



Chapter

30

**Answer to Company Audit Section
139 to 141**

 Notes

 Questions

 Answers



SECTION – 139

Ans 1: As per section 139 (2) , No listed company or a company belonging to following classes of companies except One Person Company , Small Companies :

- a) All unlisted public company having paid up share capital of rupees ten crore or more;
- b) All private limited companies having paid up share capital of rupees fifty crore or more
- c) All companies having paid up share capital of below threshold limit mentioned in (a) and (b) above ,but having public borrowings from financial institutions, bonus or public deposit of rupees fifty crore or more Shall appoint or re-appoint –
- a) An individual as auditor for more than one term of five consecutive years;
- b) An audit firm as auditor for more than two terms of five consecutive years.

In the present case, JBL Ltd. is an unlisted public company , who’s paid up share capital is ₹ 6 crores but the borrowing from financial institutions amount to Rs 51 crores. Therefore, it is necessary for JBL Ltd. to follow the rotation of auditors.

Ans 2: As per section 139 (2) , No listed company or a company belonging to following classes of companies except One Person Company , Small Companies :

- a) All unlisted public company having paid up share capital of rupees ten crore or more;
- b) All private limited companies having paid up share capital of rupees fifty crore or more
- c) All companies having paid up share capital of below threshold limit mentioned in (a) and (b) above ,but having public borrowings from financial institutions , bonus or public deposit of rupees fifty crore or more Shall appoint or re-appoint –
- a) An individual as auditor for more than one term of five consecutive years;
- b) An audit firm as auditor for more than two terms of five consecutive years.

In the present case, B Khan Pvt. Ltd. public borrowing from financial institutions , banks or ₹ 48 Lacs , but the paid up share capital of the company is ₹ 22.5 crores Therefore it is necessary for B.Khan Pvt. Ltd. to follow the rotation of auditors.

Ans 3: As per section 139 (2) , No listed company or a company belonging to following classes of companies except One Person Company , Small Companies :

- a) All unlisted public company having paid up share capital of rupees ten crore or more;
- b) All private limited companies having paid up share capital of rupees fifty crore or more
- c) All companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions , bonus or public deposit of rupees fifty crore or more Shall appoint or re-appoint –
- a) An individual as auditor for more than one term of five consecutive years;
- b) An audit firm as auditor for more than two terms of five consecutive years.

In the present case, X Ltd. is that company whose shares are listed on stock exchange but the paid up capital is ₹ 7 crores and public borrowing form financial institutions , banks or public deposits amounted to ₹ 30 crores. Therefore, it is necessary for X Ltd. to follow the rotation of auditors.

Ans 4: As per section 139 (2) , No listed company or a company belonging to following classes of companies except One Person Company , Small Companies :

a)	All unlisted public company having paid up share capital of rupees ten crore or more;
b)	All private limited companies having paid up share capital of rupees fifty crore or more
c)	All companies having paid up share capital of below threshold limit mentioned in (a) and (b) above ,but having public borrowings from financial institutions, bonus or public deposit of rupees fifty crore or more Shall appoint or re-appoint –
a)	An individual as auditor for more than one term of five consecutive years;
b)	An audit firm as auditor for more than two terms of five consecutive years.

In the present case, Ambuja Cements is a Small company whose paid up share capital is ₹ 20 lacs and borrowings from financial institution amounted to ₹ 60 Lacs , which is as per the requirement of provision to section 139 (2) . Hence, it is not necessary for Ambuja Cements to follow the rotation of auditors.

Ans 5: As per section 139 (7), In the case of a Government Company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the controller and Auditor General of India within sixty days from the date of registration of the company and in case the comptroller and Auditor- General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next thirty days; and in the case of failure of the Board to appoint such auditor within the next thirty days, it shall inform the members of the company who shall appoint such auditor within the sixty days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.

In the present case, the first auditor of the EDSO Ltd. (Government Company) was appoint in GM of the members and not in Extra Ordinary General Meeting who shall hold office till the conclusion of the next AGM, which is not as per the provision of the section 139 (7). Therefore, the appointment of first auditor of EDSO Ltd. does not stand valid.

Ans 6: Section 139(8) of the Companies Act, 2013 deals with the provisions relating to appointment of auditor caused due to casual vacancy. A casual vacancy normally arises when an auditor ceases to act as such after he has been validity appointed, e.g., death, disqualification, resignation etc.

