

## CL B1 Solution

**Time: 1 Hour 50 Minutes**  
**Total Marks – 60**

### PART-A

- |     |  |   |
|-----|--|---|
| 1.  | (d) All of above   | 1 |
| 2.  | (d) With the consent of all the members and obtaining the approval | 1 |
| 3.  | (c) 14 days  | 1 |
| 4.  | (d) Either (a) or (b)  | 1 |
| 5.  | (b) Its articles; the public                                       | 1 |
| 6.  | (c) 'Limited' or 'Private Limited', as the case may be             | 1 |
| 7.  | (a) 12% per annum  | 1 |
| 8.  | (c) Subscribed capital   | 1 |
| 9.  | (c) 3 months   | 1 |
| 10. | (a) Corporate Identity Number                                      | 1 |
| 11. | (c) Cash flow statement  | 1 |

12. (b) Fourteen 1
13. (d) Three times 1
14. (c) in case of debentures, the rate of underwriting commission shall not exceed five percent of the issue price of the debentures. 1
15. (c) Qualified Institutional Buyers. 1
16. (d) When securities are offered to the public for subscription 1
17. (d) A Red Herring Prospectus 1
18. (a) 30 1

## PART-B

1. (a) **Solution:** 4

According to Section 2(68) of the Companies Act, 2013, "**Private company**" means a company having prescribed minimum paid-up share capital, and which by its articles, **limits the number of its members to two hundred.**

However, where two or more persons **hold one or more shares in a company jointly**, they shall, for the purposes of this clause, be **treated as a single member.**

It is further provided that following **shall not be included** in the number of members –

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased.

Accordingly, total Number of members in SAHIL Limited are:

i.	Directors and their Relatives	18
ii.	Members holding shares jointly (7 x 2)	14
iii.	Other Members	137
	<b>Total</b>	<b>162</b>

(i) SAHIL Limited may be converted into a private company only if the total members of the company are limited to 200. In the instant case, since existing number of members are

162 which is within the prescribed maximum limit of 200, so **SAHIL Limited can be converted into a private company.**

(ii) There is **no need for reduction** in the number of members for the proposed private company as existing number of members are 162 which does not exceed maximum limit of 200.

Particulars	Marks
Provision	1 Mark
Calculation of total members	1 Mark
Conclusion of Point (i)	1 Mark
Conclusion of Point (ii)	1 Mark

(b) **Solution:**

3

Where company is incorporated by person only for the purpose of evading tax, the Court **has discretion to disregard the corporate entity.**

The facts given in the question is similar to the leading case of **Dinshaw Manekji.**

In this case, an assessee was earning huge income by way of dividend and interest. He formed four private companies and transferred his investments to each of these companies in exchange of their shares. The dividend and interest income received by the company was given back to Sir Dinshaw as a pretended loan.

It was held that the company was formed by the assessee purely and simply a **means of avoiding tax.** It did no business, but was created simply as a legal entity to ostensibly receive the dividends and interest and to hand them over to the assessee as pretended loans.

Based on above judgment, it may be decided that **legal personality of all three companies may be disregarded.**

Particulars	Marks
Provision	1 Mark
Purpose for which companies were established?	1 Mark
Legal personality of the companies may be disregarded?	1 Mark

2. **Solution:**

7=

- I. According to section 2(85) of the Companies Act, 2013, **small company** means a company, other than a public company, having- (4+3)
- (A) paid-up share capital **not exceeding Four crore rupees** or such higher amount as may be prescribed which **shall not be more than ten crore rupees**; and
- (B) turnover as per profit and loss account for the immediately preceding financial year **not exceeding Forty crore rupees** or such higher amount as may be prescribed which **shall not be more than one hundred crore rupees**:

Provided that nothing in this clause shall apply to a holding company or a subsidiary company.

Also, according to section 2(87), **subsidiary company**, in relation to any other company (that is to say the holding company), means a company in which the holding company exercises or controls more than one-half of the total voting power either at its own or together with one or

more of its subsidiary companies.

In the given question, Nice Software Limited (a public company) holds 2,00,000 equity shares of Smart Solutions Private Limited (having paid up share capital of 5,00,000 equity shares @ ` 10 totalling ` 50 lakhs). Hence, Smart Solutions Private Limited **is not a subsidiary** of Nice Software Limited and hence **it is a private company** and not a deemed public company

Further, the paidup share capital ( ` 50 lakhs) and turnover ( ` 2 crores) is within the limit as prescribed under section 2(87), hence, Smart Solutions Private Limited **can be categorised as a small company**.

