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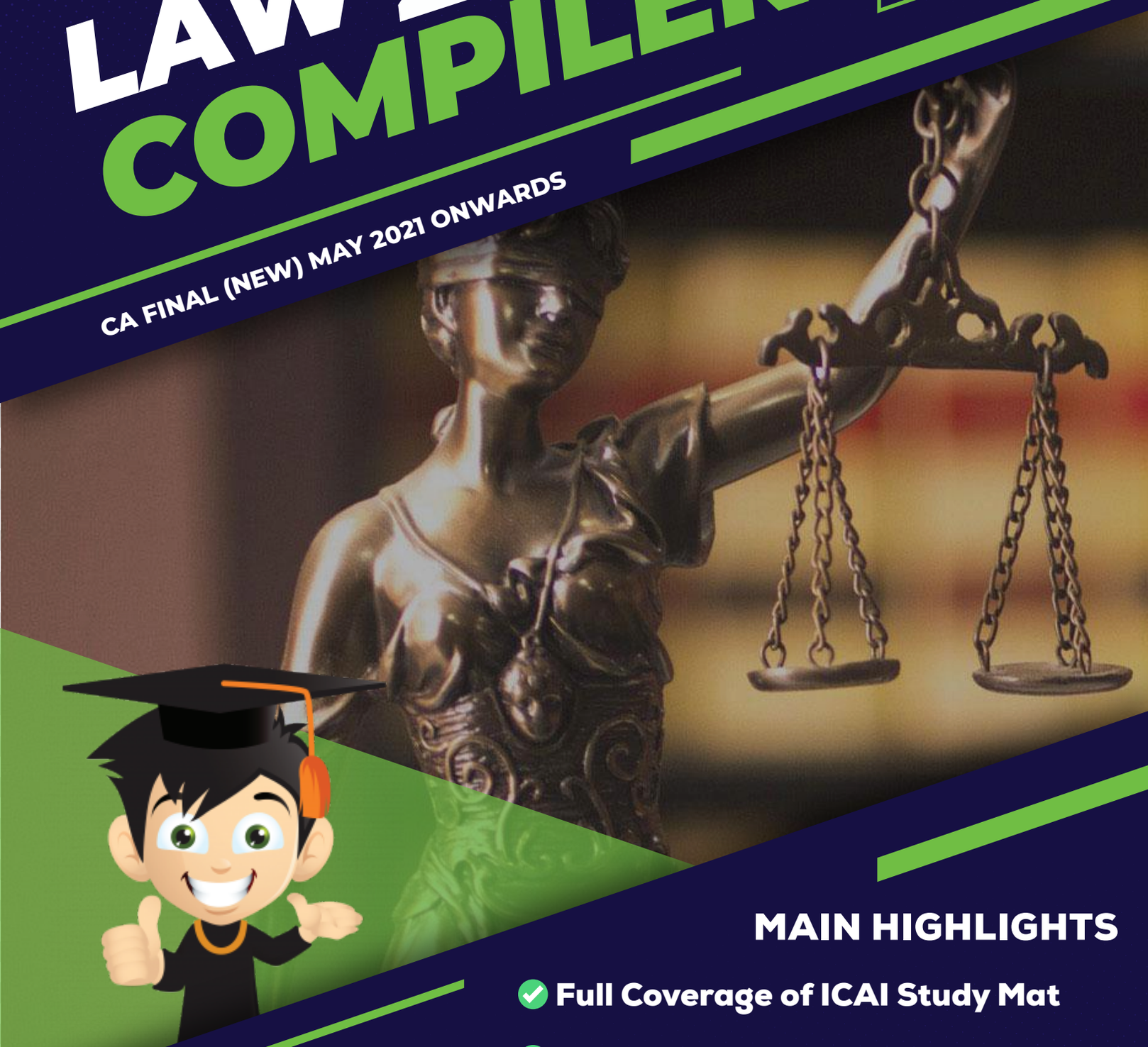

MAIN HIGHLIGHTS

- Full Coverage of ICAI Study Mat
- Additional ICAI SM Dec 2020 Q's
- Includes New Illustrations
- All Past Papers
- All MTPs
- All RTPs (including Nov 2020)

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CORPORATE LAWS

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Chapter 1 –Appointment & Qualification of Director

Multiple Choice Questions

1.MTP Mar 2019 Qn no 12

Srishakti Homecare Limited, incorporated on 30th October, 2018, has ten subscribers to the Memorandum out of which two are private limited companies and remaining individuals. However, there is no mention in any of the documents as to who shall be the first directors. Advise the company regarding the appointment of first directors who shall manage the affairs of the company.

(a) All the subscribers to the Memorandum shall be deemed to be the first directors.

(b) The two private limited companies being subscribers to the Memorandum shall decide as to who shall be the first directors.

(c) All the individual subscribers to the Memorandum shall be deemed to be the first directors.

(d) As the company requires minimum three directors, the eight individual subscribers shall choose two from among themselves and one shall be chosen by the two private limited companies from among themselves.

Answer: Option C

2.May 2019 RTP Qn no 1

All the three directors of Cygnus Wires Limited generally remain out of India for developing connections and securing business opportunities on behalf of the company. However, the company must strictly follow the legal requirement that at least one of its directors must stay for the specified statutory period in India. To reckon as 'resident director' for the financial year 2018-19, advise the company as to which period spent in India shall count towards statutory period.

(a) Period spent in India during the previous financial year 2017-18.

(b) Total of fifty percent each of the period spent in India during the financial year 2016- 17 and 2017-18.

(c) Period spent in India during the financial year 2018-19.

(d) Total of fifty percent each of the period spent in India during the financial year 2017 - 18 and 2018-19.

Answer: Option C

3.May 2019 RTP Qn no2

Mr. Roop was appointed as an Additional Director of XYZ Limited in July, 2018. Immediately after his appointment, on behalf of the Company he entered into an agreement with NY Private Limited for supplies of raw material. In the ensuing meeting, he was regularized as a Director. He signed Contract with Laxmi vendors. At the end of the December 2018, management came to know that his appointment was not valid as he was disqualified to act as a Director of any Company. He signed one more agreement in January 2019 with Saraswati vendors. In such scenario, what will be the status of contract/agreements he signed on behalf of XYZ Limited?

(a) All agreement/ contracts will become invalid;

(b) All agreement/ contracts will be valid;

(c) All agreement/ contracts before December 2018 will be valid;

(d) All agreement/ contracts before December 2018 will be invalid.

Answer : Option C

4.RTP May 2019 Qn no 3

Mr. Nagar a director, decided to resign from MGT Private Limited due to preoccupation. He sent his resignation letter dated 12th June, 2018 to the Company stating that he will resign w.e.f. 15th June, 2018. Due to non receipt of any communication from the Company he dropped a mail on 17th June, 2018, to confirm whether Company has received his letter. Finally Company received his letter on 25th June, 2018. In this case, from which date his resignation will be effective?

(a) 12th June, 2018

(b) 15th June, 2018

(c) 17th June, 2018

(d) 25th June, 2018

Answer: Option D

5.MTP April 2019 Qn no 4

Mr. Jigar is a director of PQR Ltd., which had accepted deposits from public. The Financial position of PQR Ltd. declined which resulted in failure to repay the deposits. It became 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. Jigar as its director at its annual general meeting to be held on 6 th August, 2018. State the correct statement as to the appointment of Mr. Jigar as a director of JKL Ltd.

a) Mr. Jigar can be appointed in JKL Ltd. as it is other than the defaulted company

b) Mr. Jigar cannot be appointed at all in JKL Ltd. or any other company.

c) Mr. Jigar will not be eligible to be appointed as a director of JKL Ltd. on the scheduled AGM but may be after expiry of five years from the date of default.

d) Mr. Jigar will not be appointed as a director of JKL Ltd. before 6 months from the date of default.

Answer: Option C

6.MTP Apr 2019 Qn no 5

Diksha, a professional architect, had been approached by Newage Builders Limited – a companyformed by her distant relatives but with whom she has good rapports – to accept the directorship in the company. However, she could not immediately agree to take the post of director, for she did not possess Director Identification Number (DIN). Accordingly, she applied for the DIN but her application was found to be incomplete and she received an e-mail on 3rd January, 2019 which directed her to rectify the defects by resubmitting the application. Advise Diksha regarding the latest date by which she must resubmit the application after fully rectifying it.

(a) Latest by 10th January, 2019.

(b) Latest by 16th January, 2019.

(c) Latest by 18th January, 2019

(d) Latest by 23rd January, 2019.

Answer: Option C

7.MTP Apr 2019 Qn no 6

Bnorth Motors and Spares Limited, a listed company, has 4500 small shareholders but till date there is no director who can represent them. Accordingly, some of such shareholders have approached the company for appointment of their director on the Board. By choosing the correct option, advise as to minimum how many small shareholders must group together so that they succeed in their objective.

(a) **Minimum one thousand small shareholders must group together for getting appointed their director on the Board.**

(b) **Minimum nine hundred small shareholders must group together for getting appointed their director on the Board.**

(c) **Minimum four hundred and fifty small shareholders must group together for getting appointed their director on the Board.**

(d) **Minimum two hundred and twenty-five small shareholders must group together for getting appointed their director on the Board.**

Answer: C

8.April 2019 MTP Qn no 7

Rati holds 2,500 equity shares of Rs. 10 each (Rs. 5 paid up) in Uranus Glass Limited which is listed on National Stock Exchange as well as Bombay Stock Exchange. In the same company her mother Rachna holds 2,000 equity shares on which Rs. 7 have been paid up. Her brother Ruchir has also been allotted 3,000 equity shares by the Uranus but till date, similar to Rati, he has paid only Rs. 5 as application and allotment money. All the three claim to be small shareholders and want to participate in the process of appointing small shareholders' directors. Advise them whether they could be categorized as small shareholders.

a) **Only Rati is small shareholder and therefore, she can participate in the process of appointing small shareholders' directors.**

b) **Only Rachna is small shareholder and therefore, she can participate in the process of appointing small shareholders' directors.**

c) **Only Ruchir is small shareholder and therefore, he can participate in the process of appointing small shareholders' directors.**

d) **All the three are small shareholders and therefore, they can participate in the process of appointing small shareholders' directors.**

9.MTP Apr 2019 Qn no 9

Mr. Raman is a managing director of SLR Ltd. He was proposed to be appointed as director in the same company. Mr. Raman got better opportunity and joined the other company "Alternate Ltd.". He left the office of managing director of SLR Limited. State the correct legal position as to holding of offices of Mr. Raman in the companies-

a) **he will hold directorship both in SLR Ltd and Alternate Ltd.**

b) **He cannot hold office in Alternate Ltd. being employed as managing director in SLR Ltd.**

c) **He will validly hold all the designated offices in both SLR and Alternative Ltd.**

d) **He can hold directorship only in Alternate Ltd.**

Answer: Option D

10.MTP Apr 2019 QN no 11

State which is not a valid situation for the vacation of the office of director amongst the given:

(i) **When the directors absents himself from 3 consecutive meetings of Board of Directors held during a period of 12 months**

(ii) **Director entering into a contract in which he is uninterested**

(iii) **Order disqualifying him as Director has been made by Court or NCLT**

(iv) **If he is convicted by a Court of any offence, whether involving moral turpitude or otherwise, and sentenced to imprisonment for not less than 6 months.**

(a) **(i) & (ii)**

(b) **(ii) &(iii)**

(c) **(iii) &(iv)**

(d) **(i) &(iv)**

Answer: Option a

11.Nov 2019 RTP Qn no 7

Sunila Interior Decorators and Furnishers Limited which has not accessed the primary market so far, is required to appoint whole-time Key Managerial Personnel (KMPs) in view of the fact that it has surpassed the threshold limit which necessitates such appointment. Out of the three whole-time KMPs which it is obligated to keep on roll, it has already appointed a Managing Director (MD) and a Company Secretary. From the given options, choose the third KMP which needs to be appointed by the company under the given circumstances.

(a) **Chief Executive Officer (CEO)**

(b) **Chief Financial Officer (CFO)**

(c) **Whole-time Director (WTD)**

(d) **Chief Manager (CM)**

Answer: (b)

Descriptive Questions

12.March 2018 Qn no 6(a) 4 Marks:

XYZ Limited is an unlisted public company having a paid-up capital of twenty crore rupees as on 31st March, 2017 and a turnover of one hundred fifty crore rupees during the year ended 31st March, 2017. The total number of directors is thirteen.

State the following answers:

(i) **Minimum number of directors appointed as Independent Director in XYZ Limited.**

(ii) **What will be the consequences where XYZ Ltd. ceases to fulfill any of the required conditions with respect to appointment of Independent directors for three continuous years?**

If suppose XYZ Ltd. (Unlisted public company) is a dormant company, what shall be the law related to the appointment of Independent director?