The section provides that a casual vacancy shall be filled by the Board of Directors within 30 days. However, in case a casual vacancy has been created by the resignation of the auditor, the Board cannot fill in that vacancy itself, such appointment shall also be approved by the company at general meeting convened within 3 months of the recommendation of the board and then he shall hold office till the conclusion of the next annual general meeting.

In the instant case, CA J.K. Singh has been validly appointed ad thereafter he died in a road accident. Consequently, the casual vacancy has been created on account of death.

Therefore, Board of Directors will have to fill the vacancy within 30 days. The new auditor so appointed shall hold office only till the conclusion of the next annual general meeting.



Ans 7: Section 139(8) of the Companies Act, 2013 deals with the provisions relating to appointment of auditor caused due to casual vacancy. A casual vacancy normally arises when an auditor ceases to act as such after he has been validly appointed, e.g., death, disqualification, resignation etc.

The section provides that a casual vacancy shall be filled by the Board of Directors within 30 days. However, in case a casual vacancy has been created by the resignation of the auditor, the Board cannot fill in that vacancy itself, such appointment shall also be approved by the company at general meeting convened within 3 months of the recommendation of the board and then he shall hold office till the conclusion of the next annual general meeting.

In the instant case, Mr. L Patel has been validly appointed and thereafter, he does an indirect business relationship with the associate company of HBL Ltd. So the procedure of removal is followed in the company and he is finally removed during the continuation of his tenure. Consequently, the casual vacancy has been created on account of.

Therefore, the Board of Directors will have to fill the vacancy within 30 days. The new auditor so appointed shall hold office only till the conclusion of the next annual general meeting.

Ans 8: As per section 139 (2) (i), an individual auditor who has completed his term as an individual auditor for more than one term of five consecutive years shall not be eligible for reappointment as auditor in the same company for five years from the completion of his term.

In the present case, Mrs. A Kumari , a qualified CA , was appointed as an auditor in Blue Ltd. Immediately on completion of her 5th Year tenure as an auditor in Blue Ltd. she was further appointed as an auditor in the holding company of Blue Limited.

Hence, Cooling off period for 5 years from the completion of her term in Blue Ltd. will not apply because she is not appointed in the same company. Therefore, the appointment of Mrs. A Kumari as an auditor in the holding company of Blue Ltd. stands valid.

Ans 9: Section 139(8) of the Companies Act, 2013 deals with the provisions relating to appointment of auditor caused due to casual vacancy. A casual vacancy normally arises when an auditor ceases to act as such after he has been validly appointed , e.g., death, disqualification, resignation etc.

The section provides that a casual vacancy shall be filled by the Comptroller and Auditor General of India within 30 days. Provided that in case the Comptroller and Auditor- General of India does not fill the vacancy within said period, the board of directors must fill the vacancy within 30 days.

In the instant case, the CA firm has been validly appointed and thereafter he resigned. Consequently, the casual vacancy has been created on account of resignation.

The Comptroller and Auditor General of India will have to fill the vacancy within 30 days in Steel Authority of India Ltd. (Government Company)

Ans 10: Section 139(8) of the Companies Act, 2013 deals with the provisions relating to appointment of auditor caused due to casual vacancy. A casual vacancy normally arises when an auditor ceases to act as such after he has been validly appointed, e.g., death, disqualification, resignation etc.

The section provides that a casual vacancy shall be filled by the Board of Directors within 30 days. However, in case a casual vacancy has been created by the resignation of the auditor, the Board cannot fill in that vacancy itself, such appointment shall also be approved by the company at general meeting convened within 3 months of the recommendation of the board and then he shall hold office till the conclusion of the next annual general meeting.

In the instant case, Mr. J.K. Singh had been validly appointed and thereafter he had resigned. Consequently, the casual vacancy has been created on account of resignation.

Ans 11: As per section 139 (2) , an individual auditor / an audit firm who has completed his term as an individual auditor/ as an audit firm as auditor for more than one term / two terms respectively of five consecutive years shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.

Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, where tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years (i.e., incoming auditors not to be related to the outgoing auditors)

In the present case, A & Co. Associates was the outgoing auditor of Reliance Industries Ltd. who has completed his term. However, B & Co. Associates will be appointed as incoming auditor and the company found A & Co. Associates is associated with B & Co. Associates under the same network same network of audit firm. Therefore, **B & Co. Associates cannot be appointed** as auditor of Reliance Industries Ltd.

Ans 12: As per Section 139 (5), In case of a Government company or any other company owned or controlled, directly or indirectly , by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

In the present case, Rakesh and Nilesh is a CA firm who was appointed as an incoming auditor of ONGC Ltd. (Government Company), within a period of one hundred and eighty days from the commencement of the financial year. i.e. on 2/7/14 and the financial year commenced on 1/4/14. Therefore, Rakesh and Nilesh shall **hold office till the conclusion of the annual general meeting.**

Ans 13: As per section 139 (2) (i), an individual auditor who has completed his term as an individual auditor for more than one term of five consecutive years shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term.

In the present case, Mr. Mehta was the outgoing auditor of ITC Ltd. who completed the one term of a consecutive five years on 3/7/14. Further, he wants to be appointed as an incoming auditor on the subsidiary company of ITC Ltd. on 2/8/14.

Hence, cooling off period for 5 years from the completion of his term in ITC Ltd. will not apply because he is not appointed in the same company . Therefore, The appointment of Mr. Mehta as an auditor in the subsidiary company of ITC Ltd. valid.



Ans 14: As per section 139 (2) (i) ,an individual auditor who has completed his term as an individual auditor for more than one term of five consecutive years shall not be eligible for reappointment as auditor in the same company for five years from the completion of his term.

Provided further that every company existing on or before the commencement of this Act which is required to comply with provisions of this sub-section, shall comply with the requirements of this sub- section within three years from the date of commencement of this Act (Transition period 3 years w.e.f 1 st April 2014).

In the present case, on the date of commencement of the Act. (i.e. 1/4/14) Mr. C was functioning as a auditor of the Century Textile Ltd. since 14 years consecutively and the company further wants to appoint Mr. C for two or more consecutive years , which is as per the provision to section 139 (2). Therefore, the appointment of Mr. C as an auditor of Century Textiles Ltd. for two or more consecutive years stands valid.

Ans 15: An Auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be , but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company, namely:-

- a) Accounting and book keeping services.
- b) Internal audit .
- c) Design and implementation of any financial information system.
- d) Acturial services.
- e) Investment advisory services.
- f) Investment banking services.
- g) Rendering of outsourced financial services.
- h) Management services.
- i) Any other kind of services as may be prescribed.

Provided that an auditor or audit firm who or which has been performing any non-audit services on or before the commencement of this Act shall comply with the provisions of this section before the closure of the first financial year after the date of such commencement.

Explanation:- For the purpose of this sub-section, the term “ directly or indirectly” shall include rendering of services by the auditor-

- i. In case of auditor being an individual, either himself or through his relative or any other person connected or associated with such individual or through any other entity , whatsoever, in which such individual has significant influence or control or whose name or trade mark or brand is used by such individual
- ii. **In case of auditor being a firm, either itself or through any of its partners or through its parent, subsidiary or associate entity or through any other entity, whatsoever, in which the firm or any partner of the firm has significant influence or control, or whose name or trade mark or brand is used by the firm or any of its partners.**

Ans 16: Clause (e) of sub-section 5 of Section 134 explains the meaning of the term “Internal Financial Controls” the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business including adherence to company’s policies. The safeguarding of its assets, the prevention and detection of frauds and errors , the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information.

As referred to in : Clause (e) of sub-section (3) of Section 134 the Directors Responsibility Statement shall state that the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively .

The inclusion of the matters relating to internal financial controls in the director’s responsibility statement is an addition to the requirement for the directors to state that they have taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of the 2013 Act, for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities.

As per Section 143 (3) (P), the auditor’s objective is an audit of internal financial control is to state in auditor’s report whether the company has adequate internal financial control system in place and effectiveness of such controls. Because a company’s internal controls cannot be considered effective if one or more material weakness exists, to form a basis for expressing an opinion , the auditor must plan and perform the audit to obtain sufficient appropriate evidence to obtain reasonable assurance about whether material weakness exists as of the date specified in management’s assessment. A material weakness in internal financial controls may exist even when the financial statements are not materially misstated.

