

CLUSTER 1

1. **'Holmes' was appointed as a director for life by the articles of association of a private company incorporated on 1st June, 2014. The articles also empowered 'Holmes' to appoint a successor. 'Holmes' appointed, by will, 'Watson' to succeed him after his death. Can 'Watson' succeed 'Holmes' as a director after the death of 'Holmes'?**

Ans. As per sub-section 6 of Section 166 of the Companies Act, 2013, a director of a company shall not assign his office and any assignment so made shall be void.

In the given case, the Articles of the company gave its director the power to appoint a successor. Mr. Holmes appointed Mr. Watson to succeed him as director after his death. This closely resembles **Oriental Metal Pressing Pvt. Ltd. V B. K. Thakoor (1961) 31 Comp Case 143**, where the court observed that a director is prohibited from assigning his office. However, the wording of Section 166 indicates that the prohibition applies only when an office held by a director is assigned to any other person. Where a director dies, the office held by him becomes vacant and therefore, such office cannot be assigned to any other person. Therefore, appointment of a new person in such office does not amount to an assignment within the meaning of Section 166.

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

Ans. The given problem relates to sections 153 and 154 of the Companies Act, 2013 and Rules 9 and 10 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

Every individual intending to be appointed as a director of any company shall make an application for allotment of DIN in Form No. DIR-3. As per section 154, the Central Government shall allot DIN to an applicant within 1 month of receipt of application for allotment of DIN [Section 153 read with Rule 9 of the Companies (Appointment and Qualification of Directors) Rules, 2014]

If the Central Government, on examination, finds that the application for allotment of DIN made by the applicant is defective or incomplete in any respect, it shall give intimation of such defect or incompleteness, by placing it on the website and by email to the applicant who has filed such application, directing the applicant to rectify such defects or incompleteness by resubmitting the application within a period of 15 days of such placing on the website and email [Rule 10]

In such a case, the Central Government shall-

- (i) Reject the application and direct the applicant to file fresh application with complete and correct information, where the defect has been rectified partially or the information given is still found to be defective;
 - (ii) Treat such application as invalid in the electronic record in case the defects are not removed within the given time; and
 - (iii) Inform the applicant either by way of letter by post or electronically or in any other mode.
- Frequently Asked Questions (FAQs) with respect to DIN by MCA also states that If the DIN application is put under Resubmission, one can submit additional documents for rectifying your DIN application, within a period of 15 days from the date on which it is marked as resubmission. Reasons of the status are
- Proof of Identity / residence is not enclosed or expired.
 - Proof of Date of Birth is not enclosed.
 - Supporting documents are not properly attested.
 - Non-submission of affidavit (if required).

On resubmitting the additional documents, same DIN will be approved, if documents are found in correct order as per marked in resubmission."

Thus, based on the above, we can be concluding that the application for DIN made by Mr. Anil Kumar has not been rejected, and he is not required to obtain a fresh DIN. He is required to rectify his earlier application within 15 days from the date his application is marked for resubmission.

3. Some changes in the particulars of a Director, who has already obtained a Director Identification Number have taken Place. Now the Director wants to incorporate the changes in his DIN in the database maintained by the Central Government in this regard. Describe the procedure to be followed by the Director. (CA (Final) May. 2015)

OR

Surya, a director in New Age Limited Holding Directors Identification Number (DIN) wants to make certain changes in the particulars of his DIN. What procedure would you follow to get changes incorporated in the DIN already allotted to Surya? (CA (Final) May, 2017)

Ans. We can refer to Rule 12 of the Companies (Appointment and Qualification of Directors) Rules, 2014, as explained below:

(a) Every individual who has been allotted a DIN shall, in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the Central Government within a period of 30 days of such change(s) in Form DIR-6 in the following manner, namely:

(i) The applicant shall download Form DIR-6 from the portal, fill in the relevant changes, verify the Form and attach duly scanned copy of the proof of the changed particulars and submit it electronically.

(ii) The form shall be digitally signed by a chartered accountant in practice or a company secretary in practice or a cost accountant in practice.

(iii) The applicant shall submit the Form DIR-6.

(b) The Central Government, upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained by the Ministry.

(c) The DIN cell of the Ministry shall also intimate the change(s) in the particulars of the director submitted to it in Form DIR-6 to the concerned Registrar(s) under whose jurisdiction the registered office of the company or companies in which such individual is a director is situated.

(d) The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within 15 days of such change.

4. M/s. Iqbal Sons Ltd. issued shares of the nominal value of Rs. 10 per share, out of which Rs. 5 was payable on application and balance Rs. 5 was payable on call. The call money was invited by the Board of directors but some shareholders, including a non-executive director, failed to pay the same within the prescribed period. Explain the status of director who defaulted in paying call money. (CA (Final) May 2005)

Ans. As per section 164(1)(f) read with section 167 of the Companies Act 2013, if a director has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and more than 6 months have elapsed from the last day fixed for the payment of such call, he shall vacate his office.

In the given case, the call money was invited by the board of directors, but a non-executive director failed to pay within the prescribed time. If such default extends beyond a period of 6 months from the last day fixed for payment of the call money, the non-executive director's office shall become vacant. Also, the non-executive director will not be eligible for appointment as director of M/s Iqbal Sons Ltd. in such a case.



5. Mr. A is a director of ABC Limited which failed to repay matured deposits from 1st April, 2018 onwards and the default continues. But ABC Limited is regular in filing annual accounts and annual returns. Mr. A is also a director of PQR Limited and XYZ Limited.

Ans. As per sub-section 2 of section 164, a director of a company shall be disqualified from being reappointed as a director in that company or appointed as a director in any other company, if the company of which he is already a director fails to repay its deposits or interest thereon on the due date and such failure continues for 1 year or more. Such disqualification shall remain in force for a period of 5 years.

As per section 167, if a director who becomes disqualified under section 164(2) is also a director in any other company, his office of director in all such other companies shall become vacant, but his office of director in the defaulting company shall not become vacant.

In the given case, ABC Limited has failed to repay its deposits on the due date (1.4.2018) and such default has continued for more than 1 year (beyond 31.3.2019). Therefore-

- Mr. A is disqualified for appointment or reappointment as a director for a period of 5 years. Accordingly, DEF Limited cannot appoint Mr. A as an additional director on 15.5.2019.
- Mr. A cannot continue as a director in PQR Limited and XYZ Limited after 31.3.2019. However, he is entitled to continue as a director in ABC Limited.
- Disqualification contained in section 164(2) can apply to a person only if such person was a director as on the date when such disqualification was first attracted. Therefore, if Mr. A had ceased to be a director of ABC Limited by resignation on 1st March, 2015, he would have escaped the disqualification specified under section 164(2) and accordingly DEF Limited could appoint Mr. A as an additional director on 15.5.2019 and the office of director of M. A in PQR Limited and XYZ Limited would not have become vacant.
- As per section 143(3)(g), the auditor of the company shall state in his report as to whether any of the directors of the company are disqualified from being appointed as a director under section 164(2).