Answer:

According to Rule 4(1) of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following class or classes of companies shall have at least 2 directors as independent directors:

(1) the Public Companies having paid up share capital of 10 crore rupees or more; or

(2) the Public Companies having turnover of 100 crore rupees or more; or

(3) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees.

In the present case, XYZ Limited is an unlisted public company having a paid-up capital of ` 20 crores as on 31st March, 2017 and a turnover of ` 150 crores during the year ended 31st March, 2017. Thus, as per the Companies (Appointment and Qualification of Directors) Rules, 2014, XYZ Limited shall have at least 2 directors as independent directors.

Where a company ceases to fulfil any of 3 conditions for three consecutive years, it shall not be required to comply with these provisions (i.e., related to appointment of Independent directors) until such time as it meets any of such conditions.

(ii) As per Rule 4(2) of the Companies (Appointment and Qualification of Directors) Rules, 2014 the following classes of unlisted public company are not covered under Rule 4(1), namely:-.

(a) a joint venture;

(b) a wholly owned subsidiary; and

(c) a dormant company as defined under section 455 of the Act.

Accordingly, XYZ, a dormant company does not require to fulfil the conditions stated in Rule 4(1) for appointment of Independent Directors.

13.March 2018 Qn no 5(a) 8 Marks:

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

(iii) 4 Public companies

(iv) 10 private companies

(v) 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

Decide the number of companies in which Mr. Fortune can hold the directorship.

Answer:

Section 165 of the Companies Act, 2013 provides for the maximum permissible number of directorships that a person can hold. According to this section:

No person, after the commencement of this Act, shall hold office as director, including any alternate directorship, in more than 20 companies at the same time. [Section 165(1)]

Provided that out of the limit of 20, the maximum number of public companies in which a person can be appointed as a director shall not exceed 10. [Proviso to section 165(1)]

However, the limit of directorship of 20 companies shall not include the directorship in a dormant company; as also in a section 8 company.

Private companies that is either holding or subsidiary company of a public company shall be included in reckoning the limit of public companies in which a person can be appointed as a director.

The MCA vide Notification No. 466(E) dated 5th June, 2015, has clarified that section 165(1) of the Companies Act, 2013, shall not apply to section 8 companies.

Based on the above provisions, Mr. Fortune can hold the directorship as follows:

(i) 6 Public companies. Since the maximum number of public companies in which one can be a director is 10 only.

(ii) No more private company. Since his total holding has already reached the maximum permissible 20 companies (All inclusive of public and private companies)

(iii) 2 more companies registered under section 8 of the companies Act, 2013. Since there is no restriction on the number of directorship, a person can hold in the companies registered under section 8 of the Companies Act, 2013.

14.March 2018 Qn no 1(a) 8 Marks:

Mr. Ram have been appointed as a director in X Ltd. due to his holding of an office as Managing Director (MD) in its holding company, ABC Limited. In due course of time, Mr. Ram was offered by HXL Limited to join the company as a managerial personnel on very good package. He was offered the said position on the term that he has to resign from the ABC Ltd. Mr. Ram served a notice in writing to the company by mail and through post to his registered office on 1.02.2018. His notice of resignation specified the date 15.02 2018 as the last date in the ABC Ltd. However, due to pressure of HXL Ltd., he joined the company on 13.02.2018.

Analyse, Integrate and apply in terms of the Companies Act, 2013, the legal position of Mr. Ram in the given situations-

(a) **Holding of directorship of Mr. Ram in X Ltd. after ceasing to hold office as MD in ABC Ltd.**

(b) **Joining of HXL Ltd on 13. 02.2018.**

Answer:

According to section 167(1)(h) of the Companies Act, 2013, the office of a director shall become vacant in case he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company. If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in sub-section (1), he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ` 1,00,000 but which may extend to ` 5,00,000, or with both. [Section 167(2)]

- As per section 168 a director may resign from his office by giving a notice in writing to the company.
- The Board shall on receipt of such notice take note of the same and intimate Registrar
- The Company shall within 30 Days from the date of receipt of notice of resignation from director, intimate the registrar in FORM DIR 12 and post the information on its website, if any.
- Board shall place the fact of such resignation in the report of Director in the immediate following General Meeting by the Company.
- Besides, Director also forward his resignation to registrar within 30 days of his resignation in FORM DIR – 11.

- 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.

As per the given facts, the legal position of Mr. Ram in the given situations will be as follows:

Holding of directorship of Mr. Ram in X Ltd. is invalid in the light of section 167(1)(h) of the Companies Act, 2013. As per the facts, Mr. Ram was appointed as director in X Ltd. due to holding of office in its holding company, ABC Ltd. According to the above provisions, office of director in X Ltd. shall become vacant due to cease of its holding of his office or employment in ABC Ltd. So holding of directorship in X Ltd. by Mr. Ram is invalid and he is liable to vacate.

Even if, Mr. Ram functions as a director knowing that the office of director held by him has become vacant on account of the above provision, he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ` 1,00,000 but which may extend to ` 5,00,000, or with both. [Section 167(2)]

According to Section 168 of the Companies Act, 2013, Resignation shall 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, i.e., 15.02.2018. So joining of HXL Ltd. during the notice period i.e. on 13.02.2018, is not valid.

As per section 172 of the Companies Act, 2013, if a company contravenes in compliance to the said provision, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

15.RTP May 2018 Qn no 1

The composition of the Board of Directors of a listed company as on 31-03-2017 comprised of (i) Mr. A, Director, (ii) Mr. B, Director (iii) Mr. C, Director (iv) Mr.· D, Director, (v) Mrs. E, Independent Director, (vi) Mr. F, Independent Director and (vii) Mr. G, Independent Director.

You are required to examine with reference to the provisions of the Companies Act, 2013 the vacations of the offices of Mr. D & Mrs. E and discuss the course of action that can be taken up by the Company in this regard?

Discuss the legal position in the given situations with reference to the provisions of the Companies Act, 2013:

(a) Mr. Arthav, 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. Besides, the company fails to intimate about the resignation of Mr. Arthav to RoC.

(b) The Board of Directors of Superwood Limited decides to appoint on its Board, Mr. Ramakant as a nominee director upon the request of a bank which has extended a long term financial assistance to the company. The Articles of Association of the company do not confer upon the Board any such power. Also, there is no formal agreement between the company and the bank for any such nomination.

Answer:

1. **(i)** The provision of the Companies Act, 2013 governing the appointment of Women Director and Independent Directors are as under:

(a) The second proviso to section 149(1) of the Companies Act, 2013 provides that such class or classes of companies as may be prescribed, shall have atleast one women director. Rule 3 of *Companies (Appointment and Qualification of Directors) Rules, 2014* provides that the following class of companies shall appoint at least one women director –

(1) every listed company;

(2) every other public company having-

- paid-up share capital of one hundred crore rupees or more; or
- turnover of three hundred crore rupees or more:

It further provides that any intermittent vacancy of a women director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

In this case the Company is a listed and under the provisions of the Companies Act, 2013, it is required to have at least 1 Women Director in its Board.

(b) The provision of section 149(4) provides that every listed company shall have at least 1/3rd of the total number of Directors as Independent Directors.

As per the facts stated in the question, composition of board of directors of listed company as on 31-3-2017 comprised of total 7 directors. Out of which 4 were directors and 3 were independent directors. Later Mr. D (Director) and Mrs. E (Independent Director) vacated their offices of director on 15 -4-2017.

So accordingly, listed company as stated above, shall have at least one women director and one-third of the total number of directors as independent directors in the Board. However, on 15-4-2017, total number of directors left were 5 due to vacation of Mr. D and Mrs. E. Further, Rule 3 of the *Companies (Appointment and Qualification of Directors) Rules, 2014*, provides that if there is an intermittent vacancy of a women director, it shall be filled up by the Board at the earliest but not later than immediate next board meeting or three months from the date of such vacancy whichever is later.

As per the requirement of the above sections, there is compliance of section 149(4) as 1/3rd of the total number of directors comprises of (1/3x5) 1.6 rounded off as 2, which complies with the minimum requirement of 2 independent directors in the board, however, pertaining to women director, Board have to fill up the intermittent vacancy at the earliest but not later than immediate next board meeting or three months from the date of such vacancy whichever is later.

(ii) (a) Resignation of Director (Section 168 of the Companies Act, 2013)

A director may resign from his office by giving a notice in writing to the company. The Board shall on receipt of such notice take note of the same. The company shall 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.

Such director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30 days from the date of resignation in *Form DIR-11* along with the prescribed fee. 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. In the present case, Mr. Arthav, a director resigns after giving due notice to the company and he forwards a copy of resignation in e-form DIR-11 to the RoC within the prescribed time.

If the company fails to intimate about the resignation of Mr. Arthav to RoC, even then the resignation of Mr. Arthav shall take effect from the date on which the notice is received by the company or the date, if any, specified by Mr. Arthav in the notice, whichever is later.

(b) According to section 161 (3) of the Companies Act, 2013, subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company.

The Articles of Association of Superwood Limited do not confer upon the Board of Directors any such power. Hence, the Board cannot appoint Mr. Ramakant as a nominee director even on the request of a bank which has extended a long term financial assistance to the company.

16.May 2018 Qn no 6(a)(i) 4 Marks:

Mr. Bond and Mr. James were appointed as Directors of Jamesbond Ltd. at the AGM held on 30th September, 2017 by a single resolution. State the relevant provisions of the Companies Act, 2013 and identify is it possible to appoint the above Directors by a single resolution?

Answer:

According to Section 162 of the Companies Act, 2013, at a general meeting of a Company, a motion for the appointment of two or more persons as Directors of the Company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.

A resolution moved in contravention of above shall be void, whether or not any objectio n was taken when it was moved.

A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment.

In the instant case, it is not possible to appoint Mr. Bond and Mr. James as Directors of James Bond Ltd. by a single resolution.

17.May 2018 Qn no 1(a) 8 Marks:

CTC Limited is an unlisted public company having a paid up capital of ` 100 crores as on 31st March, 2017. The company made a turnover of ` 300 crores for the financial year ended 31st March, 2017. The Articles of Association of the company provides for payment of sitting fee to Directors for each Board Meeting/Committee thereof subject to a maximum of ` 40,000 per meeting. The Board of Directors is comprised of Independent Directors and Women Directors also. The Company is having 7 directors in its Audit Committee. Shri PKV, working as Financial Advisor of the company, was designated as Chief Financial Officer from 1st April, 2015. He retired from service on superannuation on 31st March, 2016, He is in receipt of monthly pension of ` 80,000 from the company. It is proposed to appoint Shri PKV as Independent Director of the Company. The Board of Directors proposes to fix sitting fee of ` 50,000 per meeting to Independent Director and` 30,000 per meeting to Woman Director, taking into consideration their experience and qualification.

In the light of the provisions of the Companies Act, 2013, advise the Board of Directors in the following matters :

(1) **Appointment of Mr. PKV as Independent Director.**

(2) **Fixing sitting fee of ` 50,000 to Independent Director and ` 30,000 to Woman Director.**

(3) **Minimum number of Independent Directors.**

(4) **Maximum sitting fee to a Director.**

Assuming CTC Ltd. is a Government Company, what will be your advise in the matter of appointment of Mr. PKV as Independent Director.

Answer:

1) Appointment of Mr. PKV as an Independent Director

According to Section 149(6)(e)(i) of the Companies Act, 2013, an Independent Director shall be a person who, neither himself nor any of his relatives holds or has held the position of a Key Managerial Personnel (KMP) or is or has been an employee of the Company or its Holding, Subsidiary or Associate Company in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed.

In the instant case, the Company, CTC Limited is proposing to appoint Mr. PKV as an Independent Director who was working as Financial Advisor in the Company and then was designated as Chief Financial Officer for the financial year 2015 -2016. Since, he was an employee and also a Key Managerial Personnel in one of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed, Mr. PKV shall not

be appointed as an Independent Director in CTC Limited.

(2)Fixing sitting fee to Independent Director and Women Director

As per Section 197(5) of the Companies Act, 2013 along with the *Companies (Appointment and Remuneration of Managerial personnel) Rules, 2014* , a Company may pay a sitting fee to a Director for attending meetings of the Board or Committees thereof, such sum as may be decided by the Board of Directors thereof which shall not exceed one lakh rupees per meeting of the Board or Committee thereof.

However, for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors.

In the instant case, the Articles of Association of the Company provides for payment of sitting fee to Directors of ` 40,000.

Hence, the sitting fee of ` 50,000 can be paid to the Independent Director but the sitting fee payable to Woman Director shall not be less than ` 40,000. So, the amount of Sitting fee payable to Woman Director has to be increased from ` 30,000 (as proposed) to minimum `40,000.

3) Minimum number of Independent Directors

According to the Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following class or classes of Companies shall have at least 2 directors as Independent Directors:

(1)	The Public Companies having paid up share capital of 10 crore rupees or more; or
(2)	the Public Companies having turnover of 100 crore rupees or more; or
(3)	the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees.