Ans 17: Independence is the key stone upon which the respect dignity of a profession is based. Independence implies that the judgment of a person is not subordinate to the wishes or directions of another person who might have engaged him or to his own self interest. In the context of auditors, his independence is necessary so as to enable him to express unbiased opinion on financial statements. The user of financial statements will rely on the opinion of the auditor only when he is convinced about his independence.

In order to achieve the objectives of auditor’s independence an auditor should be straight forward and honest in performing professional services. An auditor should be fair and should not allow prejudice or bias or influence of others to override objectivity. He should respect the confidentiality of information acquired during the course of performing professional services should not disclose any such information without proper and specific authority or unless there is a legal or professional right or duty to disclose.

The Companies Act, 2013 has therefore enacted specific provisions to give concrete shape to this vital concept and Companies Act, 2013 Section 141, Section 144, Section 139 & Section 143 has inserted more provision to ensure independence.

i. The provisions disqualifying certain types of person (Section 144) from understanding audit of limited companies

For example, As per Section 144, a person is disqualified to be appointed as an auditor if he is an employee of the company, a person who is a partner , or who is in the employment of an officer or employee of the company, etc.



- ii. Provisions relating to ceiling on the number of audits {Section 144(3)(g)} that can be undertaken by chartered accountant .
For example, As per Section 144 (3) (g) , a person can hold appointment as auditor of a maximum of twenty companies. One person Companies, dormant companies, small companies and Private Companies having paid up share capital of less than ₹ 100 crore, are not to be counted in the maximum limit of audit which is twenty for Auditors.
- iii. Other provisions on appointment, re-appointment and removal of auditor (Section 139) are designed with sufficient independence to carry out the audit in the larger interest of shareholders and other users.
For example, As per Section 139 (2), no listed company or a company belonging to certain specific classes of companies except One Person Company, Small Companies, shall appoint or reappoint an individual an individual as auditor for more than one term of five consecutive years.
- iv. The power to qualify his report (Section 143) is yet another weapon in the army of the auditor to protect his independence
For example As per Section 143 (3), an auditor shall also state in the auditor's report whether in his opinion, proper books of accounts as required by law have been kept by the company, whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls, etc.

Ans 18: A company can issue its shares either for cash or for consideration other than cash. As is clear from the term itself, shares issued for consideration other than cash means when shares of the company are issued to somebody for something which is not cash. It can be issue of shares to a vendor against the purchase of the assets or it can be issue of shares against the purchase of the entire business of an enterprise. It can also be an issue of shares to the brokers, underwriters in lieu of their services to the brokers, underwriters in lieu of their services to the company or for acquisition of technical know-how.

In such cases, the contract on the basis of which the shares have been allotted should be referred to and the allotment confirmed by reference to the Minutes of the Board of Directors. It should also be verified that a certified copy of the agreement in pursuance of which allotment has been made shall be filed with the ROC within 30 days after the allotment. If the agreement is not in writing, its main terms and conditions shall be reduced to writing and it shall be filed after being stamped.

After allotment having been made, the auditor will verify whether return of allotment has been filed with ROC within 30 days of the date of allotment. He should also check the copy of Board Resolution authorizing such allotment. The auditor will also see whether Board Resolution at Board Meeting has been passed before allotment.

After being complied with all the legal formalities the company issue Share Certificates in accordance with Companies (Issue of Share Certificate) Rules and make entry of the particulars in the Register of Members.

Section -141

Ans 20: As per section 141(3) (a), a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008 shall not be eligible for appointment as an auditor of a company.

In the present case, MW corporate is a LLP registered under UK Law. Therefore, MN Corporate is not eligible for appointment as an auditor of A Ltd.

Ans 21: As per sec 141(3) (a), a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008 shall not be eligible for appointment as an auditor of a company.

In the present case, XYZ Enterprises is registered under Limited Liability Partnership Act, 2008. Therefore, XYZ Enterprises is eligible for appointment as an auditor of A Ltd.

Ans 22: As per Sec 141 (3) (d) (i), 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 is holding debentures in S Ltd. of face value ₹ 99000. Therefore, he is not eligible for appointed as an auditor of S Ltd.