Friends please note: Section 164 and section 167 have been amended by the Companies (Amendment) Act, 2017. This answer is based on the amended provisions. However, the answers given in the Suggested Answers issued by ICAI are not updated by ICAI by any amendment made in the Act or the Rules. So, students may find that some of the answers given in this Book do not match with the answers given in the Suggested Answers issued by ICAI.

6. Mr. Kishore is a director of AB Limited and PQ Limited. AB Limited was regular in filing the annual returns but did not file public financial institution from 1st April, 2017 and also failed to repay matured deposits taken from public on due dates from 1st April, 2017 and the default continues.

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

(i) Whether Mr. Kishore is disqualified under section 164 of the Companies Act, 2013?

(ii) Whether Mr. Kishore can continue as a director in AB Limited and PQ Limited?

(iii) Whether Mr. Kishore can seek reappointment when he retires by rotation at the Annual General Meeting of AB Limited to be held in September, 2018?

(iv) Mr. Kishore is proposed to be appointed as additional director of XY Limited in June, 2018. Is he eligible to be appointed as additional director in XY Limited? (CA (Final) May 2013 (Modified))

Ans. As per section 164(2), a person who has been a director of a company shall be disqualified from being appointed or reappointed as a director in any company for a period of 5 years, if the company of which he has been a director-

(a) has not filed the financial statements or annual returns for any continuous 3 financial years; or

(b) has failed to repay the deposits accepted by it or pay interest thereon on due date or redeem its debentures on due date or pay interest due thereon or pay the declared dividend, and such failure continues for 1 year or more.

As per section 167, if a director who becomes disqualified under section 164(2) is also a director in any other company, then, his office of director in all such other companies shall become vacant, but his office of director in the defaulting company shall not become vacant.

In the present case, ABC Limited has committed the following defaults:

(a) Failure to file the financial statement for continuous 3 financial years, viz. 2015-16, 2016-17 and 2017-18. Because of such failure, all the persons who have been the directors of AB Limited shall be disqualified for 5 years.

(b) Failure to pay interest on loans taken from a Public financial institution from 1st April, 2017 onwards. However, such failure does not attract the disqualification under section 164(2), since the disqualification is incurred only if the default relates to payment of 'deposits', and not because of non-payment of loans taken from any public financial institution or interest thereon.

(c) Failure to repay the matured deposits on due date from 1st April, 2017 till 31st March, 2018. The default in payment of matured deposits has continued for a period of 1 year. Accordingly, all the directors of AB Limited shall be disqualified under section 164(2) with effect from 1st April, 2018.

In the given case,

(i) Mr. Kishore is disqualified under section 164(2) w.e.f. 1st April, 2018 for a period of 5 years.

(ii) Mr. Kishore can continue as a director in AB Limited, but his office of director in PQ Limited shall become vacant.

(iii) Since Mr. Kishore is disqualified under section 164(2), he cannot be reappointed as a director in AB Limited, or appointed as a director in any other company for a period of 5 years, i.e, from 1st April, 2018 to 31st March, 2023. Accordingly, Mr. Kishore cannot be reappointed as a director when he retires by rotation at the Annual General Meeting of AB Limited to be held in September, 2018.

(iv) With effect from 1st April, 2018, Mr. Kishore is disqualified under section 164(2) for a period of 5 years. So, he is not eligible to be appointed as an additional director of XY Limited in June, 2018.

Note: Section 164 and Section 167 have been amended by the Companies (Amendment) Act, 2017. The answer to the practical problem given above is as per the amended provisions. However, the answers given in the Suggested Answers issued by ICAI may not be updated by ICAI. Tread carefully if you're reading ICAI suggested answers, since old law + new law will become 'your' own law in the exams :)

7. Mr. Shivakumar is a director of M/s PJ Limited and KG Limited respectively M/s PJ Limited did not file its financial statements for the year ended 31st March 2016, 2017 & 2018 respectively with the Registrar of Companies (ROC) as mandated under the Companies Act, 2013. M/s. PJ Limited also did not pay interest on loans taken from a public financial institution from 1st April, 2017 and also failed to repay matured deposits taken from public on due dates from 1st April, 2017 onwards.

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

(i) Whether Mr. Shivakumar is disqualified under Companies Act, 2013 and if so, whether he can continue as a director in M/s PJ Limited? Further can he also seek reappointment when he retires by rotation of the AGM of M/s KG Limited scheduled to be held in



September 2019?

(ii) Mr. Shivakumar is proposed to be appointed as an additional director of M/s MN Limited in June 2019. Is he eligible to be appointed as an additional director in M/s MN Limited? Decide. (CA (Final) May 2019)

Ans. As per Section 164(2), a person who has been a director of a company shall be disqualified from being appointed or reappointed as a director in any company for a period of 5 years, if the company of which he has been a director-

(a) has not filed the financial statements or annual returns for any continuous 3 financial years; or

(b) has failed to repay the deposits accepted by it or pay interest thereon on due date or redeem its debentures on due date or pay interest due thereon or pay the declared dividend, and such failure continues for 1 year or more.

As per Section 167, if a director who becomes disqualified under section 164(2) is also a director in any other company, then, his office of director in all such other companies shall become vacant, but his office of director in the defaulting company shall not become vacant.

In the present case, M/s PJ Limited has committed the following defaults:

(a) They have not filed the financial statements for continuous 3 financial years, viz. 2015-16, 2016-17 and 2017-18.

Because of such failure, all the directors of M/s PJ Limited shall be disqualified under section 164(2) for a period of 5 years.

(b) Non-payment of interest on loans taken from a Public financial institution from 1st April, 2017 onwards does not attract the disqualification under section 164(2), since the disqualification is incurred only if the default relates to payment of 'deposits', and not because of non-payment of loans taken from any public financial institution or interest thereon.

(c) Non-payment of matured deposits on due date from 1st April, 2017-

If the default in payment of matured deposits has continued for a period of 1 year, all the directors of M/s PJ Limited shall be disqualified under section 164(2) with effect from 1st April, 2018.

Accordingly,

(i) M. Shivakumar is disqualified under section 164(2) w.e.f. 1st April, 2018 for a period of 5 years, assuming that the default in payment of matured deposits has continued up to 31st March, 2018.