However, in case a Company covered as under the above Rule is required to appoint a higher number of Independent Directors due to composition of its Audit Committee, such higher number of Independent Directors shall be applicable to it.

As per Section 177(2) of the Companies Act, 2013, the Audit Committee shall consist of a minimum of three directors with Independent Directors forming a majority.

In the instant case, CTC Limited shall appoint at least 2 directors as Independent Directors as it is covered under Rule 4 of the above Rules since the Company is having a paid up capital of ` 100 crores and a turnover of ` 300 crores for the financial year ended 31st March, 2017. But since the Company is having an Audit Committee having 7 directors, therefore 4 directors out of 7 must be Independent directors (4 is forming majority).

(4)Maximum sitting fee to a Director

As per Section 197(5) of the Companies Act, 2013 along with the *Companies (Appointment and Remuneration of Managerial personnel) Rules, 2014* , a Company may pay a sitting fee to a Director for attending meetings of the Board or Committees thereof, such sum as may be decided by the Board of Directors thereof which **shall not exceed one lakh rupees** per meeting of the Board or Committee thereof. Accordingly, the maximum sitting fee payable to a Director shall not exceed one lakh rupees.

(5)Appointment of Mr. PKV if CTC Ltd is a government company

If CTC Ltd. is a Government Company, then also Mr. PKV shall not be appointed as an Independent Director in CTC Limited because, he was an employee and also a Key Managerial Personnel in one of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed

18.Aug 2018 Qn no 6(a) 4 Marks:

Mr. Single, a director of XYZ Ltd. goes Singapore, for a period of 6 months. Board appoints Mr. Replacement, in his place as an alternate director. Mr. Replacement was also holding directorship in XYZ Ltd. Identify the nature of appointment of Mr. Replacement in XYZ Ltd as an alternate director.

Answer:

According to Section 161(2) of the Companies Act, 2013, the Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company, or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India.

In the given question, Board appoints Mr. Replacement, in the place of Mr. Single as an alternate director. Mr. Replacement was also holding directorship in XYZ Ltd. So, as the per above provision, Mr. Replacement shall not be appointed as an alternate director due to his holding of directorship in the same company in which he is appointed as an alternate director. So his appointment is invalid.

19.Aug 2018 Qn no 5(a) 8 Marks:

ABC Ltd. is a listed company having 50,00,000 equity shares of Rs. 100 each as its paid up capital. Of the total shareholders of the company there are 20000 shareholders who are holding shares of nominal value of not more than Rs. 20000 each. A group of shareholders who had applied for these shares at the time of issue of such shares by the company by issuing prospectus and been allotted these shares, wants to appoint a small shareholder's director to safeguard their interest and to get a proper representation in the company. A total number of 1500 such small shareholders decided to propose Mr. X as their candidate for this post. In the light of the Companies Act, 2013 on the basis of the facts provided, determine the following situations—

(1) What procedure should be followed by group of shareholders to have Mr. X, a small shareholder director in the Board of Directors of the company?

(2) What are the provisions related to his (Mr. X) status as an independent director and what exceptions are available to him in relation to his appointment as a director?

Answer:

As per the provisions given in Section 151 of the Companies Act, 2013, a listed company may have one director elected by such small shareholders in such manner and on such terms and conditions as prescribed in Rule 7 of the *Companies (Appointment and Qualification of directors) Rules, 2014.* "Small Shareholders" means a shareholder holding shares of nominal value of not more than Rs. 20000/- or such other sum as may be prescribed.

(1) The *Companies (Appointment and Qualification of directors) Rules, 2014* provides for the procedure for appointment of Small shareholders' director according to which:

(A) A listed company, may upon notice of not less than

(a) one thousand small shareholders; or

(b) one-tenth of the total number of such shareholders,

Whichever is lower; have a small shareholders director elected by the small shareholder.

However, a listed company may opt suomoto, to have a director representing small shareholders and in such case the provisions stated in point (B) shall not apply for appointment of such director.

(B) The small shareholders intending to propose a person as a candidate for the post of small shareholder's director shall leave a notice of their intention with the company **at least fourteen days before the meeting** under their signature specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director.

However, if the person being proposed does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice.

(C) The notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholder's director stating-

(a) his Director Identification Number;

(b) that he is not disqualified to become a director under the Act; and

(c) his consent to act as a director of the company.

(d)

A person shall not be appointed as small shareholder's director of a company, if he is not eligible for appointment as a director as per the provisions of the Companies Act, 2013. In compliance with the said provisions Mr. X can be appointed as the small shareholder by the group of shareholders in Board of Directors of ABC Ltd.

(2) Such small shareholders' director shall be considered as an independent director if he fulfills all the conditions/pre requisite to become an independent director as mentioned in Section 149(6) and gives a declaration of his independence in accordance with the provisions of section 149(7) of the Companies Act, 2013.

The appointment of small shareholder's director i.e. Mr. X shall be as per the provisions of Companies Act, 2013, except that—

(a) such director shall not be liable to retire by rotation;

(b) such director's tenure as small shareholder's director shall not exceed **a period of three consecutive years**; and

(c) on the expiry of the tenure, such director **shall not be eligible for re-appointment.**

20.Nov 2018 Qn no 6(a) 4 Marks:

ABC Limited is an unlisted public Company having a paid up equity share capital of ` 20 Crores and a turnover of ` 150 Crores as on 31st March, 2018. The total number of Directors on the Board is 13.

Referring to the provisions of the Companies Act, 2013 answer the following:

(i) **The minimum number of Independent Directors that the Company should appoint.**

(ii) **How many Independent Directors are to be appointed in case ABC Limited is a listed Company?**

Answer:

According to Section 149(4) of the Companies Act, 2013, every listed public company shall have at least one-third of the total number of directors as independent directors.

Any fraction contained in such one-third numbers shall be rounded off as one

According to the Rule 4 of the *Companies (Appointment and Qualification of Directors) Rules, 2014*, the following class or classes of companies shall have at least 2 directors as independent directors:

(1)	the Public Companies having paid up share capital of 10 crore rupees or more; or
(2)	the Public Companies having turnover of 100 crore rupees or more; or
(3)	the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees.

(i) As the paid up share capital of ABC Limited is Rs. 20 Crore and turnover is Rs. 150 crore, the company shall have at least 2 directors as independent directors.

(ii) In case ABC Limited is a listed company, it shall have at least 5

(iii) directors as independent director (1/3rd of the total number of directors: 1/3rd of 13 is 4.33 rounded off as 5).

21.Nov 2018 Qn no 5(a) 8 Marks:

VGP Ltd. is a listed public Company with a paid up capital of ` 100 crores as on 31st March, 2018. Mrs. Jasmine, who was one of the promoters of PDS Ltd. (a Joint Venture Company of VGP Ltd.), was appointed as Woman Director on the Board of VGP Ltd. VGP Ltd. has the following proposals :

(1) **To remove Mr. Z, an Independent Director who was re-appointed for a second term.**

(2) **To appoint Mr. N, a nominee Director in the Board as an Independent Director.**

(3) **To appoint Mrs. Jasmine as 'an Independent-cum-Woman Director.**

With reference to the relevant provisions of the Companies Act, 2013, examine:

(i) **The validity the above proposals and the appointment of Woman Director already made.**

(ii) **Whether Mr. N, can be appointed as an Independent Director of PDS Ltd.?**

Is an Independent Director entitled for stock option?

Answer:

(a) As per the stated facts, VGP Ltd., a listed public company with a paid up capital of 100 crore appointed Mrs. Jasmine (Promoter of PDS Ltd., a joint venture of VGP Ltd.) as woman director on the Board of VGP Ltd. VGP Ltd. made the following proposals:

(1) Removal of Mr. Z, an Independent Director(ID) who was re-appointed for a second term.

(2) Appointment of Mr. N, a nominee director in the Board as an Independent Director.

(3) Appointment of Mrs. Jasmine as an Independent- cum-woman Director

Following are the answers in the light of the above given facts under the Companies Act, 2013-

(i) With respect to this part of the question, **Proposal no. (1)** will be valid only on the compliance of the proviso given under section 169(1). According to the said proviso an independent director re-appointed for second term under section 149(10) **shall be removed by the company only by passing a special resolution** and after giving him a reasonable opportunity of being heard.

W.r.t. **proposal nos. (2),** it will be invalid as per section 149(6). As per the stated section, in relation to a company, an independent director means a director other than a managing director or a whole-time director or a nominee director.

W.r.t. **proposal nos. (3),** it will be valid as per requirement of section 149(6) read with Rule 3 of the *Companies (Appointment and Qualification of Directors) Rules, 2014*. Person so appointed as ID, is or was not a promoter of the company or its holding, subsidiary or associate company. Since here, Mrs. Jasmine is a promoter of PDS Ltd. which is joint venture co. of VGP Ltd. So, out of the purview of the above disqualification and is in compliance with Rule 3, so she is eligible to be appointed as Independent –cum- Woman director in VGP Ltd.

Alternate Answer:

As per Section 2 (6) of the Act, associate company includes a joint venture company, therefore Mrs. Jasmine, a promoter of an associate company cannot be appointed as independent director.

(ii) As per Notification G.S.R. 839(E) dated 5th July, 2017, an unlisted public company which is a joint venture, a wholly owned subsidiary or a dormant company will not be required to appoint Independent Directors. So, Mr. N cannot be appointed as an Independent Director of PDS Ltd.

(iii) As per section 149(9), notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director shall not be entitled to any stock option.

22.RTP Nov 2018:

The Promoters of M/s Frontline Limited, a listed public company propose to have the strength of the Board of Directors as eleven. They also propose to make the Managing Director and Whole Time directors as directors not liable to retire by rotation. Advise on the following matters as per the provisions of the Companies Act, 2013:

(a) Maximum number of persons, who can be appointed as directors not liable to retire by rotation.

(b) How many of the remaining directors will have to retire by rotation every year at the Annual General Meeting (AGM)?

For the purpose of increasing the strength, certain nominations were received to nominate candidates for contesting elections. One of the nominations was rejected by the directors as it was received after sending the notice of AGM and that too after the working hours of the last day on which nomination should have been received.

(c) Can the Board of Directors increase the strength of companies' directors to 18 from 11 by appointing additional directors through passing single resolution?

Answer:

According to Section 152(6) of the Companies Act, 2013, unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement of directors by rotation

Directors liable to retire by rotation: 11 * 2/3 =7.3 or 8

So, maximum number of persons, who can be appointed as directors not liable to retire by rotation: 11-8 = 3.

(a) According to Section 152(6)(c) of the Companies Act, 2013, 1/3rd of such of the Directors for the time being as are liable to retire by rotation, or their number is neither three nor a multiple of three, then, the number nearest to the 1/3 rd shall retire from

office. Therefor the Directors liable to retire by rotation are 11*2/3 i.e.7.3 or 8.

No. of directors to retire at AGM: 8 * 1/3 i.e.2.67. Hence nearest to 1/3 rd is 3.

(b) According to Section 160 of the Companies Act, 2013, a person who is not a retiring director in terms of Section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he has, not less than 14 days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director.

In the instant case, one nomination was rejected by the directors as it was received

after sending the notice of AGM and that too after the working hours of the last day on which nomination should have been received i.e. 14th day. Hence, the contention of the directors are valid.

(C) According to Section 149(1) of the Companies Act, 2013, if the company wants to appoint more than 15 directors, it can do so after passing a special resolution. Hence, the Board of directors of Frontline Limited, before increasing the strength of directors from 11 to 18 by appointing additional directors, have to pass a special resolution.

But, these appointments cannot be done through single resolution. Each director shall be appointed by a separate resolution unless the meeting first agreed that the appointment shall be made by a single resolution and no vote has been cast against such agreement. A resolution moved in contravention of this provision shall be void, whether or not objection thereto was raised at the time it was so moved. [Section 162 of the Act].

23.RTP Nov 2018:

M/s. Bosch and Lawrence Limited, an unlisted company has a paid up equity share capital of ` 11 crores as on 31st March, 2013. Mr. Robert was appointed as an Independent Director at the Annual General Meeting of the company held on 29 -09- 2015 for a period of one year. Again, he was appointed in the subsequent Annual General Meeting held on 28-09-2016 for a period of two years as his second consecutive term. Examine under the provisions of the Companies Act, 2013 whether he can be again appointed in the Annual General Meeting to be held in September 2018 for another period of 2 years to complete his total term of 5 years?

