thus cannot be counted in subsequent financial years.

2. The Annual General Meeting of ABC Ltd. declared a dividend at the rate of 30 percent payable on paid up equity share capital of the Company as recommended by Board of Directors on 30th April, 2013. But the Company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder of the Company, upto 30th June, 2013. Mr. Ranjan filed a suit against the Company for the payment of dividend along with interest at the rate of 20 percent per annum for default period. Decide in the light of provisions of the Companies Act, 2013, whether Mr. Ranjan would succeed? Also state the directors' liability in this regard under the Act.

Answer:

Section 127 of the Companies Act, 2013 lays down the penalty for non - payment of dividend within the prescribed time period. Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any shareholder entitled to the payment of the dividend:

- (a) every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues; and
- (b) the company shall be liable to pay simple interest at the rate of eighteen per cent. per annum during the period for which such default continues.

In the given case, AGM of ABC Ltd., declared a dividend @ 30% on paid up equity share capital which it was unable to pay upto 30th June, 2013. Mr. Ranjan, an equity shareholder filed a suit against the company for the payment of dividend along with interest @ 20% p.a. for default period.

Question involved is about the penal consequences and would Mr. Ranjan succeed.

Applying the above provision in the given case, we understand that Mr. Rajan will not succeed in his claim for 20% interest as the limit under section 127 is 18% per annum and the liability of director will be as mentioned above.

3. Answer the following:

- (i) Managing Director of PQR Ltd. himself wants to appoint Shri Ganapati, a practicing Chartered Accountant, as first auditor of the company. Referring the provisions of Co.s Act, 2013 Comment on the proposed action of the Managing Director.
- (ii) "Mr. A", a practicing Chartered Accountant, is holding securities of "XYZ Ltd." having face value of ₹ 900/-. Whether Mr. A is qualified for appointment as an Auditor of "XYZ Ltd."?

Answer:

(i) Section 139(6) of The Companies Act, 2013 lays down that "the first auditor(s) of a company shall be appointed by the Board of directors within 30 days from the date of registration of the company".

In the instant case, the appointment of Shri Ganapati, a practicing Chartered Accountant as first auditors by the Managing Director of PQR Ltd by himself is in violation of Section 139(6) of the Companies Act, 2013, which authorizes the Board of Directors to appoint the first auditor of the company.

In view of the above, we may conclude that the Managing Director of PQR Ltd should be advised not to appoint the first auditor of the company.

(ii) As per section 141 (3)(d) (i) of The Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:

In the present case, Mr. A, a practicing chartered accountant is holding securities of XYZ Ltd having face value of Rs.900/-

Question involved is whether he is qualified for appointment as an auditor of XYZ Ltd.

Applying the above provisions in the given case, Mr. A. is holding security of Rs.900 in the XYZ Ltd, **therefore** he is not eligible for appointment as an Auditor of "XYZ Ltd".

- 4. The Annual General Meeting of M/s. Robertson Ltd. for laying the Annual Accounts thereat for the year ended 31st March, 2004 was not held as the accounts were not ready. In this context:
 - (i) Advise the company regarding compliance of the provisions of Sec.137 of the Companies Act, 2013 for filing of copies of Annual Accounts with the Registrar of Companies.
 - (ii) Will it make any difference in case the Annual Accounts were duly laid before the AGM held on 27th September, 2004 but the same were not adopted by the shareholders?

Answer:

Referring the provisions of The Companies Act 2013, following is the advise to Robertson Ltd., :

(i) In the present case though Annual General Meeting (AGM) was not held, it ought to be held by 30th September, 2016 under sections 96 of the Companies Act, 2013.

Therefore, under the provisions of section 137(2) the financial statements along with the documents

required to be attached under this Act, duly signed along with the statement of facts and reasons for not holding the AGM shall be filed with the Registrar within thirty days of the last date before which the AGM should have been held i.e. by 30th October 2016 along with such fees or additional fees as may be prescribed.

(ii) Alternatively, if the AGM has been held in time on 27th September 2016, the unadopted financial statements along with the required documents u/s 137 shall be filed with the Registrar within thirty days of the date of AGM and the Registrar shall take them in his records as provisional till the financial statements are filed with him after its adoption in the adjourned AGM for that purpose.

5. State the provisions of the Companies Act, 2013 in respect of appointment of Auditor in the following cases:

(i) A public limited company at whose AGM held on 30th November, 2006, the auditor was appointed to hold office as such till the conclusion of its 6th AGM, but whose auditor has resigned on 15th March, 2007.

(ii) A company whose shareholders include the following:

- a) Bank of Baroda (a nationalized bank) holding 12% of the Subscribed capital in the Co.
- b) National Insurance Co. Ltd. (carrying on general insurance business) holding 10% of the Subscribed capital in the Company.
- c) Maharashtra State Financial Corpn (a PFI) holding 8% of the Subscribed capital in the Co.

Answer:

(i) **As per section 139 of The Companies Act 2013,** 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 three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.

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 than Government company and can be filled as stated above.

(ii) **Section 139 of The Companies Act, 2013** categorizes companies into Government companies and Non-Government Companies and lists down the provisions relating to appointment, of auditors as per this classification. Hence, 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. So, the appointment of auditor shall be made by members in the AGM by passing ordinary resolution.