Mr. Shivakumar can continue as a director in M/s PJ Limited, but his office of director in M/s KG Limited shall become vacant on 1st April, 2018.

Since the office of director of Mr. Shivakumar in M/s KG Limited has become vacant on 1st April, 2018, and he is disqualified for appointment as a director in any company for a period of 5 years with effect from 1st April, 2018, it is not possible that Mr. Shivakumar holds the position of director in M/s KG Limited in September, 2019. Accordingly, there is no question of retirement or reappointment of Mr. Shivakumar in the AGM of M/s KG Limited in September, 2019.

Since Mr. Shivakumar is disqualified under section 164(2), he cannot be appointed as a director in any company for a period of 5 years, i.e. from 1st April, 2018 to 31st March, 2023. So, he is not eligible to be appointed as an additional director of M/s MN Limited in June, 2019.

8. Mr. John is a director of MNC Ltd., which accepted deposits from public. The financial position of MNC Ltd, turned very bad and it failed to repay the deposits which fell due for payment on 10th April 2017 and such repayment has not been made till 5th May 2018. Another company JKL Ltd. wants to appoint the said Mr. John as its director at its annual

general meeting to be held on 6th May, 2018. You are required to state with reference to the provisions of the Companies Act, 2013 whether Mr. John can be appointed as a director of JKL Ltd. (CA (Final) May 2008 (Modified))

Ans. As per section 164(2), a person who has been a director of a company shall be disqualified from being appointed or reappointed as a director in any company for a period of 5 years, if the company of which he has been a director –

(a) has not filed the financial statements or annual returns for any continuous 3 financial years; or

(b) has failed to repay the deposits accepted by it or pay interest thereon on due date or redeem its debentures on due date or pay interest due thereon or pay the declared dividend, and such failure continues for 1 year or more.

In the given case, MNC Ltd. has failed to repay its deposits on the due date (10.4.2017) and such default has continued for 1 year (viz. from 11.04.2017 to 10.4.2018). Hence

Mr. John, the director of MNC Ltd., is disqualified for appointment or reappointment as a director in any company for a period of 5 years. The period of disqualification shall be from 11.04.2018 to 10.04.2023. Accordingly, JKL Ltd., cannot appoint Mr. John as a director on 06.05.2018.

As per Section 167, if a director who becomes disqualified under Section 164(2) is also a director in any other company, then his office of director in all such other companies shall become vacant, but his office of director in the defaulting company shall not become vacant. Accordingly, Mr. John can continue as a director in MNC Ltd., but his directorship in all such other companies shall become vacant.

9. Mr. Ramanathan is a director of Fraudulent Ltd., Honest Ltd. and Regular Ltd. For the financial year ended on 31st March, 2014 two irregularities were discovered against Fraudulent Ltd. Fraudulent Ltd did not file its financial statement for the year ended 31.3.2014 and failed to pay interest on loans taken from a financial institution for the last three years.

On 1st June 2015 Mr. Ramanathan is proposed to be appointed as additional director of Goodwill Ltd., which company has sought a declaration from Mr. Ramanathan and he also submitted the declaration stating that the disqualification specified in Section 164 of the Companies Act, 2013 is not attracted in his case. Decide under the provisions of the Companies Act, 2013:

(i) Whether the declaration submitted by Mr. Ramanathan to Goodwill Ltd. is in order?

(ii) Whether Mr. Ramanathan can continue as a director in Honest Ltd. and Regular Ltd.?

(CA (Final) June 2009 (Modified))

Ans. As per section 164(2), No person who is or has been a director of a company which-

(a) has not filed the financial statements or annual returns for any continuous period of 3 financial years; or

(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any declared dividend, and such failure to pay or redeem continues for 1 year or more,

shall be eligible to be re-appointed as director of that company or appointed in another company for a period of five years from the date on which the said company fails to do so.

In the given case-

(a) Fraudulent Ltd. has failed to file its financial statements for the year ending 31.03.2014. However, the disqualification in Section 164(2)(a) is only attracted if then financial statements have not been filed for a continuous period of three or more years.

(b) Fraudulent Ltd. has also failed to pay interest on loans taken from a financial institution for the last three years. However, the disqualification under Section 164(2)(b) is only

attracted if the said company fails to repay deposits accepted by it, or the interest thereon. Loans taken from a financial institution are not to be considered here.

Therefore, the declaration submitted by Mr. Ramanathan to Goodwill Ltd. is in order, and Mr. Ramanathan can continue as a director in Fraudulent Ltd., Honest Ltd. and Regular Ltd.

10. Mr. Ravindranathan is holding the post of director in three companies out of which Good luck Colours Limited is one. For the financial year ended on 31st March, 2014, Good luck Colours Limited failed to pay interest on loans taken from a financial institution and also failed to repay the matured deposits. On 1st June, 2014, Mr. Ravindranathan accepting the post of additional director in Soma Footwear Limited submitted a declaration that the disqualification specified in section 164 of the Companies Act, 2013 is not applicable in his case. Decide whether the declaration submitted by Mr. Ravindranathan to Soma Footwear Limited is in order. (CA (Final) May 2010 (Modified))

Ans. As per section 164(2), if the company of which a person has been a director

(a) has not filed the financial statements or annual returns for any continuous 3 financial years; or

(b) has failed to repay the deposits accepted by it or pay interest thereon on due date or redeem its debentures on due date or pay interest due thereon or pay the declared dividend, and such failure continues for 1 year or more, then person who has been a director of a company shall be disqualified from being appointed or reappointed as a director in any company for a period of 5 years

In the given question, Good luck Colours Limited has committed the following defaults:

(a) They have failed to pay interest on loans taken from a financial institution for the financial year ended on 31st March, 2014.

But such failure does not attract the disqualification under section 164(2), since the disqualification is incurred only if the default relates to payment of 'deposits', debentures, or dividend and not because of non-payment of interest on 'loans' obtained from a financial institution.

Note- Though deposit definition includes "loan", deposit rules specifically exclude loans from banks/financial institutions from the ambit of deposit

(b) They have failed to repay the matured deposits on due date for the financial year ended on 31st March, 2014.

Default in payment of matured deposits or interest thereon would result in applicability of section 164(2) only if such default continues for 1 year or more. However, the question is silent with respect to the date when such default occurred for the first time.

If 1 year has not elapsed from the date the default had first occurred, as on 1st June, 2014, then the disqualification under section 164(2) shall not be attracted to Mr. Ravindranathan, and so he may be appointed as an additional director of Soma Footwear Limited, and therefore, the declaration given by Mr. Ravindranathan would be in order.