Answer:

As per Section 149(10) of the Companies Act 2013, an Independent Director shall hold office for a term up to five consecutive years on the Board of a company. He shall be eligible for re-appointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report. As per section 149(11) no independent director shall hold office for more than two consecutive terms. However, such independent director shall be eligible for appointment after the expiration of three years of ceasing to be an independent director.The Ministry of Corporate Affairs in its General Circular 14/2014

dated June 09, 2014 clarified that section 149 (10) of the Act provides for a term of "up to five consecutive years" for an independent director. As such while appointment of an independent director for a term of less than five years would be permissible, appointment of any term (whether for five years or less) is to be treated as one term under section 149(10) of the Act. Further under section 149 (11) of the Act, no person hold office of independent director for more than 'two consecutive terms'. Such a person shall have to demit office after the consecutive terms even if the total number years of his appointment in such two consecutive terms is less than 10 years.Therefore Mr. Robert cannot be appointed as an Independent Director at the AGM proposed to be held in 2018. In such case the person completing 'consecutive terms of less than 10 years' shall be eligible for appointment only after the expiry of the requisite cooling-off period of three years.

24.May 2019 Qn no 1(a)

Two (2) out of Ten (10) directors on the board of XYZ Limited have retired by rotation at an Annual General Meeting. These two (2) vacancies or place of retiring directors is not filled up and the meeting has also not expressly resolved 'not to fill the vacancy'. Since the AGM could not complete its business, it is adjourned to a later date. Neither place of retiring directors could be filled up at this adjourned meeting nor did the meeting expressly resolve 'not to fill the vacancy'.

Analyse & apply relevant provisions of the Companies Act, 2013 and decide:

- **Whether in such a situation the retiring directors shall be deemed to have been reappointed at the adjourned meeting?**
- **What will be your answer in case at the adjourned meeting, the resolutions for reappointment of these directors were lost?**
- **Whether such directors can continue in case the directors do not call the Annual General Meeting?**

Answer

In accordance with the provision of the Companies Act, 2013, as contained in section 152(7)(a) which provides that if at the annual general meeting at which a director retires and the vacancy is not so filled up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned to same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

Section 152(7)(b) further provides that if at the adjourned meeting also, the place of the retiring is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless at the adjourned meeting or at the previous meeting a resolution for the reappointment of such directors was put and lost or he has given a notice in writing addressed to the company and the Board of Directors expressing his desire not to be re-elected or he is disqualified.

Therefore, in the given circumstances answer to the questions as asked shall be:

- In the first case, applying the above provisions, the retiring directors shall be deemed to have been re-appointed.
- In the second case, where the resolutions for the reappointment of the retiring directors were lost, the retiring directors shall not be deemed to have been re- appointed.
- Section 152(6)(c) states that $1/3^{rd}$ of the rotational directors shall retire at every AGM. They retire at the AGM and at its conclusion. Hence, they will retire as soon as the AGM is held. Further, as per section 96 (dealing with annual General Meeting) of the Companies Act, 2013, every company other than a One Person Company shall in each year hold an Annual General Meeting. Hence, it is necessary for the company to hold the AGM, whereby these directors will be liable to retire by rotation.

Further Section 97 states that, if any default is made in holding the annual general meeting of a company under section 96, the Tribunal may, on the application of any member of the company, call, or direct the calling of, an annual general meeting of the company. Such general Meeting shall be deemed to be an annual general meeting of the company under this Act.

25.May 2019 Qn no 6(a)(i) 4 Marks:

M/s Bright Motors (P) Limited at the Annual General Meeting (AGM) held on 30.09.2016 appointed Mr. Anmol as a Non-Executive Director on the board of the company for a period of three years. On 2nd October, 2017 Mr. Anmol suffered a severe heart failure and expired. The board of directors of the company on 16th October, 2017 appointed Mr. Prateek to fill the casual vacancy so created. The appointment of Mr. Prateek was made for a term of three years by the board. Subsequently at the AGM held on 29-09-2018 Mr. Prateek's appointment was not proposed or approved as the board was of the view that it is not required. But the CFO of the company is of the opinion that the board of directors have

contravened the provisions of the Companies Act, 2013 in respect of non-approval of the appointment of Mr. Prateek and his office tenure. Decide.

Answer:

According to section 161(4) of the Companies Act, 2013, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board which shall be subsequently approved by members in the immediate next general meeting.

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

In the given question, the casual vacancy caused due to death of Mr. Anmol (who was appointed by the company in AGM held on 30.9.2016, for a period of 3 years) is filled by the Board of Directors by appointing Mr. Prateek for a period of three years. However, the appointment of Mr. Prateek for a period of three years is in contravention of above stated provisions as he can hold office only up to the date up to which Mr. Anmol would have held office if it had not been vacated.

Further, as per the provisions of the Act, the appointment of Mr. Prateek ought to be approved by members in the immediate next general meeting. However, the appointment of Mr. Prateek was not even proposed or approved in the AGM held on 29.9.2018. Hence, the appointment of Mr. Prateek is in contravention of the provisions of the Companies Act, 2013.Therefore, the opinion of CFO is correct.

26.May 2019 Qn no 6(b) 4 Marks:

Mr. Dhruv is a Director of M/s. LT Limited and XT Limited respectively. M/s. LT 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. LT 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. Dhruv is disqualified under Companies Act, 2013 and if so, whether he can continue as a Director in M/s LT Limited? Further can he also seek reappointment when he retires by rotation at the AGM of M/s. XT limited scheduled to be held in September, 2019?

(ii) Mr. Dhruv 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.

Answer:

According to section 164(2) of the Companies Act, 2013, no person who is or has been a director of a company which—

(a) has not filed financial statements or annual returns for any continuous period of three 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 dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.

Also, according to section 167(1)(a), the office of a director shall become vacant in case he incurs any of the disqualifications specified in section 164;

Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.

Thus, in the light of the said provisions of the Act and the facts of the question:

(i) Yes, Mr. Dhruv is disqualified under the Companies Act, 2013, as M/s LT Limited did not file financial statements for a period of three years. Also, the M/s LT Limited

(j) has defaulted in the repayment of matured deposits taken from public since 1st April, 2017 (i.e. the default has continued for more than one year).

Mr. Dhruv can continue as a director in M/s LT Limited as proviso to section 167(1)(a) provides that where the director incurs disqualification under section 164(2), the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section. Whereas he has to vacate the office of director in M/s XT Limited.

Mr. Dhruv cannot be reappointed (in the AGM to be held in September 2019) as director in M/s. XT Limited.

(ii) Mr. Dhruv cannot be appointed as an Additional Director (in the AGM to be held in June 2019) of M/s MN Limited because as per section 164(2), he is not eligible to be appointed in other company for a period of five years from the date of such default.

27.Nov 2018 Qn no 1(a) 8 Marks:

The Board of Directors of M/s. Diya Steels and Aluminium Limited, a listed Company having a paid up equity share capital of ` 15 crore and preference share capital of ` 1 crore and 1100 small shareholders holding equity shares, seeks your advice on the following:

(i) **Is it mandatory for the Company to appoint a Director to represent Small Shareholders?**

(ii) **If the Company decides to appoint such a Director, the procedure to be followed by the Company for such appointment and the tenure for which such appointment can be made.**

(iii) **Whether such a Director be considered as an Independent Director?**

(iv) **When does a person appointed as a small shareholders Director vacate his office?**

Advise suitably in the light of the provisions of the Companies Act, 2013 and the rules framed thereunder.

Answer:

According to section 151 of the Companies Act, 2013, a listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed.

So, it is not mandatory for the company to appoint a director to represent small shareholders.

Procedure for appointment: The Board of Directors of M/s Diya Steels and Aluminium Limited is advised that:

The *Companies (Appointment and Qualification of directors) Rules, 2014* provides for the procedure for appointment of Small shareholders' director according to which:

(1) A listed company, may upon notice of not less than

(a) one thousand small shareholders; or

(b) one-tenth of the total number of such shareholders,

whichever is lower, have a small shareholders' director elected by the small shareholders.

However, a listed company may opt to have a director representing small shareholders *suomotu* and in such a case the provisions of sub-rule (2), given below, shall not apply for appointment of such director.

(2) The small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall leave a notice of their intention with the company at least fourteen days before the meeting under their signature specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director.

However, if the person being proposed does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice.

(3) The notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders' director stating-

(a) his Director Identification Number;

(b) that he is not disqualified to become a director under the Act; and

(c) his consent to act as a director of the company.

Tenure: A small shareholders' director shall not, for a period of three years

from the date on which he ceases to hold office as a small shareholders' director in a company, be appointed in or be associated with such company in any other capacity, either directly or indirectly.

(iii) Small shareholder director as Independent Director: Such director shall be considered as an independent director subject to, his being eligible under sub- section (6) of section 149 and his giving a declaration of his independence in accordance with sub-section (7) of section 149 of the Act.

(iv)Vacation of office by small shareholder director: A person appointed as small shareholders' director shall vacate the office if -

(a) the director incurs any of the disqualifications specified in section 164;

(b) the office of the director becomes vacant in pursuance of section 167;

(c) the director ceases to meet the criteria of independence as provided in sub- section (6) of section 149.

28.MTP Mar 2019 QN no 1(a) 6 Marks

State the legal positions as to the valid appointment of the directors in the given situations in the light of the Companies Act, 2013-

i. **Shiksham Ltd. was formed for prompting the girls education with 15 directors in its Board. Due to expansion of its objective at large scale, the company increased the strength of its directors to 20 without passing SR.**

ii. **Mr. Kabir was appointed as an alternate director on behalf of Mr. Robert, as Mr. Robert goes abroad and comes back to India temporarily and leaves country again.**

iii. **PQR Ltd., who failed to file a financial statement in previous financial year 2017- 2018, appointed Mr. Khurana as a director in July 2018.**

Answer

(i) As per section 149(1) of the Companies Act, 2013, every public company must have at least three directors. A private limited company should have minimum two directors. A one person company (OPC) will have minimum one director. Maximum directors can be 15. Maximum number of directors can be increased beyond 15 by passing a special resolution.

However, MCA vide Notification dated 5-6-2015 issued under section 462 of Companies Act, 2013, the upper limit of 15 directors is not applicable to section 8 (licensed i.e. non-profit) companies.

Therefore, increase in the strength of directors to 20 in the Shiksham Ltd. without passing SR is valid.

(ii) As per section 161(2) of the Companies Act, 2013, the alternate director will vacate his office as soon as the foreign director comes to India. Thus, return of Original director (Mr. Robert)to India would serve. However, if Mr. Robert goes abroad and comes back to India temporarily and leaves country again, thus, becoming unable to transact business, alternate director (Mr. Kabir) would continue for such temporary period.

(iii) As per section 164(2) of Companies Act, 2013, PQR Ltd. is a defaulted company as it failed to filed financial statement in the financial year 2017-2018 . If a company is a defaulting company, any person appointed as director immediately, as per the amendment w.e.f. 7.5.2018, will not be disqualified for first six months after joining i.e., from date of his appointment. Hence the appointment of Mr. Khurana as a director is valid upto January 2019.

29.MTP April 2019 Qn no 1(a) 6 Marks

On the ground of the conviction for an offence dealing with related party transaction, Mr. Gap was disqualified to hold the directorship in XYZ Ltd. His vacancy was filled up by Mr. Samarth by the Board as a director on 3rd April, 2018 which was subsequently approved by the members in the immediate next general meeting. Unfortunately Mr. Samarth expired on 15th May, 2018 after working about 40 days as a director. The

Board now wishes to fill up the said vacancy by appointing Mr. Able in the forthcoming meeting of the Board. Advise the Board on the validity of the following appointments as per the provisions under the Companies Act, 2013.

(i) **Holding of Mr. Samarth in place of Mr. Gap**

(ii) **Appointment of Mr. Able in place of Mr. Samarth**

Answer

Section 161(4) of the Companies Act, 2013 provides that if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any

regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board which shall be subsequently approved by members in the immediate next general meeting.

Any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

(i) In view of the above provisions, in the given case, the appointment of Mr. Samarth in place of the disqualified director Mr. Gap was in order. In normal course, Mr. Samarth could have held his office as director up to the date to which Mr. Gap would have held the same.

(ii) As per facts, Mr. Samarth expired on 15th May, 2018 and again a vacancy has arisen in the office of director owing to death of Mr. Samarth who was appointed by the board and approved

by members to fill up the casual vacancy resulting from disqualification of Mr. Gap. Vacancy arising on the Board due to vacation of office by the director appointed to fill a casual vacancy in the first place, does not create another casual vacancy as section 161 (4) clearly mentions that such vacancy is created by the vacation of office by any director appointed by the company in general meeting. Hence, the Board cannot fill in the vacancy arising from the death of Mr. Samarth. So cannot appoint Mr. Able in the office of Mr. Samarth.

The Board may however appoint Mr. Able as an additional director under section 161 (1) of the Companies Act, 2013 provided the articles of association authorises the board to do so, in which case Mr. Able will hold the office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

30.RTP May 2019 Qn no 8

Rudraksh Ltd., a public company, was incorporated for supply of solar panels for the emerging project of government for construction of highways. However, the said project did not turn up for two years due to some legal implications. During the said period, no any significant accounting transaction was made and so the company did not file financial statements and annual returns during the last two financial years. In the meantime, the Board proposed for Mr. Ram & Mr. Rahim to be appointed as an Independent Directors for their independent and expertise knowledge and experience for better working and improvement of financial position of the company.