II. According to section 2 (40), **Financial statement** in relation to a company, includes—

- (a) a balance sheet as at the end of the financial year;
- (b) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- (c) cash flow statement for the financial year;
- (d) a statement of changes in equity, if applicable; and
- (e) any explanatory note annexed to, or forming part of, any document referred to in points (a) to (d):

Provided that the financial statement, with respect to One Person Company, small company and dormant company, **may not include the cash flow statement**.

Smart Solutions Private Limited being a small company **is exempted** from filing a cash flow statement as a part of its financial statements. Thus, Smart Solutions Private Limited **has not defaulted** in filing its financial statements with ROC.

Particulars	Marks
Define Small company	1 Mark
Define Subsidiary company	1 Mark
Conclusion that Smart Solutions Private Limited is a Private Company	1 Mark
Conclusion that Smart Solutions Private Limited is a Small Company	1 Mark
Define Financial Statements	1 Mark
OPC, small company and dormant company are exempted to include CFS...	1 Mark
Smart Solutions Private Limited has not defaulted....	1 Mark

3. (a) **Solution:**

5

- (i) According to Section 8(6) of the Companies Act, 2013, the Central Government may **by order revoke the licence** of the company where the company contravenes any of the requirements or the conditions of section 8 subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or in violation of the objects of the company or prejudicial to public interest, and on revocation, the **Registrar shall put 'Limited' or 'Private Limited'** against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

Hence, in the instant case, the **Central Government can revoke the license** given to State Cricket Club as section 8 company, as the affairs of the company are conducted fraudulently and dividend was paid to its members which is in contravention to the conditions given under section 8.

- (ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, **direct that the company be wound up** under this Act or amalgamated with another company registered under this section.

However, no such order shall be made **unless** the company is given a **reasonable opportunity of being heard**. [Section 8(7)] Hence, the stated company **may be wound up**.

- (iii) A company registered under this section shall amalgamate only with another company registered under this section and **having similar objects**. [Section 8(10)]

In the instant case, State Cricket Club **cannot be merged** with Cool Net Private Limited as the objects of both the companies are different and not similar.

Particulars	Marks
Point (i) and (ii)	2 Marks each
-- Provision	1 Mark
--Conclusion	1 Mark
Point (iii)	1 Mark

(b) **Solution:**

5

As a financial consultant the Board of Directors of ABC Limited would be **advised to issue a Red Herring Prospectus**. The expression “red herring prospectus” means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

Thus, ABC Limited may raise funds from public through red herring prospectus whereby the **price per security and number of securities are left open** to be decided post closure of the issue.

The company may follow the provisions of section 32 in issuing a red herring prospectus:

**(1) Red Herring Prospectus is issued prior to issue of Prospectus:** A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.

**(2) Filing with the registrar:** A company proposing to issue a red herring prospectus shall file it with the Registrar **at least three days prior to the opening of the subscription list** and the offer.

**(3) Obligations under Red Herring Prospectus vis-à-vis Prospectus:** A red herring prospectus shall carry the **same obligations** as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

**(4) Filing of Red Herring Prospectus with Registrar and SEBI upon closing of Offer:** Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

Particulars	Marks
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Advised to issue a Red Herring Prospectus....	1 Mark
Point 1, 2, 3 and 4	1 Mark each

4. **Solution:**

6

According to section 42 of the Companies Act, 2013 any private or public company may make private placement through issue of a private placement offer letter. However, the offer shall be made to the persons **not exceeding fifty or such higher number** as may be prescribed, in a financial year. For counting number of persons, **Qualified Institutional Buyers (QIBs)** and **employees** of the company being offered securities under a scheme of employees' stock option **will not be considered**. Further, Rule 14 (2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 prescribes **maximum of 200 persons** who can be offered securities under the private placement in a financial year, though this limit should be counted separately for each type of security.

It is to be noted that if a company makes an offer or invitation to **more than the prescribed number** of persons, it shall be **deemed to be an offer to the public** and accordingly, it shall be governed by the provisions relating to prospectus.

Also, a company is **not permitted to make fresh offer** under this section if the allotment with respect to any offer made earlier has not been completed or otherwise, that offer has been withdrawn or abandoned by the company. This provision is **applicable even if the issue is of different kind of security**.

Any offer or invitation not in compliance with the provisions of this section **shall be treated as a public offer** and all provisions will apply accordingly.