However, if as on 1st June, 2014, 1 year has elapsed from the date the default had first occurred, Mr. Ravindranathan shall be disqualified under section 164(2), and hence he cannot be appointed as an additional director of Soma Footwear Limited, and therefore, the declaration given by Mr. Ravindranathan is not in order.

11. Mr. Vikram, a director of M/s Tubelight Limited has made default in filing of annual accounts and annual returns with registrar of companies for continuous period of 3 financial years ending on 31st march 2018. Examine the validity of the following under the companies act 2013:

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



(ii) What would be your answer in case Mr. Vikram is a nominee director of a Public Financial Institution?

What would be your answer in case the defaulting company (i.e. M/s. Tubelight Limited) is a private limited company? [CA (Final) Nov.2017 (Modified)]

Ans. As per section 164(2), if the company of which a person has been a director

(a) has not filed the financial statements or annual returns for any continuous 3 financial years; or

(b) has failed to repay the deposits accepted by it or pay interest thereon on due date or redeem its debentures on due date or pay interest due thereon or pay the declared dividend, and such failure continues for 1 year or more, then person who has been a director of a company shall be disqualified from being appointed or reappointed as a director in any company for a period of 5 years

In the present case, M/s Tubelight Limited has committed the default as specified under section 164(2)(a). Accordingly, all the directors of M/s Tubelight Limited shall be disqualified under section 164(2).

As per proviso to Section 167(1), if a director who becomes disqualified under section 164(2) is also a director in any other company, then, his Office of director in all such other companies shall become vacant, but his office of director in the defaulting Company shall not become vacant.

The answer to the given problem would be:

(i) Mr. Vikram can continue as a director of M/s Tubelight Limited since as per section 167, his office of director in the defaulting company (viz. M/s Tubelight Limited) shall not be vacated. However, Mr. Vikram cannot continue as a director in M/s Green Light Limited since as per section 167, the office of director of Mr. Vikram in all companies, other than the defaulting company, shall become vacant.

As per section 164(2), Mr. Vikram shall be disqualified for reappointment in the defaulting company for a period of 5 years from the date of incurring disqualification. Accordingly, Mr. Vikram cannot be reappointed as a director in M/s Tubelight Limited for a period of 5 years.

(ii) The answers would remain same even if Mr. Vikram were a nominee director of a Public Financial Institution, since the provisions contained in sections 164(2) and 167 apply to nominee directors of Public Financial Institutions also, and no exemption has been provided to them under the Companies Act, 2013 or the Rules prescribed thereunder.

[However, under the Companies Act, 1956, non-filing of annual accounts and annual returns resulting in disqualification as per Section 274(1)(g) of the Companies Act, 1956 did not apply to the nominee directors of Public Financial Institutions as per Circular No. 11/2001, dated 25.5.2001. However, this Circular does not have no relevance under the Companies Act, 2013.

Alternative (but weak) answer: Nominee directors are generally governed by 161(3) and their rights and duties are clearly mentioned and agreed upon as per the agreement. Generally, the agreement includes the term that 164(2) would not apply to Nominee directors. The loan agreement would override the act

(iii) The provisions contained in sections 164(2) and 167 equally apply to the private companies. Accordingly, the answers would remain same even if the defaulting company, viz. M/s Tubelight Limited were a private company.

12. Mr. Ram is a Director of ABC Limited, XYZ Limited and PQR Limited. ABC Limited was regular in filing annual returns, but did not file financial statements for the year ended 31st March, 2017. Further ABC Limited failed to pay interest on loans taken from a public financial institution from 1st January, 2017 onwards and also failed to repay the matured deposits on due date from 1st April, 2017 onwards.

Mr. Ram is proposed to be appointed as additional director of MN Limited on 1st June,



2018. MN Limited has sought a declaration from Mr. Ram to the effect that the disqualification specified in section 164(2) of the Companies Act, 2013 is not applicable in his case. Mr. Ram seeks your advice on the following:

(i) Whether it is in order for him to give the declaration sought by MN Limited in view of the defaults committed by ABC Limited.

(ii) Whether he can continue as a director in ABC Limited, XYZ Limited and PQR Limited.

(iii) Whether he can seek reappointment when he retires by rotation at the annual general meeting of ABC Limited to be held in September, 2018.

(iv) What would be your answer, if Mr. Ram had resigned from his office of director in ABC Limited on 31st December, 2017?

Advise explaining the relevant provisions of the Companies Act, 2013. [CA (Final) May 2003 (modified)]

Ans. As per section 164(2), No person who is or has been a director of a company which-

(a) has not filed the financial statements or annual returns for any continuous period of 3 financial years; or

(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any declared dividend, and such failure to pay or redeem continues for 1 year or more,

shall be eligible to be re-appointed as director of that company or appointed in another company for a period of five years from the date on which the said company fails to do so.

As per the proviso to section 167(1)(a), where a director incurs disqualification under 164(2), the office of the director shall become vacant in all companies, other than the company which is in default under 164(2).

In the given case,

a) ABC Ltd. has failed to file its financial statements for the year ending 31.03.2017. However, the disqualification in Section 164(2)(a) is only attracted if the financial statements have not been filed for a continuous period of three or more years.

ABC Ltd. has also failed to pay interest on loans taken from a public financial institution from 01/01/2017. But such failure does not attract the disqualification under section 164(2), since the disqualification is incurred only if the default relates to payment of 'deposits', 'debentures', or dividend and not because of non-payment of interest on 'loans' obtained from a financial institution.

Note- Though deposit definition includes "loan", deposit rules specifically exclude loans from banks/financial institutions from the ambit of deposit

b) ABC Ltd. has also failed to repay matured deposits from 01/04/2017, and as of 01/06/2018, the default in repayment will have continued beyond a period of 1 year. Mr. Ram and the other directors will attract the disqualification under section 164(2)(b), and shall be ineligible for re-appointment as director in ABC Ltd. or for appointment as director in another company for a period of five years from 31/03/2018.

Therefore,

(i) It would not be in order for Mr. Ram to give the declaration sought by MN Ltd.

(ii) His office shall become vacant in both XYZ Ltd. and PQR Ltd., but he can continue as director of ABC Ltd.

(iii) He cannot apply for re-appointment as director of ABC Ltd once he retires by rotation at the annual general meeting of ABC Limited to be held in September, 2018, because he shall remain disqualified for a period of 5 years from 31/03/2018.

(iv) If Mr. Ram had resigned as director of ABC Ltd. on 31/12/2017, he would not have attracted the disqualification under section 164(2)(b), and would remain eligible to be director in XYZ Ltd. and PQR Ltd. He would also be eligible to be appointed as additional director in MN Ltd., and the declaration sought by MN Ltd. would have been in order.