Evaluate in the light of the given facts, the following legal position:

(i) **Comment upon the accountability for non- filing of financial statements and annual returns for last two financial years of the Rudraksh Ltd.**

(ii) **Nature of the proposal for an appointment of Mr. Ram & Mr. Rahim in the Rudraksh Ltd. for improvement of the company.**

Answer

(i) As per the stated facts, Rudraksh Ltd. is an inactive company as per the provision given under the Companies Act, 2013. According to the section 455 of the Companies Act, 2013, where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company (which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;) may make an application to the Registrar for obtaining the status of a dormant company. Since in the given case, Rudraksh Ltd. has not filed financial statements or annual returns for 2 financial years consecutively, the Registrar shall issue a notice to that effect and enter the name in the register maintained for dormant companies.

(ii) As per section 149(6) read with Rule 4 of the *Companies (Appointment and Qualification of Directors) Rules, 2014*, the public companies of prescribed class shall require to appoint minimum 2 Independent directors. However, vide Notification number G.S.R. 839(E) dated 5th July, 2017, an amendment was issued through the *Companies (Appointment and Qualification of Directors) Amendment Rules, 2017* inter-alia amending rule 4 of the *Companies (Appointment and Qualification of Directors) Rules, 2014.* It is

provided that an unlisted public company which is a joint venture, a wholly owned subsidiary or a dormant company will not be required to appoint Independent Directors. So, the proposal for appointment of Independent Director (Mr. Ram & Mr. Rahim) is not necessitated.

31.Broadway Infrastructure Limited entered into a contract with Royal forgings, in which wife of Mr. Patrick, a director of the company is a partner. The contract is for supply of certain components by the firm for a period of three years with effect from 1st September , 2018 on credit basis. Explain the requirements under the Companies Act, 2013, which should have been complied with by Broadway Infrastructure Limited before entering into contract with Royal forgings.

What would be your answer in case Royal forgings is a private Limited company in which wife of Mr. Patrick is holding shares?

Answer

The contract for supply of components entered into between Broadway Infrastructure Limited and Royal forgings, a partnership firm (in which wife of Mr. Patrick, a director of the company is a partner) attracts Section 184,188 and 189 of the Companies Act, 2013.

As per Section 188, company cannot enter into contract with firm for supply or purchase of goods or material where director of company or his relative is partner of firm without approval of Board of directors at board meeting. As per Section 184, interested directors must disclose his interest at board meeting at which said business is to be discussed. Interested directors should not take part in the discussion or voting at board meeting. If he does vote, his vote shall not be counted. In case of Private limited Company interested director can participate in the board meeting after disclosure of interest.

As per Section 189, prescribed particulars of the contract must be entered into the Register of Contract in which directors are interested in Form MBP-4. Every entry made in Register should be authenticated by Company Secretary of company or any other person authorized by Board. After each entry in the register, it shall be placed before the next board meeting and shall be signed by all the directors present thereat.

Based upon discussion of the above provisions:

If the value of the contract or transaction is exceeded than limit specified, prior approval of shareholders is required to be obtained. Question does not suggest value of transaction. Assuming that it is within limits specified under the Act, consent of shareholders is not required.

If Royal forgings is a private limited company: The provision of Section 188 are applicable to it. As the directors wife (i.e Patrick's wife) is member of Royal forgings private limited.

Section 184 is not applicable as Mr. Patrick, director of Broadway Infrastructure Limited is neither director nor holding any shares in Royal Forgings Private Limited. Shares held by Mr. Patrick's wife are not to be considered. Hence the provisions of Section 184 are not attracted.

32.Nov 2019 Qn no 1(a) 8 Marks

You are the CFO and in-charge of legal compliances of large multi-national company in India. The Board of Directors of the Company are broad based and comprise of competent directors who are Indian as well as Foreign Nationals. Mr. "X", who is a Director (Business Development) on the Board is very often on business tour abroad. He approached you and wants to know from you the regulatory provisions of the Companies Act, 2013 relating to appointment of Alternate Directors. Analyse the following situations and advise suitably, Mr. X referring to the provisions of the Companies Act, 2013.

(a) **To how many directors can a person be appointed as an alternate director and how many votes does he have in one Board Meeting.**

(b) **If the original director joins the Board Meeting through video conferencing without returning to India, then, can the alternate director appointed in his place attend the same board meeting? If yes, whose presence and vote will be counted?**

(c) **In case of private company, where an alternate director is appointed in place of a non-executive director whose term is indefinite, then, what will be the tenure of such alternate director, provide the original director does not return to India for a longer period say 3-4 years?**

Can an Executive Director/Whole Time Director/Managing Director appoint alternate directors?

Answer

According to Section 161(2) of the Companies Act, 2013, the Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company o *r holding directorship in the same company*, to act as an alternate director for a director during his absence for a period of not less than three months from India.

According to section 165, no person shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time. However, the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Hence, in the instant case, a person can be appointed as an alternate director for only one director in the **same company** but maximum twenty different companies.

An alternate director will have only one vote as he can hold alternate directorship for one director only in the same company.

(b) The office of alternate director is separate from the attendance of the original director in the Board Meeting and as per section 161(2) of the Companies Act, 2013, an alternate director is appointed to hold the office of original director during his absence from India. Accordingly, as far as attendance in Board Meeting by the original director is concerned, an alternate director may continue to hold office even if the original director joins the meeting by video conferencing, but the original director will be deemed to have joined only as a invitee and the attendance of the alternate director shall be counted for the purpose of the Board Meeting. This is specific only with respect to matters which shall not be dealt with through video conferencing. In such matters where video conferencing is allowed, voting of original director will be counted.

(c) According to second proviso to section 161(2), an alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India.

Third proviso says that if the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

Hence, in the instant case, the alternate director shall hold office till the time original director returns to India, even if the period is as long as 3-4 years.

(d) As per section 161(2), the Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India.

From the above provision, it is clear that an alternate director

can be appointed for any director. Hence, an alternate director can be appointed for Executive director/ Whole time Directors / Managing Director

however, not by them but by the board of directors.

33.Nov 2019 Qn no 6(a)(i) 4 Marks

Mr. 'K' is a small shareholder director in M/s KGP Tyres Limited from 1st April 2018 and in M/s VSR Cotton Mills Limited from 1st April 2019, in compliance with the relevant provisions of the Companies Act, 2013. M/s KGP Tyres Limited has not paid interest on the public deposits due from 1st July 2018. In the light of the information given above, examine the following under the provisions of the Companies Act, 2013.

(i) **Whether the office of Mr. 'K', small shareholder director, shall become vacant in M/s KGP Tyres Limited and M/s VSR Cotton Mills Limited?**

(ii) **If yes, state the period from which the office of the directorship shall become vacant.**

Answer

According to Rule - 7, *Companies (Appointment and Qualification of Directors) Rules, 2014*, a person shall not be appointed as small shareholders' director of a company, if the person is not eligible for appointment in terms of section 164.

Also, a person appointed as small shareholders' director shall vacate the office if the director incurs any of the disqualifications specified in section 164.

According to Section 167(1)(a), the office of a director shall become vacant in case he incurs any of the disqualification specified in section 164. Provided that when he incurs disqualification under section 164(2), the office of the director shall become vacant in all

companies, other than the company which is in default under that sub section [inserted by Companies (Amendment) Act, 2017 w.e.f. 07-05-2018]

According to proviso of section 164(2) of the Companies Act, 2013, where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.

In the instant case, M/s KGP Tyres Limited has not paid interest on the public deposits due from 1st July, 2018 and disqualification under section 164(2)(b) of the Companies

Act, 2013 occurs on a person who is or has been a director of a company which has

failed to repay the deposits accepted by it or pay interest thereon and such failure to pay or redeem continues for one year or more. Accordingly, following are the answers:

(i) Yes, the office of Mr. K shall become vacant in M/s VSR Cotton Mills Limited as he has become disqualified under section 164(2)(b) from 1st July 2019 but not in M/s KGP Tyres Limited.

(ii) Mr. K's office of the directorship shall become vacant from 1st July, 2019.

34.Nov 2019 Qn no 6(a)(ii) 4 Marks

Mr. 'R' holds directorship in 10 Public Companies and 11 Private Companies as on 31.05.2019. One of the above Private Company is a dormant Company. Apart from the dormant Company, on 30.06.2019 a Private Company (in which Mr. R is holding directorship) has become a subsidiary of a Public Company.

In the light of the provisions of the Companies Act, 2013 examine and decide:

(i) **The validity of holding directorship of Mr. 'R' with reference to number of directorship as on 31 05.2019 and as on 30.06.2019.**

Whether a Company has power to specify any lesser number of Companies in which a director of the Company may act as a director?

Answer

According to Section 165 of the Companies Act, 2013,no person shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time. Whereas that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

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 reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included.

In the instant case, holding of directorship of Mr. R as on 31.05.2019 is valid as he is holding directorship in 10 public companies and in 11 private companies out of which one company is dormant company. So, maximum directorship he is holding in 20 companies.

Holding of directorship of Mr. R as on 30.06.2019 is not valid, as on 30.06.2019 a private company (in which Mr. R is holding directorship) has become a subsidiary of a public company. Accordingly, it means that this private company shall deemed to be included in the limit of public companies and thereby increasing the number of public companies in which he is holding directorship to 11 and making it invalid.

(ii) According to section 165(2), Subject to the provisions of sub-section (1), the members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors.

35.Nov 2019 Qn no 6(B) 4 Marks

Mr. Thangavel is a Director in 7 Companies with a DIN (Director Identification Number) allotted to him. Again, another DIN was inadvertently allotted to him which was never used for filing any document with any Authority. He desires to surrender the second DIN and keep all his directorship with the first DIN. Advise him the procedure to be followed under the provisions of the Companies Act, 2013 and the Rules made thereunder for surrendering the second DIN inadvertently obtained by him.

Answer

According to Rule 11 of *the Companies (Appointment and Qualification of Directors) Rules, 2014*: The Central Government or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director may, upon being satisfied on verification of particulars or documentary proof attached with the application received along with fee as specified from any person, cancel or deactivate the DIN in case on an application made

in Form DIR-5 by the DIN holder to surrender his DIN along with declaration that the said DIN has never been used for filing of any document with any authority, the Central Government may deactivate such DIN.

Provided that before deactivation of any DIN in such case, the Central Government shall verify e-records.

36.MTP NOV 2019 Qn no 1(a) 6 Marks

Eternal Ltd., a wholly owned government company consisting of 10 directors in its Board with the subsidiary company, Evergreen Ltd., having 9 directors in its board. Referring to the provisions of the Companies Act, 2013, examine the following situations:

(i) **Number of directors liable to retire by rotation in Eternal Ltd.at an AGM.**

(ii) **Number of directors liable to retire in Evergreen Ltd.**

(iii) **What will be the legal situation in case Eternal Ltd. is a listed Government Company?**

Answer

Section 152(6) of the Companies Act, 2013 specifies the legal provision as to the retirement of directors by rotation of public company . According to the said provision, out of retiring directors, 1/3rd of directors must retire every year. However, as per amendment to the Companies Act, 2013, by MCA vide Notification No. 463(E) on 13/6/17, the government companies are exempted from the applicability of Section 152(6) and 152 (7) of the Act. Accordingly, a Government company, which is not a listed company, in which not less than fifty-one per cent of paid up of share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; and a subsidiary of a Government company, referred above, the provision as to retirement by rotation is not applicable.

Following are the answers in the light of the stated provisions:

(i) Since Eternal Ltd. is a wholly owned Government Company (other than listed company), so section 152(6) in given circumstances is not applicable. None of the directors of Eternal Ltd. will be retired by rotation under section 152(6).

(ii) Since Evergreen Ltd. is a subsidiary company of Eternal Ltd. so retirement by rotation is also not applicable here. None of the directors of Evergreen Ltd. will be retired by rotation under section 152(6).

(iii) In case Eternal Ltd. is a listed Government Company, then section 152(6) will be applicable presuming that a company has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar. According to it, the Eternal Ltd will be treated as a

(iv) public company, with 10 directors in its Board, 3 can be non-retiring

(v) and out of 7 retiring directors, 2 must retire every year.

37.MTP Nov 2019 Qn no.6(a) 8 Marks

One of the Objects Clauses of the Memorandum of Association of Info Company Limited conferred upon the company power to sell its undertaking to another company with identical objects. Company's Articles also conferred upon the directors whereby power was conferred upon them to sell or otherwise deal with the property of the company. At an Extraordinary General Meeting of the company, members passed an ordinary resolution for the sale of its assets on certain terms and authorized the directors to carry out the sale. Directors refused to comply with the wishes of the members where upon it was contended on behalf of the members that they were the principals and directors being their agents, were bound to give effect to their (members') decisions.

Examining the provisions of the Companies Act, 2013, answer the following:
Whether the contention of members against the non-compliance of members' decision by the
directors is tenable?