In the given case SRK Limited, though a public company can raise funds through private placement as provisions related to private placement allow even a public company to raise funds through this route. The company has given offer to 55 persons out of which 4 are qualified institutional buyers and hence, the **offer is given effectively to only 51 persons** which is well within the limit of 200 persons. From this point of view, the **company complies the private placement provisions**.

However, as per the question, the company has given another private placement offer of debentures before completing the allotment in respect of first offer and therefore, **the second offer does not comply** with the provisions of section 42. Hence, the offers given by the company **will be treated as public offer**.

In case the company gives offer for debentures in the same financial year **after allotment of equity shares** is complete then both the offers **can well be treated as private placement offers**.

Particulars	Marks
Point I, II and III	2 Marks each
-- Provision	1 Mark
--Conclusion	1 Mark

5. (a).  
**Solution:**

4

According to Section 55(3) of the Companies Act, 2013, where a company is not in a position to

redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may— **with the consent of the holders of three-fourths in value** of such preference shares, and with the **approval of the Tribunal on a petition made by** it in this behalf, **issue further redeemable preference shares equal to the amount due**, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the **unredeemed preference shares shall be deemed to have been redeemed**.

Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

In view of the provisions of Section 55 (3), Silver Robotics Limited can initiate steps for the issue of further redeemable preference shares equal to the amount due i.e. 10,00,000. For this purpose, it **shall obtain the consent of the holders** of three-fourths in value of such preference shares and also **seek approval of the Tribunal** by making a petition. In case, there are certain preference shareholders who have not accorded their consent for the proposal of issuing further redeemable preference shares, the **Tribunal may order the company to redeem forthwith** such preference shares.

Accordingly, Silver Robotics Limited **must be ready with sufficient funds** for the redemption of preference shares held by those who have not consented.

On the issue of such further redeemable preference shares by the company, the unredeemed preference shares shall be deemed to have been redeemed.

Particulars	Marks
Provision	2 Marks
Conclusion	2 Marks

**(b). Solution:**

According to section 34 of the Companies Act, 2013, where a prospectus, issued, circulated or distributed, includes any statement which **is untrue or misleading** in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorizes the issue of such prospectus **shall be liable under section 447**.

Further, Section 35(3) provides that, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in sub-section (1) of section 35, **shall be personally responsible**, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

In the given question, the non-disclosure of the fact that dividends were paid out of capital profits is a concealment of material fact as a company is normally required to distribute dividend only from trading or revenue profits and under exceptional circumstances it can pay dividend out of capital profits. Hence, **a material misrepresentation has been made**.

Accordingly, in the given case the allottee **can avoid the contract** of allotment of shares.

Particulars	Marks
Provision	1 Mark
Case	1 Mark
Conclusion	1 Mark

6. (a).

3

**Solution:**

According to section 53 of the Companies Act, 2013, except as provided in section 54, a company **shall not issue shares at a discount**. Any share issued by a company at a discount shall be **void**.

According to section 54 of the Companies Act, 2013, notwithstanding anything contained in section 53, a **company may issue sweat equity shares** of a class of shares already issued, if the prescribed conditions are fulfilled.

(1) As per facts of the question and provisions of section 53 and 54 of the Companies Act, 2013, Aarav Limited **cannot issue at a discount** of Rs. 1 per share. Hence, the advice of the underwriter to issue shares at a discount is **not valid**.

(2) In terms of provisions of section 54 of the Companies Act, 2013, if the above shares have been issued to employees as Sweat equity shares and prescribed conditions are fulfilled, **then the issue of shares at discount is valid**.

Particulars	Marks
Provision	1 Mark
Conclusion of Point (i)	1 Mark
Conclusion of Point (ii)	1 Mark

(b).

2

**Solution:**

Section 40 (6) of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription to its securities, subject to the conditions prescribed under the Companies (Prospectus and Allotment of Securities) Rules, 2014. Rule 13 states that the rate of commission paid or agreed to be paid **shall not exceed**, in case of shares, **five percent (5%) of the price at which the shares are issued or a rate authorized by the articles**, whichever is less.

In the given problem, the articles of X Ltd. have prescribed 4% underwriting commission but the directors decided to pay 5% underwriting commission. Therefore, the decision of the Board of Directors to pay 5% underwriting commission to the underwriters (i.e. Deal & Co.) **is invalid**.

Particulars	Marks
Provision	1 Mark
Conclusion	1 Mark