13. In the general meeting of X Ltd., held on 2.5.2018, Mr. A was appointed as a director. On that day, he was not holding any equity shares in X Ltd. As per the articles of association of X Ltd., the share qualification is the holding of 500 equity shares. On 15.6.2018 Mr. A applied to 1,000 equity shares in X Ltd. and the shares were allotted on 10.7.2018. Discuss as to whether Mr. A's office of director shall be vacated. (CA (Final) Nov. 2000 (Modified))

OR

Mr. Busybody has been appointed as a director of ACE Automobiles Ltd. On 2nd April, 2017. The articles of association of the company provides that the qualification of a director shall be holding of at least 10 shares in the company. Mr. Busybody applied for 10 equity shares of the company on 31st May, 2017. But the shares were allotted only at the Board meeting held on 19th August, 2017. Examine with reference to the relevant provisions of the Companies Act, 2013 whether Mr. Busybody's office of director shall be become vacant. (CA (Final) May 2003 (Modified))

OR

The Articles of Association of Sunrise Ltd. provide that the qualification of a director shall be holding of at least 10 shares in the company. Mr. Rao has been appointed as a director in the said meeting on 1st May, 2016. Mr. Rao applied for 10 equity shares of the company on 30th July, 2016. The said shares were allotted to him on 20th August, 2016 when the Board meeting was held. (CA (Final) Nov. 2008 (Modified))

Ans. None of the sections 164 or 167 which contain the grounds of disqualification of a director and vacation of office of a director respectively require holding of any shares in order to become a director, or to continue as a director. Hence, no person shall be disqualified for directorship on the ground that he does not hold any shares in the company. On the same lines, no director of a company shall have to vacate his office of director on the ground that he did not acquire certain shares in the company.

Even where the articles of a company require holding of certain shares within such time as may be specified in the articles, such a provision has no legal effect, since it is contrary to the provisions contained in sections 164 and 167.

Hence, there is requirement of holding any qualification shares by the directors.

Accordingly, the office of director of Mr. A/Mr. Busybody / Mr. Rao shall not become vacant.

14. State with reference to the relevant provisions of the Companies Act, 2013 whether the following persons can be appointed as directors of a public company:

- (i) Mr. A. who has huge personal liabilities far in excess of his assets and properties, has applied to the court for adjudicating him as an insolvent and such application is pending.**
- (ii) Mr. B, who was caught red-handed in a shop lifting case two years ago, was convicted by a Court and sentenced to imprisonment for a period of eight weeks.**
- (iii) Mr. C, a former bank executive, was convicted by a Court eight years ago for embezzlement of funds and sentenced to imprisonment for a period of one year.**
- (iv) Mr. D is a director of DLT Limited, which has not filled its annual returns for 3 continuous financial years.**

Ans. The given problem relates to Section 164 of the Companies Act, 2013, which contain grounds of disqualification for appointment as a director.

In the present case:

(i) A person is disqualified if he himself applies to the Court for adjudicating him as an insolvent [Section 164(1)(c)]. Since, Mr. A has himself applied to the court for adjudicating him as an insolvent, he is disqualified for directorship even if his application is pending.

(ii) A person is disqualified only if he is convicted by a Court of any offence (whether involving moral turpitude or otherwise) and sentenced to imprisonment for 6 months or more [Section 164(1)(d)]. In this case, Mr. B was caught red-handed in a shop lifting case and was sentenced to imprisonment for a period of 8 weeks, i.e. less than 6 months. Since section

164(1)(d) is not attracted, Mr. B is not disqualified for directorship.

(iii) A person is disqualified if he is convicted by a Court of any offence (whether involving moral turpitude or otherwise) and sentenced to imprisonment for 6 months or more. However, such disqualification shall continue for a period of 5 years only [Section 164(1)(d)]. In the present case Mr. C was convicted 8 years ago. Therefore, as on date, the disqualification period of Mr. C is already over, and so, he is not disqualified for directorship.

(iv) Disqualification specified under section 164(2) applies if a company makes a default in filing financial statements or annual returns for 3 continuous financial years. Such disqualification shall continue for 5 years. In the present case, DLT Limited, in which Mr. D is a director, has not filed its annual returns for three Continuous financial years. Hence, Mr. D is disqualified for directorship for a period of 5 years, i.e. he cannot be reappointed as a director in DLT Limited or appointed as a director in any other Company.

As per section 167, if a director who becomes disqualified under section 164(2) is also a director in any other company, then, his office of director in all such other companies shall become vacant, but his office of director in the defaulting company shall not become vacant. Accordingly, Mr. D can continue as a director in DLT Limited, but if he is a director in any other company also, his office of director in all such other companies shall become vacant.

Note: As per 164(3), the articles of a private company may provide additional grounds of disqualification of a director. Therefore, in cases (ii) and (iii) above, the concerned person shall be disqualified for directorship if-

(a) the company is a private company; and

(b) it has included in its articles, additional grounds of disqualification of a director, and such additional ground covers the situation given in case (ii) and (iii) above.

15. State with reference to the provisions of the Companies Act, 2013, whether the following persons can be appointed as directors of a company.

(i) Mr. L, who has not paid calls in respect of shares of the company held by him and five months have passed from the last day fixed for the payment of calls.

**(ii) Mr. G is Director of LDT limited, which has not filed the annual return pertaining to the annual general meeting held for the financial years 2015-2016, 2016-2017 and 2017-2018.
[CA (Final) Nov. 2016 (Modified)]**

Ans. (i) As per Section 164(1)(f) of the Companies Act 2013, if a director has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and more than 6 months have elapsed from the last day fixed for the payment of the call, he shall not be eligible for appointment as a director of a company.

In the given case, Mr.L has not paid calls in respect of shares of the company held by him for 5 months after the last day fixed for the payment of the call money. Thus, he does not attract the disqualification under section 164(1)(f). He can be appointed as a director of the company.

(ii) As per section 164(2)(a), no person who is or has been a director of a company which has not filed the financial statements or annual returns for any continuous period of 3 financial years shall be eligible to be re-appointed as director of that company or appointed in another company for a period of five years from the date on which the said company fails to do so.

In the given case, LDT Ltd., of which Mr. G is a director, has not filed the annual return pertaining to the annual general meeting held for the financial years 2015-2016, 2016-2017 and 2017-2018. Mr. G, therefore, attracts the disqualification under Section 164(2)(a), and shall stand ineligible for appointment as a director of the company.