Whether it is possible for the members usurp the powers which by the Articles are vested in the directors by passing a resolution in the general meeting?

Powers of Board: In accordance with the provisions of the Companies Act, 2013, as contained under Section 179(1), the Board of Directors of a company shall be entitled to exercise all such powers and to do all such acts and things, as the company is authorized to exercise and do:

Provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made there under including regulations m ade by the company in general meeting.

Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the members or articles of the company or otherwise to be exercised or done by the company in general meeting.

Section 180(1) of the Companies Act, 2013, provides that the powers of the Board of Directors of a company which can be exercised only with the consent of the company by passing of a special resolution. Clause (a) of Section 180(1) defines one such power as the power to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking of

the whole or substantially the whole or any of such undertakings.

Therefore, the sale of the undertaking of a company can be made by the Board of Directors only with the consent of members of the company accorded vide a special resolution.

Even if the power is given to the Board by the memorandum and articles of the company, the sale of the undertaking must be approved by the shareholders in general meeting by passing a special resolution.

Therefore, the correct procedure to be followed is for the Board to approve the sale of the undertaking clearly specifying the terms of such sale and then convene a general meeting of members to have the proposal approved by a special resolution.

In the given case, the procedure followed is completely incorrect and violative of the provisions of the Act. The shareholders cannot on their own make out a proposal of sale and pass an ordinary resolution to implement it through the directors.

The contention of the shareholders is incorrect in the first place as it is not within their authority to approve a proposal independently of the Board of Directors. It is for the Board to approve a proposal of sale of the undertaking and then get the members to approve it by a special resolution. Accordingly the contention of the members that they were the principals and directors being their agents were bound to give effect to the decisions of the members, is not correct.

Further, in exercising their powers the directors do not act as agent for the majority of members or even all the members. The members therefore, cannot by resolution passed by a majority or even unanimously supersede the powers of directors or instruct them how they shall exercise their powers. The shareholders have, however, the power to alter the Articles of Association of the company in the manner they like subject to the provisions of the Companies Act, 2013.

Study Material

38. In addition to a listed company, which other company is required to appoint a woman director-

(a) **a company having paid–up share capital of ` one hundred crore**

(b) **a company having turnover of ` three hundred crore**

(c) **a company meeting both the parameters mentioned at (a) and (b)**

(d) **a company meeting any one of the parameters i.e. either (a) or (b)**

Answer: d) Hint: Second proviso to section 149(1) of the Companies Act, 2013 along with Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014

39. An independent director who has tendered resignation from the Board shall be replaced by a new independent director within ----------from the date of such resignation.

(a) **one month**

(b) **two months**

(c) **three months**

(d) **four months**

Answer: c) **Hint:** Section 149(4) of the Companies Act, 2013 along with Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014

40. A shareholder holding shares of nominal value of not more than ---------- is a small shareholder.

(a) ` 5,000

(b) `10,000

(c) `15,000

(d) ` 20,000

Answer:d) **Hint:** Section 151 of the Companies Act, 2013

41. A person appointed as a director is required to give his written consent in Form DIR-2 ---------- to the company.

a) **on or before his appointment as director**
b) **within 10 days of his appointment as director**
c) **within 20 days of his appointment as director**
d) **None of the above**

Answer: a) **Hint:** Section 152(5) of the Companies Act, 2013 along with Rule 8 of the Companies (Appointment and Qualification of Directors) Rules, 2014

42. In case the articles of a public company do not provide for the retirement of all directors at every annual general meeting, not less than ---------- of the total number of directors shall be liable to retire by rotation.

(a) **one-third**
(b) **within 10 days of his appointment as director**
(c) **within 20 days of his appointment as director**
(d) **None of the above**

Answer: b) **Hint:** Section 152(6) of the Companies Act, 2013

43. An independent director shall hold office for a term up to ---------- on the Board of a company.

a) **three consecutive years**
b) **four consecutive years**
c) **five consecutive years**
d) **None of the above**

Answer: c) **Hint:** Section 149(10) & 149(11) of the Companies Act, 2013

44. Every company is required to furnish Director Identification Numbers of all its directors to the Registrar within of the receipt of intimation regarding DIN from the directors.

(a) **ten days**

(b) **fifteen days**

(c) **twenty days**

(d) **thirty days**

Answer:b) **Hint:** Section 157 of the Companies Act, 2013

45. The amount of ` 1,00,000 deposited by a proposed director (other than a retiring director) shall be refunded to him if he gets more than---------- of the total valid votes cast either on show of hands or on poll.

(a) 10%

(b) 15%

(c) 25%

(d) None of the above

Answer: c) **Hint**: Section 160 of the Companies Act, 2013

46. An additional director appointed by the Board of Directors shall continue to hold the office up to the due date of the next ----------

a) **Board meeting**

b) **Annual general meeting**

c) **Extra-ordinary general meeting**

d) **None of the above**

Answer: b) **Hint:** Section 161(1) of the Companies Act, 2013

47. A person is permitted to hold office as director (including any alternate directorship) in maximum twenty companies of which maximum number of public companies in which he can be appointed as director shall not exceed

(a) **Five**

(b) **Eight**

(c) **Ten**

(d) **Twelve**

Answer: c) **Hint:** Section 165 of the Companies Act, 2013

48**. The Articles of Association of Rajasthan Toys Private Limited provide that the maximum number of Directors in the company shall not exceed 10. Presently, the company has 8 directors. Its Board of Directors desires to increase the number of directors from 8 to 16. Advise whether under the provisions of the Companies Act, 2013, the Board can do so.**

Answer:

Under Section 149 (1) of the Companies Act, 2013 every company shall have a Board of Directors consisting of individuals as directors and shall have 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. The maximum number of directors shall be 15.

The First Proviso to Section 149 (1) states that a company may appoint more than 15 directors after passing a special resolution.

From the provisions of section 149 (1) as above, though the minimum number of directors may vary depending on whether the company is a public, private or a one person company, the maximum number of directors is same for all types of companies i.e. 15 directors.

In the given case since the number of directors is proposed to be increased from 8 to 16, the company will be required to comply with the following provisions:

(i) Alter its Articles of Association as per the provisions of Section 14 of the Act by passing a special resolution, so as to increase the number of directors in the Articles from 10 to 16;

(ii) Also take approval for increasing the maximum number of directors from 8 to 16 by means of a special resolution passed by the members at a duly convened general meeting.

49. **ADJ Limited has 10 directors on its board. Two of the directors have retired by rotation at an Annual General Meeting. The place of retiring directors is not so filled up and the meeting has also not expressly resolved 'not to fill the vacancy'. Since the AGM could not complete its business, it is adjourned till the same day in the next week, at the same time and place. At this adjourned meeting also the place of retiring directors could not be filled up, and the meeting has also not expressly resolved 'not to fill the vacancy'.**

Referring to the provisions of the Companies Act, 2013, decide:

(i) **Whether in such a situation the retiring directors shall be deemed to have been re-appointed at the adjourned meeting?**

(ii) **What will be your answer in case at the adjourned meeting, the resolutions for re-appointment of these directors were lost?**

(iii) **Whether such directors can continue in case the directors do not call the Annual General Meeting?**

Answer

Retiring director – When to be deemed director?

In accordance with the provision of the Companies Act, 2013, as contained in section 152(7)(a) which provides that if at the annual general meeting at which a director retires and the vacancy is not so filled up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned to same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

Section 152(7)(b) further provides that if at the adjourned meeting also, the place of the retiring is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless at the adjourned meeting or at the previous meeting a resolution for the re-appointment of such director was put and lost or he has given a notice in writing addressed to the company or the Board of Directors expressing his desire not to be re-elected or he is disqualified.

Therefore, in the given circumstances answers to the asked questions shall be as under:

i. In the first case, applying the above provisions, the retiring directors shall be deemed to have been re-appointed.

ii. In the second case, where the resolutions for the reappointment of the retiring directors were lost, the retiring directors shall not be deemed to have been re-appointed.

iii. Section 152(6)(c) states that 1/3rd of the rotational directors shall retire at every AGM. Accordingly, the directors will retire as soon as the AGM is held on its due date. Further, as per Section 96 (dealing with Annual General Meeting), every company other than a One Person Company is required to hold an Annual General Meeting in each year. Hence, it is necessary for the company to hold the AGM, where the directors liable to retire by rotation shall retire. In case AGM is not held till the last date on which it should have been held, the term of retiring directors ends on this last date and it can not be extended till the new date when the AGM shall be held. As the calling of the AGM is the duty and responsibility of the directors, they by omitting to call the AGM on its due date cannot take advantage of their own fault and by that means cannot extend their own continuance in the office for any period of their choice and as long as the holding of the next AGM does not take place.

50. Prince Ltd. desires to appoint an additional director on its Board of directors. The Articles of the company confer upon the Board to exercise the power to appoint such a director. As such M is appointed as an additional director. In the light of the provisions of the Companies Act, 2013, examine:

(i) **Whether M can continue as director if the annual general meeting of the company is not held within the stipulated period and is adjourned to a later date?**

(ii) **Can the power of appointing additional director be exercised at the Annual General Meeting by the members?**

(iii) **As the Company Secretary of the company what checks would you make after M is appointed as an additional director?**

Answer:

1. Section 161(1) of the Companies Act, 2013 provides that the articles of association of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director at the general meeting, as an additional director at any time and such director will hold office upto the date of the next annual general meeting or the last date on which such annual general meeting should have been held, whichever is earlier.

(i) M cannot continue as director till the adjourned annual general meeting, since he can hold the office of directorship only up to the

(ii) date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier. Such an additional director shall vacate his office latest on the date on which the annual general meeting should have been held under Section 96 of the Companies Act, 2013. He cannot continue in the office on the ground that the meeting was not held or it could not be called within the time prescribed.

(iii) The power to appoint additional directors vests with the Board of Directors and not with the members of the company. The only condition is that the Board must be conferred such power by the articles of the company.

(iv) As a Company Secretary, I would put the following checks in place in respect of M's appointment as an additional director:

(a) He must have got the Directors Identification Number (DIN).

(b) He must furnish the DIN and a declaration that he is not disqualified to become a director under the Companies Act, 2013.

(c) He must give his written consent in Form DIR-2 on or before his appointment as director and such consent stands filed with the Registrar within 30 days of his appointment.

(d) His appointment is made by the Board of Directors.

His name is entered in the statutory records as required under the Companies Act, 2013

51. The Board of directors of XYZ Ltd. filled up a casual vacancy caused by the death of Mr. P by appointing Mr. C as a director on 3rd April, 2019 which was subsequently approved by the members in the immediate next general meeting. Unfortunately Mr. C expired on 15th May, 2019 after working about 40 days as a director. The Board now wishes to fill up the casual vacancy by appointing Mrs. C in the forthcoming meeting of the Board. Advise the Board in this regard keeping in view the provisions of the Companies Act, 2013.

Answer: Section 161(4) of the Companies Act, 2013 provides that if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board which shall be subsequently approved by members in the immediate next general meeting.

Further, any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

In view of the above provisions, in the given case, the appointment of Mr. C in place of the deceased director Mr. P was in order. In normal course, Mr. C could have held his office as director up to the date to which Mr. P would have held the same.

However, Mr. C expired on 15th May, 2018 and again a vacancy has arisen in the office of director owing to death of Mr. C who was appointed by the board and approved by members to fill up the casual vacancy resulting from P's demise. Vacancy arising on the Board due to vacation of office by the director appointed to fill a casual vacancy in the first place, does not create another casual vacancy as section 161 (4) clearly mentions that such vacancy is created by the vacation of office by any director appointed by the company in general meeting. Hence, the Board cannot fill the vacancy arising from the death of Mr. C who was appointed to fill a casual vacancy.

The Board may however appoint Mrs. C as an additional director under section 161 (1) of the Companies Act, 2013 provided the articles of association authorise the board to do so, in which case Mrs. C will hold the office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

52. Mr. John is a director of MNC Ltd., which had accepted deposits from public. The financial position of MNC Ltd. took a southward turn and became bad to worse and ultimately, it failed to repay the deposits which fell due for payment on 10th April, 2018 and such repayment has not been made till 5th May, 2019. 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, 2019. 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.

Answer

Section 164 (2) (b) of the Companies Act, 2013 states that where a person is or has been a director of a company which has failed to repay its deposit on due date and such failure continues for one year or more, then such person shall not be eligible to be appointed as a director of any other company for a period of five years from the date on which such company, in which he is a director, failed to repay its deposits.

In the instant case, MNC Ltd., has failed to repay its deposit on due dates and the default continues for more than one year. Hence, Mr. John will not be eligible to be appointed as a director of JKL Ltd

53. XYZ Limited is an unlisted public company having a paid-up share capital of twenty crore rupees as on 31st March, 2019 and a turnover of one hundred fifty crore rupees during the year ended 31st March, 2019. The total number of directors is thirteen.