Ans 23: As per Sec 141 (3) (d) (i), 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. Further as per provision to this section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding one lakh rupees.

In the instant case, Mr. A's brother (relative of Mr. A, an auditor) is having equity shares of ₹ 150000 face value in the S Ltd. which is not as per requirement of provision to section 141 (3) (d) (i). Therefore, Mr. A will be disqualified to be appointed as an auditor of S Ltd.

Ans 24: As per Sec 141 (3) (d) (i), 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. R is holding debentures of ₹ 95000 face value in the B Ltd. which is a holding company of A Ltd. Therefore, Mr. R is not qualified to be appointed as an auditor of A Ltd.

Ans 25: As per Sec 141 (3) (d) (i), 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. R is holding debentures of ₹ 99000 face value in A Ltd., which is a subsidiary of S Ltd. Therefore, Mr. R is not eligible for appointment as an auditor of S Ltd.



Ans 26: As per section 143 (3) (e), a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed shall not be eligible for appointment as an auditor of a company.

In the present case, A Ltd. has purchased goods on credit worth ₹ 14 lacs from Mr. S therefore Mr. S is disqualified to be appointed as an auditor of A Ltd.

Ans 27: As per Sec 141 (3) (d) (ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the Company, or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, in excess of 5 lacs.

In the present case, Mr. A will not be disqualified for appointment as an auditor of XYZ Ltd. as the relative of Mr. A i.e. Mr. A's wife is indebted to XYZ Ltd. for credit purpose of goods worth ₹ 5 lacs

Ans 28: As per Sec 141 (3) (d) (ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the Company, or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, in excess of 5 lacs.

In the present case Mr. A is indebted to the S Ltd. for taking a loan of ₹ 5 lacs (not exceeding 5 lacs). Therefore, Mr. A is eligible to be appointed as an auditor of S Ltd.

Ans 29: As per Section 141(3) (d) (iii), an auditor is disqualified to be appointed as an auditor, if he or his relative or partner has given guarantee or provided any security in connection with the indebtedness of any third person to the Company, or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, in excess of 1 lacs.

In the instant case, Mr. A will be eligible to be appointed as an auditor of S Ltd. as Mr. A has given a guarantee of ₹ 100000 only to S Ltd. for a loan taken by Mr. R for ₹ 6 lacs.

Ans 30 : As per Section 141(3) (d) (iii), an auditor is disqualified to be appointed as an auditor, if he or his relative or partner has given guarantee or provided any security in connection with the indebtedness of any third person to the Company, or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, in excess of ₹ 1 lacs.

In the instant case, Mr. A will be disqualified for appointment as an auditor of XYZ Ltd. as Mr. A has provided security of ₹ 200000 for Mr. R to XYZ Ltd. and XYZ Ltd. has given loan to Mr. R for ₹ 2 lacs.

Ans 31: As per Section 141(3) (d) (iii), an auditor is disqualified to be appointed as an auditor, if he or his relative or partner has given guarantee or provided any security in connection with the indebtedness of any third person to the Company, or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, in excess of 1 lacs.

In the present case, Mr A will be disqualified for appointment as an auditor of S Ltd. as Mr. R i.e., partner of Mr. A has given guarantee for Ms. B for ₹ 2 lacs in AB Ltd. an associate of S Ltd.

Ans 32: As per section 141 (3) (e), an auditor is disqualified to be appointed as an auditor, if he or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or of its holding or associate company or a subsidiary of such holding company or associate company of such nature may be prescribed. Further, as per provision to this section, the term business relationship means commercial transaction but excludes:

(i) Commercial Transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts;

(ii) Commercial Transactions which are in the ordinary course of business of the company at arm's length price like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

In the present case, Mr. S is a regular customer of AB Ltd. but all the transactions are in ordinary course of business and at arm's length, which is as per requirement of provision to section 143(3)(e)(ii). Therefore, Mr. S will not be disqualified to be appointed as an auditor of AB Ltd.