16. The number of directors appointed by each of the following companies is 9:



- (i) ABS Company Ltd.
- (ii) DSP Trading Private Ltd.
- (iii) Traders Association (a company registered under section 8 of the companies act, 2013)
- (iv) Hindustan Paper Ltd. (a government company under clause (45) of section 2 of the companies act, 2013)

The Board of directors of the company wants to increase the number of directors to 15. State with reference to the provisions of the companies Act, 2013 whether the directors can do so. What would be your answer if the number of directors is proposed to be increased to 16 instead of 15? [CA (Final) Nov.2003 (Modified)]

OR

The number of directors appointed by each of the following companies is 9:

- (i) Dosa Company Limited.
- (ii) Idli Vada Pipes Private Limited
- (iii) Vade Paysa Limited (a Government company under Clause (45) of Section 2 of the Companies Act, 2013).

The Board of Directors of the aforesaid companies propose to increase the number of Directors to 15. Advise, whether under the provisions of the Companies Act, 2013, the Board of Directors can do so? What would be your answer if the number of directors is proposed to be increased to 16 instead of 15?

Ans. As per Section 149(1), every company shall have a Board of Directors consisting of individuals as directors and shall have-

- (a) a minimum number of 3 directors in the case of a public company, 2 directors in the case of a private company, and one director in the case of a One Person Company; and
- (b) a maximum of 15 directors:

Provided that a company may appoint more than 15 directors after passing a special resolution.

However, in case of Section 8 companies, Section 149(1)(b) and first proviso to Section 149(1) shall not apply as per Notification no. GSR 466(E), dated 5-6-15, as amended by Notification no. GSR 584(E), dated 13-6-2017.

Also, in case of Government companies, section 149(1)(b) and first proviso to section 149(1) shall not apply as per Notification No. GSR 463(E), dated 5-6-15.

In the given case, the Board of Directors may increase the number of directors to 15 without passing any special resolution. However, if the Board of Directors wishes to appoint more than 15 directors-

- (a) ABS Company Ltd/ Dosa Company Ltd. shall pass a special resolution, and alter its Articles under Section 14 if the limit set by the Articles is below 16.
- (b) DSP Trading Private Ltd/ Idli Vada Pipes Private Ltd. shall pass a special resolution, and alter its Articles under Section 14 if the limit set by the Articles is below 16.
- (c) Traders Association (a company registered under section 8 of the companies act, 2013) need not pass a special resolution as per Notification no. GSR 466(E), dated 5-6-15, as amended by Notification no. GSR 584(E), dated 13-6-2017.
- (d) Hindustan Paper Ltd/ Vade Paysa Ltd (a Government company under subsection (45) of Section 2 of the Companies Act, 2013) need not pass a special resolution as per Notification No. GSR 463(E), dated 5-6-15.

17. The articles of association of Rajasthan Toys Private Limited provide that the maximum number of directors in the company shall be 10. Presently, the company is having 8 directors. The Board of directors of the said company desire to increase the number of directors to 16. Advise whether under the provisions of the Companies Act, 2013 the Board of directors can do so. (CA (Final) May 2010 (Modified): ICAI Study Material)

OR



The articles of association of Surya Private Co. provided that the maximum number of directors in the company shall be 15. Presently, the company is having 12 directors. The Board of directors of the said company desired to increase the number of directors to 16. Advise whether under the provisions of the Companies Act, 2013 the Board of directors can do so. (ICAI, RTP. Nov. 2015)

Ans. As per section 149(1), every company shall have a Board of Directors consisting of individuals as directors and shall have-

- (a) a minimum number of 3 directors in the case of a public company, 2 directors in the case of a private company, and one director in the case of a One Person Company; and
- (b) a maximum of 15 directors;

Provided that a company may appoint more than 15 directors after passing a special resolution.

As per Section 14 of the Act, a company may alter its articles of association by way of a special resolution.

In the given case, the BoD of Rajasthan Toys Pvt Ltd/ Surya Private Co. shall be required to

- (a) Alter the maximum number of directors as specified in the Articles of association from 10(15 in the case of Surya Private Co.) and provide for the maximum number of directors to be 16, by way of passing a special resolution.
- (b) Pass a special resolution in a general meeting, approving the appointment of more than 15 directors.

18. KMR Limited, a listed public company, has 15 directors of association of the said company provide form the maximum number of directors in the company to be 15. Due to diversification and expansion of activities, the Board of directors of the said company desire to increase the number of directors to 18. Decide with reference to the applicable provisions of the Companies Act, 2013:

(i) Whether the Board of directors can do so?

(ii) Will your answer differ if the said company would have been a Government Company? (CA (Final) May 2019)

Ans. As per Section 149(1), every company shall have a Board of Directors consisting of individuals as directors and shall have-

- (a) a minimum number of 3 directors in the case of a public company, 2 directors in the case of a private company, and one director in the case of a One Person Company; and
- (b) a maximum of 15 directors;

Provided that a company may appoint more than 15 directors after passing a special resolution.

However, in case of Government companies, Section 149(1)(b) and first proviso to Section 149(1) shall not apply as per Notification No. GSR 463(E), dated 5-6-15.

As per Section 14 of the Act, a company may alter its articles of association by way of a special resolution.

In the given case, the Board of Directors of KMR Ltd. can appoint 18 directors by-

- (a) Passing a special resolution in a general meeting, by altering the maximum number of directors as specified in the Articles of association from 15, and providing for the maximum number of directors to be 18.
- (b) Passing a special resolution in a general meeting, approving the appointment of more than 15 directors.

However, if KMR Ltd. was a Government company, the special resolution for approval of appointment of more than 15 directors need not be passed, since the proviso to section 149(1) does not apply to Government Companies as per Notification No. GSR 463(E), dated 5-6-15 (if it has not committed any default in filing with the Registrar its financial statements under section 137 or annual return under section 92) They would need to comply with Section



14 and accordingly pass a special resolution towards altering the Articles of association to provide for appointment of 18 directors instead of 10 directors.

19. Mr. Influential is already a director of 19 companies. Out of these 19 companies, 10 are public companies and 9 are private companies. Mr. Influential is being appointed as a director of another company named Expensive Remedies Ltd. Advise Mr. Influential in regard to the following:

(i) Restrictions on the number of directorships to be held by an individual and whether he can accept the new appointment in view thereof. What would be your answer if Mr. Influential was appointed as a director in ABC Pvt. Ltd. instead of Expensive Remedies Ltd.

(ii) What are the companies to be excluded for the purpose of calculating the ceiling on the appointment of directors? (CA (Final) Nov. 2001 (Modified))

Ans. As per Section 165(1), no person shall hold office as a director, including any alternate directorship, in more than 20 companies at the same time, provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed 10.