Referring to the provisions of the Companies Act, 2013 answer the following:

(i) **State the minimum number of independent directors that the company should appoint.**

(ii) **How many independent directors are to be appointed in case XYZ Limited is a listed company?**

Answer:

(i) According to Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following class or classes of companies shall have at least 2 directors as independent directors:

the Public Companies having paid up share capital of 10 crore rupees or more; or

the Public Companies having turnover of 100 crore rupees or more; or

the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees.

In the present case, XYZ Limited is an unlisted public company having a paid-up capital of `20 crores as on 31st March, 2019 and a turnover of `150 crores during the year ended 31st March, 2019. Accordingly, as per Rule 4 it must have at least 2 directors as independent directors.

(ii) According to Section 149(4) of the Companies Act, 2013, every listed public company shall have at least one-third of the total number of directors as independent directors. The Explanation to Section 149(4) specifies that any fraction contained in such one- third numbers shall be rounded off as one.

In the present case, XYZ Limited is a listed company and the total number of directors is 13. Hence, in this case, XYZ Limited must have at least 5 directors (1/3 of 13 is 4.33 rounded as 5) as independent directors.

Explanation to Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 clarifies that for the purpose of this Rule the paid up sharecapital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account.

In the present case, it is mentioned that paid up capital of XYZ Limited is `20 crore as on 31st March, 2019 and turnover is `150 crore during the year ended 31st March, 2019. It is, therefore, assumed that 31st March, 2019 is the last date of latest audited financial statements.

54.RTP Nov'2020 Q no 16

The Board of Directors of the Universal Ltd. which is an MNC comprised of directors who were Indian as well as of Foreign Nationals. Mr. "X", who is a Director on the Board is very often on business tour abroad. He approached you being legal expert of the company to know from you the regulatory provisions of the Companies Act, 2013 relating to appointment of Alternate Directors.

Examine the following situations and advise suitably, Mr. X referring to the provisions of the Companies Act, 2013.

(a) **Number of directors for which a person can be appointed as an alternate director.**

(b) **Where an alternate director is appointed in place of a director whose term is indefinite, then, what will be the tenure of such alternate director?**

(c) **Can an Executive Director/Whole Time Director/Managing Director appoint alternate directors?**

Answer

a)According to Section 161(2) of the Companies Act, 2013, the Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India.

According to section 165, no person shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time. However, the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Hence, in the instant case, a person can be appointed as an alternate director for only one director in the same company but maximum twenty different companies.

(b) According to second proviso to section 161(2), an alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India.

Third proviso says that if the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

Hence, in the instant case, the alternate director shall hold office till the time original director returns to India.

(c) As per section 161(2), the Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India.

From the above provision, it is clear that an alternate director can be appointed for any director by the board of directors and not by an Executive Director/Whole Time Director/Managing Director for themselves

Chapter 2 -Appointment & Remuneration of Managerial Personnel

1.RTP May 2018 Qn no 2(i)

There are Four Directors in Shine Paper Ltd. Mr. Madhav being the director instation, has been authorized to draw and endorse Cheque or other negotiable instruments on account of the company and also to direct registeration of transfer of shares and signing the share certificates etc. Evaluvate whetehr he will be treated as managing director of the company? Also recommend the procedure of appointment

Answer

Managing Director [Section 2(54)]: Section 2(54) of the Companies Act, 2013 defines a "Managing Director" as a director who is entrusted with substantial powers of management of the affairs of the company by:

a) virtue of articles of a company, or

b) an agreement with the company, or

(c) a resolution passed in its general meeting, or by its Board of Directors, and includes a director occupying the position of the managing director, by whatever name called.

Explanation to Section 2 (54) clarifies that substantial powers of the management shall not be deemed to include the power to do such administrative acts of a routine nature when so authorised by the Board such as:

(i) the power to affix the common seal of the company to any document or

(ii) to draw and endorse any cheque on the account of the company in any bank or (iii) to draw and endorse any negotiable instrument or

(iv) to sign any certificate of share or

(v) to direct registration of transfer of any share.

In the instant case, Mr. Madhav, a director in Shine Paper Limited has been authorized to draw and endorse cheque or other negotiable instruments on account of the company and also to direct registration of transfer of shares and signing the share certificates etc.

Hence, according to explanation to section 2(54), Mr. Madhav will not be treated as

managing director of the company as he is authorized to do administrative acts of a routine nature.

Procedure of appointment of a managing director [Section 196(4)]

Approval by Board and Shareholders: Subject to the provisions of section 197 and Schedule V, a managing director shall be appointed, and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting. The terms and conditions and remuneration

(i) approved by Board of Directors at a meeting and

(ii) approval of shareholders by a resolution at the next general meeting of the company.

Approval By central Government: In case Such appointment is at variance to the conditions specified in Part 1 of Schedule V, the appointment shall be approved by the central government

Inclusion of Certain Disclosures in Notice: The notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any.

Filing Return : A return in the prescribed form (Form No. MR.1) along with the prescribed fee shall be filed with the Registrar within sixty days of such appointment.

2.RTP May 2018 Qn no 2(ii)

Excel limited is a listed company with a turnover of ` 60 crores in the FY 2016-2017. The company appoints Ms. R as the women director on 1st March 2017. Ms. R is already a director in twelve companies including ten public companies. Also, Ms. R is chartered accountant in practice.

Further, also, Ms. R, is a director in Supreme Ltd. where he is acting in a professional capacity. Since lots of proposal for the holding of directorship in various companies are lined up before the Ms. R, so in order to retain him, Remuneration and

nomination committee proposed to enhance the remuneration of Ms. R from 4 Lac per month to 6 Lac per month. However, Supreme Limited was running in losses for last 2 years.

Evaluate in the light of the given facts, the following situations with reference to the provisions of the Companies Act, 2013-

(1) The validity of an appointment of Ms. R in Excel Limited.

(2) Analysis the proposition of enhancement of the remuneration of Ms. R in Supreme Ltd.

Answer:

Number of directorships: As per section 165(1) of the Companies Act, 2013, no person shall hold office as director, including any alternate directorship, in more than 20 companies at the same time.

Out of the limit of 20, the maximum number of public companies in which a person can be appointed as a director shall not exceed 10. [Proviso to section 165(1)]

It may be noted that the limit of Public Companies(10) shall include directorship in private companies that are either holding or subsidiary company of a public company.

However the limit of directorships of 20 Companies shall not include the directorship in a dormant company:; as also in a section 8 Company.

Private companies that is either holding or subsidiary company of a public company shall be included in reckoning the limit of public companies in which a person can be appointed as a director.

In the instant case, Ms. R was appointed as a women director on 1st March, 2017 in Excel Limited. She was already holding directorship in twelve companies including ten public companies.

As Ms. R was already a director in ten public companies, her appointment in Excel Limited is not valid as it will lead to her directorship in 11 public companies.
In this case, either she can choose between the companies in which she wishes to continue to hold the office of director or resign her office as director i n the other remaining companies to maintain the limit of holding of directorship.

(2)**Remuneration :** In the given case, since, the company has suffered losses in Schedule V]
The total remuneration that supreme Limited is intending to pay to Ms. R is 72 lakhs per the last two years, the company will pay remuneration to its directors in accordance with the provisions of Schedule V to the Companies Act, 2013.
In case of a managerial person who is functioning in a professional capacity, no approval of

Central Government is required, if such managerial person is not having any interest in the capital of the company or its holding company or any of its subsidiaries directly or indirectly or through any other statutory structures and not having any, direct or indirect interest or related to the directors or promoters of the company or its holding company or

any of its subsidiaries at any time during the last two years before or on or after the date of appointment and possesses graduate level qualification with expertise and specialised knowledge in the field in which the company operates. [Item B of Section II of annum, from the current remuneration of 48 lakhs per annum. Since Ms. R is working in professional capacity and the remuneration has been proposed by the remuneration Committee, no approval of Central Government is required. Also, the case shall be in compliant of Schedule V, Central Government approval will not be required even when there is increase in remuneration payable.

3.Aug 2018 Qn no 4(a) 8 Marks:

Mr. Xavier, a Director of Mac Ltd., was appointed on 1st April, 2017. One of the terms of appointment was that if the company had no profits in a particular year, he will be paid remuneration in accordance with Schedule V. For the financial year ended 31 st March, 2018, the company suffered heavy losses. The company was not in a position to pay any remuneration but he was paid Rs. 60 lacs for the year, as paid to other directors. The effective capital of the company is Rs.100 crores.

Besides, Mr. Young was appointed as Managing Director in the Company. He was appointed for the term of 5 years with effect from 1.4.2014 on a salary of Rs. 12 lakh per annum. The Board of Directors of the company on coming to know of certain questionable transactions, terminated the services of the Mr. Young from 1.3.2018. Mr. Young termed his removal as illegal and claimed compensation from the company.

Integrating the given facts in terms of the relevant provisions of the Companies Act, 2013, Examine the following situations:

(i) Validity of the payment of remuneration to Mr. Xavier.
Compensation paid, if any, to Mr. Young.

Answer:

(i) Under Section II of Part II of Schedule V to the Companies Act, 2013, the remuneration payable to a managerial personnel is linked to the effective capital of the company. Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central

Government approval, pay remuneration to the managerial person not exceeding Rs. 120 Lakh in the year in case the effective capital of the company is Rs. 100 crore to 250 crore. The limit will be doubled if approved by the members by special resolution and further if the appointment is for a part of the financial year the remuneration will be pro-rated.

From the foregoing provisions contained in schedule V to the Companies Act, 2013 the payment of Rs. 60 Lac in the year as remuneration to Mr. Xavier is valid in case he accepts it, as under the said schedule he is entitled to a remuneration of Rs. 120 Lakh in the year.

(ii) According to Section 202 of the Companies Act, 2013, compensation can be paid only to a Managing, Whole-time Director or Manager. Amount of compensation cannot exceed the remuneration which he would have earned if he would have been in the office for the unexpired term of his office or for 3 years whichever is shorter. No compensation shall be paid, if the director has been found guilty of fraud or breach of trust or gross negligence in the conduct of the affairs of the company.

In light of the above provisions of law, the company is not liable to pay any compensation to Mr. Young, if he has been found guilty of fraud or breach of trust or gross negligence in the conduct of affairs of the company. But, it is not proper on the part of the company to withhold the payment of compensation on the basic of mere allegations. The compensation payable by the company to Mr. Young would be Rs. 13 Lacs calculated at the rate of Rs. 12 Lacs per annum for unexpired term of 13 months.

4.Nov 2018 Qn no 4(a) 8 Marks:

Mr. Gopi is the Managing Director of LGB Limited. The Company wants to vacate the post of Managing Director on March 31, 2018 and appoint Mr. Lakshmikant in place of Mr. Gopi due to hands on experience and better track records. The tenure of appointment of Mr. Gopi is upto 30th June, 2022 with the condition that he will get compensation in case of early vacation of his office due to the Company's requirements. Mr. Gopi was drawing following remuneration during the last five financial years:

Financial Year	*Remuneration(` in Lakhs)*
2013-14	*30*
2014-15	*35*
2015-16	*40*
2016-17	*45*
2017-18	*50*

Mr. Gopi approaches you to know the amount of compensation he will be eligible to get from LGB Limited, as per the provisions' of the Companies Act, 2013. Advise.

What will be your answer if a person is only an ordinary director but neither the Managing Director nor a whole time director nor a manager of the Company?

Answer:

Section 202 of the Companies Act, 2013 provides the provisions for compensation for loss of office of managing or whole-time director or manager as under:

(i) A company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.

(ii) The compensation payable to such managing director or whole-time director or manager shall not exceed the remuneration he would have earned if he would have been in office for the remainder of his term or three years, whichever is shorter, calculated on the basis of the average remuneration earned by him during a period of three years immediately preceding the date on which he ceased to hold such office, or where he held the office of less than three years, then for such shorter period.

In the light of the provisions as stated above, the following will be taken into consideration while calculating the amount of compensation to be paid to Mr. Gopi:

Average remuneration earned by Mr. Gopi during a period of 3 years (i.e. 2015-16, 2016-17 and 2017-18) immediately preceding the date on which he ceased to hold office: [(40+45+50)/3] = Rs. 45 Lakhs.

Remainder time period left to be served in office has Mr. Gopi not been removed, 1st April, 2018 to 30th June, 2022, 4 years.

Thus, Mr. Gopi will be paid compensation for Maximum 3 years.

Amount of Compensation: The maximum amount of compensation that Mr. Gopi will be eligible to get from LGB Limited is Rs.45 lakhs for 3 years = Rs. 135 lakhs.

In case of an ordinary director: Further, if a person is only an ordinary director but neither the Managing Director nor a whole time director nor a manager of the company, he shall not be eligible to get compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.