Ans 33: As per section 141 (3) (e), an auditor is disqualified to be appointed as an auditor, if he or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or of its holding or associate company or a subsidiary of such holding company or associate company of such nature may be prescribed. Further, as per provision to this section, the term business relationship means commercial transaction but excludes:

(i) Commercial Transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts;

(ii) Commercial Transactions which are in the ordinary course of business of the company at arm's length price like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

In the present case, Mr. S is a regular customer of Ab Ltd. and the transactions are in ordinary course of business. However the customer is given extra credit period of 2 months and the prices were changed same as to other customers (not at arm's length) which is not as per requirement of provision to Section 141 (3) (e) (ii). Therefore, Mr. S will be disqualified to be appointed as an auditor of AB Ltd.

Ans 34: As per Section 141 (3) (f), a person whose relative is a director or is in the employment of the company as a director or key managerial personnel shall not be eligible for appointment as an auditor of a company.

In the present case, Mr. R will be disqualified for appointment as an auditor of AB Ltd. as his brother i.e. relative of Mr. R is a company secretary of the same company.



Ans 35: As per Section 141 (3) (f), an auditor is disqualified to be appointed as an auditor, if his relative is a director or is in the employment of the company as a director or key managerial personnel.

In the present case, Mr. R (relative) is the Managing Director of AB Ltd. Therefore, Mr. R's Son is not eligible for appointment as an auditor of AB Ltd.

Ans 36: As per section 141 (3) (h), an auditor is disqualified to be appointed as an auditor, if he has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction.

In the instant case, Mr. R was convicted of an offence involving fraud and has been sentenced to imprisonment for 2 years but already 14 years have passed from the date of such conviction. Therefore Mr. R will not be disqualified to be appointed as an auditor of AB Ltd.

Ans 37: As per section 141(3) (a), a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008 shall not be eligible for appointment as an auditor of a company.

In the present case, Nikita pvt. Ltd. is a Switzerland based limited liability partnership firm. Therefore, Nikita Pvt. Ltd. is not eligible to be appointed as an auditor of Prachi Pvt. Ltd. an Indian Company.

Ans 38: As per Section 141 (3) (f), an auditor is disqualified to be appointed as an auditor, if his relative is a director or is in the employment of the company as a director or key managerial personnel. Sub Section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any disqualifications specified in sub-section (3) of Section 141, he shall be deemed to have vacate his office as an auditor.

In the present case, Mr. Bothra, husband of Mrs. Bothra (relative) was appointed as Managing Director (Key managerial personnel) of Zuari pvt. Ltd. in which Mrs. Bothra was an auditor, has attracted sub-section (3) (f) of Section 141 and therefore, he shall be deemed to have vacate the office of Zuari Pvt. Ltd. as an auditor.

Ans 39: As per Section 141 (3) (f), an auditor is disqualified to be appointed as an auditor, if his relative is a director or is in the employment of the company as a director or key managerial personnel.

In the present case, Mr. Bothra, wife (relative) of Mr. Bothra who was the Managing Director (key managerial personnel) of Zuari pvt. Ltd., was appointed as an auditor in its subsidiary company. Therefore, the appointment of Mrs. Bothra as an auditor in the subsidiary company of Zuari Pvt. Ltd. is valid.

Ans 41: As per section 141 (3) (e), an auditor is disqualified to be appointed as an auditor, if he or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or of its holding or associate company or a subsidiary of such holding company or associate company of such nature may be prescribed. Further, as per provision to this section, the term business relationship means commercial transaction but excludes:

(i) Commercial Transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts;

(ii) Commercial Transactions which are in the ordinary course of business of the company at arm's length price like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

In the present case, Mr. Dutta is a regular customer of Airtel Connection and all the transaction are in the ordinary course of business of the company at arm's length price, which is as per the requirement of provision to Section 141 (3) (e) (ii). Therefore, Mr. Dutta will not be disqualified for appointment as an auditor of Airtel

Ans 42: As per section 141 (3) (g), an auditor is disqualified to be appointed as an auditor, if a person is full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies. Further as per the provision to this section, One person companies, dormant companies, small companies and private companies having paid up share capital of less than 100 crore, are not to be counted in the maximum limit of audit which is twenty for auditors.

In the present case, P.K. Shaha firm was appointed as the auditor of HK Infoware Pvt. Ltd. and at the time of appointment, the firm was holding appointment as auditor in 20 companies including One Person Company (excluded) which is as per the requirement of provision to Section 141 (3) (g). Therefore, P.K. Saha firm is eligible for appointment as an auditor of HK Infoware Pvt. Ltd.