In the explanation to the section, it is given that for reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

In the given case, Mr. Influential is already a director in 10 public companies, and is hereby advised not to take up directorship in Expensive Remedies Ltd. in view of the proviso to section 165(1) as discussed above. However, if Mr. Influential was to take up directorship of ABC Pvt Ltd. instead of Expensive Remedies Ltd., he would not contravene the proviso to section 165(1), since his directorships in public companies would not exceed 10, and his total directorships would not exceed 20 in such a case.

For the purpose of calculating the ceiling on the number of appointments as director, the following companies are to be excluded-

- (a) Section 8 Companies, as per Notification No. GSR 466(E), dated 5-6-2015.
- (b) Dormant Companies, according to the second explanation to section 165(1) of the Act.
- (c) Private companies that are neither holding nor subsidiary companies of a public company as per the first explanation to section 165(1) of the Act [this is for the internal limit of 10 public companies]

20. Mr. Arjun is director in 10 public limited companies as on 30th July, 2014 and continues to be so till 24th September, 2014. The following companies appoint Mr. Roj as a director at their respective Annual General Meetings held on dates mentioned against their names:

(1) KHARA BATH Ltd. (AGM held on 27th September, 2014)

(2) KESARI BATH Private Ltd. (AGM held on 25th September, 2014)

(3) Shavige Association (a company registered under Section 8 of the Companies Act, 2013 (AGM held on 26th September, 2014)

(4) BY TWO COFFEE Ltd. (AGM held on 29th September, 2014)

You are required to state with reference to the relevant provisions of the Companies Act, 2013

the options available to Mr. Arjun in respect of accepting or not accepting the appointment of the above companies. (CA (Final) Nov. 2003, May 2008 (Modified))

Ans. As per Section 165(1), no person shall hold office as a director, including any alternate directorship, in more than 20 companies at the same time, provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed 10. In the explanation to the section, it is given that for reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be

included.

Section 165(1) shall not apply to Section 8 Companies as per Notification No. GSR 466(E), dated 5-6-2015.

In the given case,

1. KESARI BATH Private Ltd. has appointed Mr. Arjun as director, and such appointment is permissible as KESARI BATH Pvt Ltd is a private limited company that is neither holding nor a subsidiary of a public company.
2. Mr. Arjun can also take up the directorship of Shavige Association without contravening section 165(1), if it has not committed any default in filing with the Registrar its financial statements under section 137 or annual return under section 92, since it is a section 8 company (Notification No. GSR 466(E), dated 5-6-2015).
3. KHARA BATH Ltd. and BY TWO COFFEE Ltd., both of which are public companies, have appointed Mr. Arjun as director. Such appointments contravene the ceiling as specified under section 165(1), as Mr. Arjun already hold directorship of 10 public companies. Therefore, Mr. Arjun cannot take up the directorship of KHARA BATH Ltd. and BY TWO COFFEE Ltd.

Mr. Arjun may, however, choose to resign as director from any 2 of the existing companies where he holds directorship and then take up the directorship of KHARA BATH Ltd. and BY TWO COFFEE Ltd.

As per section 165(6), if Mr. Arjun accepts such appointments as director in contravention of section 165(1), he shall be punishable with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees for every day after the first during which the contravention continues.

21. Mr. Fortune is holding directorship in the following types of companies:

(i) 4 Public companies

(ii) 10 private companies

(iii) 2 companies registered under section 8 of the Companies Act, 2013.

Mr. Fortune further received offer from 7 public companies, 6 private companies and 2 companies registered under section 8 of the Companies Act, 2013. He wants to take up maximum permissible directorship.

His order of preference is as follows:

1) Public companies

2) Private companies (not being holding or subsidiary of any public company) and

3) Companies registered under section 8 of the Companies Act, 2013

Advice Mr. Fortune referring to the restriction provisions imposed in the Companies Act, 2013. (CA (Final) Revision Test Paper, Nov. 2017)

Ans. As per Section 165(1), no person shall hold office as a director, including any alternate directorship, in more than 20 companies at the same time, provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed 10.

In the explanation to the section, it is given that for reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included

Section 165(1) shall not apply to Section 8 Companies as per Notification No. GSR 466(E), dated 5-6-2015.

In the given case, Mr. Fortune is already the director of a total of 16 companies, out of which the 2 companies registered under section 8 shall not be considered for the purposes of calculating the ceiling on number of directorships under section 165(1). Total number of directorships held by Mr. Fortune, therefore, is 14. He can accept only 6 more directorships without contravening section 165(1).

Since his priority is directorship in public companies, he can accept directorship in a maximum of 6 more public companies, because he already is director in 4 public companies. In such a case, he shall not be able to accept any more directorships in private companies without contravening the ceiling limit specified in section 165(1).

However, Mr. Fortune can further accept directorship of the 2 companies registered under section 8, since the section 165(1) does not apply to section 8 companies as per Notification No. GSR 466(E), dated 5-6-2015.

Therefore, Mr. Fortune can accept directorship in 6 public companies, and both the section 8 companies, in addition to the directorships he currently holds.

22. State whether the following directorships shall be considered while counting the limit of 10 companies and 20 companies, under section 165 of the Companies Act, 2013.

- (i) Directorship in a Government company incorporated as a public company
- (ii) Directorship in a Public Sector Undertaking (not being a Government company)
- (iii) Directorship in a foreign company
- (iv) Directorship in a foreign company which is a subsidiary or holding company of a company incorporated in India
- (v) Directorship in a foreign body corporate, not being a foreign company
- (vi) Directorship in a company licenced under section 8 of the Companies Act, 2013
- (vii) Small Shareholder Directorship in a listed public company
- (viii) Holding directorship in a public company as a nominee director
- (ix) Holding directorship in a public company as an alternate director
- (x) Holding directorship in a public company as a managing director or whole-time director
- (xi) Holding directorship in a private company
- (xii) Directorship in a private company which is a subsidiary of a public company
- (xiii) Directorship in a private company which is a holding company of a public company
- (xiv) Directorship in a dormant company which is a public company

Ans. As per Section 165(1), no person shall hold office as a director, including any alternate directorship, in more than 20 companies whether public or private, at the same time, provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed 10.

It is explained that for reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

For the purpose of calculating the ceiling on the number of appointments as director, the following companies are to be excluded-

- (a) Section 8 Companies, as per Notification No. GSR 466(E), dated 5-6-2015, if such company has not committed any default in filing with the Registrar its financial statements under section 137 or annual return under section 92.
- (b) Dormant Companies, according to the second explanation to section 165(1) of the Act.
- (d) Private companies that are neither holding nor subsidiary companies of a public company as per the first explanation to section 165(1) of the Act. [this is for the internal limit of 10 public companies]

In the given case,

CASE	SHALL BE INCLUDED WHILE COUNTING THE LIMIT FOR 20 COMPANIES- YES/ NO	SHALL BE INCLUDED WHILE COUNTING THE LIMIT FOR 10 PUBLIC COMPANIES- YES/ NO

Directorship in a Government company incorporated as a public company	Yes	Yes
Directorship in a Public Sector Undertaking (not being a Government company)	No	No
Directorship in a foreign company	No	No
Directorship in a foreign company which is a subsidiary or holding company of a company incorporated in India	No	No
Directorship in a foreign body corporate, not being a foreign company	No	No
Directorship in a company licenced under section 8 of the Companies Act, 2013	No	No
Small Shareholder Directorship in a listed public company	Yes	Yes
Holding directorship in a public company as a nominee director	Yes	Yes
Holding directorship in a public company as an alternate director	Yes	Yes
Holding directorship in a public company as a managing director or whole-time director	Yes	Yes
Holding directorship in a private company	No	Yes
Directorship in a private company which is a subsidiary of a public company	Yes	Yes
Directorship in a private company which is a holding company of a public company	Yes	Yes
Directorship in a dormant company which is a public company	No	No



23. Due to internal problems in the working of M/s. Infighting Detergents Ltd., Mr. Satyam, the executive director, and Mr. Shivam, a director, have submitted their resignations and decided to disassociate themselves with the working of the company. Mr. Sundaram, the managing director, decides to refuse their resignations. Examine whether the managing director can compel Mr. Satyam and Mr. Shivam to continue as per the provisions of the Companies Act, 2013. (CA (Final) May – 2001)

Ans. As per Section 168(2), the resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later, provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure. Section 168 does not grant any right to the managing director or to the Board of directors to refuse the resignation of a director.

In the given case, Mr. Sundaram, cannot compel Mr. Satyam and Mr. Shivam to continue as per the provisions of the Companies Act, 2013. They shall vacate their offices on the date on which the notice is received by M/s. Infighting Detergents Ltd., or the date, if any, specified by the director in the notice, whichever is later.

24. Mr. Rahim, a director of MOSARANNA Ltd., submitted his resignation from the post of director to the Board of directors on 30th October, 2019 and obtained a receipt therefore on the same day. The Board of directors of MOSARANNA Ltd neither accepted the resignation nor did it file any form with the registrar of companies. You are required to state whether Mr. Rahim ceases to be the director of MOSARANNA Ltd. And if yes, since when? (CA (Final) Nov 2004 (Modified))

Ans. As per section 168(1) read with Rule 15 of the Companies (Appointment and Qualification of Directors) Rules, 2019, the company, within 30 days from the date of receipt of notice of resignation from a director, intimate the Registrar in Form DIR-12, and post the information on its website, if any. As per the proviso to section 168(2), the resigning director may also forward a copy of his resignation along with detailed reasons for the Resignation to the Registrar within 30 days of resignation.

As per section 168(2), the resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later, provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure. Section 168 does not grant any right to the managing director or to the Board of directors to refuse the resignation of a director.

In the given case, the company shall, within 30 days from 30th October, 2019, intimate the Registrar in Form DIR -12, and post the information on its website, if any. Mr. Rahim may forward a copy of his resignation along with detailed reasons for the Resignation to the Registrar within 30 days from 30th October, 2019. Forms DIR-11 and DIR-12, however, are consequential to the resignation, and the filing or non-filing of the same cannot affect the validity of the resignation.

Mr. Rahim's notice of resignation was received by the company on 30th October, 2019, therefore, his resignation stands effective from 30th October, 2019, unless a later date was mentioned in the notice.

25. Raghuram, a director resigns after giving due notice to the company and he forwards a copy of resignation in e-form DIR-11 to the Registrar of Companies (ROC) within the prescribed time. What would be the status of Raghuram if the company fails to intimate about the resignation of Raghuram to ROC?

Ans. As per Section 168(1) read with Rule 15 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the company, within 30 days from the date of receipt

of notice of resignation from a director, intimate the Registrar in Form DIR-12, and post the information on its website, if any. As per the proviso to section 168(2), the resigning director may also forward a copy of his resignation along with detailed reasons for the Resignation to the Registrar within 30 days of resignation. As per section 168(2), the resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later, provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure. Section 168 does not grant any right to the managing director or to the Board of directors to refuse the resignation of a director.

In the given case, the company shall, within 30 days from receipt of notice of resignation from the director, intimate the Registrar in Form DIR -12, and post the information on its website, if any.

Ms. Raghuram has already filed Form DIR-11 with detailed reasons for the resignation, within 30 days of resignation. Non-filing of Form DIR-12 does not invalidate the resignation of Ms. Raghuram. Filing of Form DIR-12 is a consequence of resignation, and so non-filing of the same cannot affect the validity of the resignation.

Therefore, even if the company fails to intimate the registrar about such resignation, Ms. Raghuram's resignation shall be effective from the date on which the notice of her resignation was received by the company, or the date specified by her in the notice, if any, whichever is later.

26. XYZ Company Ltd. in its annual general meeting, all the directors were appointed by one single resolution. No objection was made to the resolution. Examine the validity of appointment of directors explaining the relevant provisions of the companies Act, 2013. Will it make any difference, if XYZ Company Ltd. were a private company? [CA (Final) May 2003]

OR

In case of appointment of directors of a company, all the directors were not voted on individually, but were appointed by one resolution and no shareholder objected to it. Discuss the position under the provision of the Companies Act, 2013.

Ans. Section 162 says that at a general meeting, two or more persons cannot be appointed as directors by a single resolution unless a resolution that appointment shall be so made has first been agreed to by the meeting without any vote being cast against it. A resolution moved in contravention of this provision shall be void, Whether or not objection was raised at the time when such resolution was passed. In the present case, all the members passed a single resolution appointing all the directors. Before moving the resolution for appointment of all the directors by a single resolution, no resolution was passed to the effect that all the directors shall be appointed by a single resolution. Therefore, the resolution appointing all the directors by a single resolution is void, and consequently the appointment of all the directors is also void. Whether any member objected to the appointment of all the directors by a single resolution is immaterial.

As per Section 176, the acts of these directors shall valid till the defect in their appointment is noticed by the company.

The provisions of Section 162 do not apply to a private company if it has not committed any default in filing with the registrar its financial statements under section 137 or annual return under section 92 [Notification No. G.S.R. 464(E) dated 5th June, 2015]. Therefore, if the company in the present case is a private company and if assumed that it has not committed any default in filing with the registrar its financial statements under section 137 or annual return under section 92, the appointment of all the directors by a single resolution shall be valid.