5.Oct 2018 Qn no 5(a) 8 Marks:

Best Limited, with a paid up capital of Rs. 400 crore proposes to pay the following remuneration :

(i) **Commission @ 5% of net profit to Mr. X, Managing Director;**

(ii) **Directors under than Mr. X are proposed to be paid monthly remuneration of Rs. 60,000/- and also commission @ 1% of net profit of the Company, subject to the condition that overall remuneration payable to each of them shall not exceed 2% of net profit of the Company. The commission is to be distributed equally amongst all the Directors.**

(iii) **The Company also proposes to pay suitable additional remuneration to Mr. Careful, a Director for professional services rendered as Lawyer whenever such services are utilized.**

Answer:

Section 197 of the companies provides a way to pay managerial remuneration in case of company's having adequate profits. As per the section, the total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent. of the net profits of that company for that financial year computed in the manner laid down in section 198 of the Companies Act, 2013.

In case where there is any one managing director; or whole-time director or manager shall not exceed five per cent. of the net profits of the company and there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together.

Moreover, any remuneration for services rendered by any such director which are of a professional nature shall not be included in the managerial remuneration. Further, a director may receive remuneration by way of a fee for each meeting of the board, or a committee thereof attended by him.

As per the facts given in the questions, following are the answers :

(i) Commission at the rate of 5% P.A to Mr. X its Managing Director can be paid as per the provisions of the Companies Act, 2013.

(ii) To other directors a monthly fixed remuneration of Rs. 60,000 along with a commission of 1% on net profits of the company with a limit that maximum

remuneration per director shall not exceed 2% of net profits. This remuneration can be paid if this remuneration along with th e remuneration paid above does not exceed the maximum limit of managerial remuneration of 11% under the Act.

(iii) Additional remuneration paid to Mr. Careful for professional services rendered by him. This remuneration can be paid by the company as it is outside the purview of managerial remuneration.

Here as per the fact, it is assumed that the company is earning profits and hence is paying remuneration to its managerial personnel under section 197 of the Act.

6.Nov 2018 Qn no 6(a) 4 Marks: , RTP Nov-2018:

The Article of Association of a listed company have fixed payment of sitting fee for each meeting of Directors subject to maximum of ` 30,000. In view of the increased responsibilities of independent directors of listed companies, the company proposes to increases the sitting fee to ` 45,000 per meeting. Advise the company about the requirement under the Companies Act, 2013 to give effect to the proposal.

Answer:

Section 197(5) of the Companies Act, 2013 provides that a director may receive remuneration by way of fee for attending the Board / Committee meetings or for any other purpose as may be decided by the Board, provided that the amount of such fees shall not exceed the amount as may be prescribed. The Central Government through rules prescribed that the amount of sitting fees payable to a director attending meetings of the Board or committees thereof may be decided by the Board of Directors or the Remuneration Committee thereof which shall not exceed the sum of` 1 lac per meeting of the Board or committee thereof. Further, the Board may decide different sitting fee payable to independent and non-dependent directors other than whole-time directors.

From the above, it is clear that fee to independent directors can be increased from ` 30000 to ` 45000 per meeting by passing a resolution in board meeting and altering the Articles of Association by passing special resolution.

7.MTP Apr 2019 QN no 1(b) 8 Marks

The International Technologies Limited, a listed company, being managed by a

Managing Director proposes to pay the following managerial remuneration:

(i) **Commission at the rate of five percent of the net profits to its Managing**

Director, Mr. Kunal.

(ii) **The directors other than the Managing Director are proposed to be paid monthly remuneration of Rs.50,000 and also commission at the rate of one percent of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed two percent of the net profits of the company. The commission is to be distributed equally among all the directors.**

(iii) **The company also proposes to pay suitable additional remuneration to Mr. Bhim, a director, for professional services rendered as legal counsel, whenever such services are utilized.**

You are required to examine with reference to the provisions of the Companies Act, 2013 the validity of the above proposals.

Answer

International Technologies Limited, a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration:

(i) Commission at the rate of 5% of the net profits to its Managing Director,

Mr. Kunal: Part(i) of the second proviso to section 197(1), provides that except with the approval of the company in general meeting by a special resolution, the remuneration payable to any one managing director; or whole time director or manager shall not exceed 5 % of the net profits of the company and if there is more than one such director then remuneration shall not exceed 10 % of the net profits to all such directors and manager taken together.

In the present case, since the International Technologies Limited is being managed by a Managing Director, the commission at the rate of 5% of the net profit to Mr. Kunal, the Managing Director is allowed and no approval of company in general meeting is required.

(i) The directors other than the Managing Director are proposed to be paid monthly remuneration of Rs. 50,000 and also commission at the rate of 1 % of net profits of the company subject to the condition that overall

remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed 2 % of the net profits of the company: Part (ii) of the second proviso to section 197(1) provides that

except with the approval of the company in general meeting by a special resolution, the remuneration payable to directors who are neither managing directors nor whole time directors shall not exceed-

(A) 1% of the net profits of the company, if there is a managing or whole time director or manager;

(B) 3% of the net profits in any other case.

In the present case, the maximum remuneration allowed for directors other than managing or whole time director is 1% of the net profits of the company because the company is having a managing director also. Hence, if the company wants to fix their remuneration at not more than 2% of the net profits of the company, the approval of the company in general meeting is required by a special resolution.

(ii) The company also proposes to pay suitable additional remuneration to Mr. Bhim, a director, for professional services rendered as legal counsel, whenever such services are utilized:

(1) According to section 197(4), the remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either

(i) by the articles of the company, or

(ii) by a resolution or,

(iii) if the articles so require, by a special resolution, passed by the company in general meeting, and

(2) the remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity.

(3) Any remuneration for services rendered by any such director in other capacity shall not be so included if—

(i) the services rendered are of a professional nature; and

(ii) in the opinion of the Nomination and Remuneration Committee, if

the company is covered under section 178(1), or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

Hence, in the present case, the additional remuneration to Mr. Bhim, a director for professional services rendered as legal counsel will not be included in the maximum managerial remuneration and is allowed but opinion of Nomination and Remuneration Committee is to be obtained.

Also, the International Technologies Limited (a listed company) shall disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed under the Companies (Appointment and Remuneration of Managerial personnel) Rules, 2014.

8.MTP Nov 2019 Qn no 1(b) 8 Marks

Shining star limited, a listed company, deals in sole business of trading of Aluminum foils and sheets. Due to economic slowdown and less domestic consumption company was running into the losses. Mr Chander, an eminent professional with vast experience in cost management, was appointed on the Board of company as whole time director. He enjoyed his 75th birthday on the same date of his appointment i.e 18.07.2019.

Following relevant extracts from latest audited financial statements (as on 31 March 2019), were;

1. **Authorised Share capital is INRs 390 crores, out of which paid up share capital was INRs 215 crores; company was in process of FPO, hence had balance of INRs 15 crores in share application money account.**
2. **Balance of reserve and surplus was INRs 170 crores, out of which INRs 150 crores was general reserve and INRs 20 crores was on accounts of revaluation reserve.**
3. **Outstanding amount for long term loans was INRs 200 crores**
4. **Company had investment of INRs 40 crores at book value; due to economic slowdown same is not liquid investment**
5. **Accumulated losses were of INRs 10 crores.**

In the light of the stated facts, evaluate the given situations in terms of the relevant provisions of the Companies Act, 2013-

(i) **As to the validity of appointment of Mr. Chander, as managerial person in office of whole time director in Shining Star Limited.**

(ii) **Compute the Effective capital of Shining Star Limited for payment of managerial remuneration.**

Since Shining Star was running in loss, state the maximum amount of remuneration to be paid on yearly basis to each managerial person.

Answer

(i) As per section 196(3) of the Companies Act, 2013,no company shall appoint or continue the employment of any person as managing director, whole-time director or manager who is below the age of twenty-one years or has attained the age of seventy years, unless that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person.

Where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.

Therefore, appointment of Mr. Chander in the shining Ltd. being of 75 years, is valid in compliance to above legal provisions.

(ii) As per section II of Part II of Schedule V to the Companies Act 2013- "effective capital" means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, overdrafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment companywhose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.

According to the particulars given:

Particulars	Amounts (in Crores)
Paid up share capital (Excluding share application money) (215-15)	INRs 200
General Reserve (Excluding Revaluation Reserve) (170-20)	INRs 150
Long term loans	INRs 200
Less: Investments (40) and Accumulated losses (10)	(INRs 50)
Effective Capital	INRs 500

(iii) As per Section II of Part II of Schedule V to the Companies Act 2013, in case of no or inadequate profits, if effective capital of company is INR 250 crore or more then, yearly remuneration per person payable shall not exceed by INR 120 lakh plus 0.01% of the effective capital in excess of INR 250 crore.

The maximum remuneration that may be paid to each managerial person will be [120 lakh+ (0.01% x 250 cr)] = 122.5 lakh.

Provided that the remuneration in excess of above limits may be paid if the resolution passed by the shareholders is a special resolution.

9.RTP May 2020 Qn no.9

Aster limited (a listed company) deals in business of trading of raw materials to the manufacturer of the garments. The company was running in losses for past two years. The Board of the company appointed Mr. C with good experience in cost management to overcome the said situation, as whole time director. He was of 70 years on the date of his appointment i.e. 18.12.2019.

Following were the relevant extracts from latest audited financial statements (as on 31st March, 2019);

(a) Authorised Share capital is ` 390 crore, out of which paid up share capital was ` 215 crore; company was in process of FPO, hence had balance of ` 15

crore in share application money account.

(b) **Balance of reserve and surplus was `170 crore, out of which `150 crore was general reserve and ` 20 crore was on accounts of revaluation reserve.**

(c) **Outstanding amount for long term loans was ` 200 crore**

(d) **Company had investment of ` 40 crore at book value; due to economic slowdown same is not liquid investment**

(e) **Accumulated losses were of ` 10 crore.**

In the light of the given facts and figures, evaluate the given situations in terms of the relevant provisions of the Companies Act, 2013-

(i) **Validity of appointment of Mr. C, as managerial person in office of whole time director in Aster Limited.**

(ii) **Compute the Effective Capital of Aster Limited for payment of Managerial Remuneration.**

(iii) **Since Aster Ltd. was running in losses, state the maximum amount of remuneration to be paid on yearly basis to each Managerial Person.**

Answer

(i) As per section 196(3) of the Companies Act, 2013, no company shall appoint or continue the employment of any person as managing director, whole-time director or manager who is below the age of twenty-one years or has attained the age of seventy years, unless that appointment of a person who has attained the age of seventy years may be made by passing a special resolution(SR) with explanatory statement annexed to the notice for such an appointment of person.

Where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.

Therefore, appointment of Mr. C as whole time director in the Aster Ltd. being of 70 years, is valid in compliance to above legal provisions.

(ii) As per section II of Part II of Schedule V to the Companies Act

2013, "effective capital" means the aggregate of the paid-up share

(iii) capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium

account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, overdrafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company

(iv) whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.

According to the particulars given:

Particulars	Amounts (in Crore)
Paid up share capital (Excluding share application money) (215-15)	` 200
General Reserve (Excluding Revaluation Reserve) (170-20)	` 150
Long term loans	` 200
Less; Investments (40) and Accumulated losses (10)	` 50
Effective Capital	` 500

(v) As per Section II of Part II of Schedule V to the Companies Act 2013,in case of no or inadequate profits, if effective capital of company is ` 250 crore or more then, yearly remuneration per person payable shall not exceed by ` 120 lakh plus 0.01% of the effective capital in excess of ` 250 crore.

The maximum remuneration that may be paid to each managerial person will be [120 lakh+ (0.01% x 250 cr)] = 122.5 lakh.

Provided that the remuneration in excess of above limits may be paid if the resolution passed by the shareholders is a special resolution.

10.RTP May 2019 Qn no 7

Mr. X, a Director of Sunrise Limited, was appointed on 1st April, 2016, one of the terms of appointment was that in the absence of adequacy of profits or if the company had no profits in a particular year, he will be paid remuneration in accordance with Schedule V. The company suffered heavy losses during the financial year ended 31st March, 2018. The company was not in a position to pay any remuneration, but he was paid ` 50 Lakhs for the year, as paid to other directors. The effective capital of the company is ` 150 crores. Referring to provisions of the Companies Act, 2013, examine the validity of the above payment of remuneration to Mr. X.

Answer

Under Section II of Part II of Schedule V to the Companies Act, 2013, the remuneration payable to managerial personnel is linked to the effective capital of the company. According to section 197(3) of the Companies Act, 2013, where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, pay remuneration to the managerial person not exceeding ` 120 Lakh in the year in case the effective capital of the company is between `100 crore to ` 250 crore. However, the remuneration in excess of ` 120 Lakhs may be paid if the resolution passed by the shareholders is a special resolution.

From the foregoing provisions contained in schedule V to the Companies Act, 2013 the payment of ` 50 Lakh in the year as remuneration to Mr. X is valid in case he accepts it, as under the said schedule he is entitled to a remuneration of ` 120 Lakh in the year and his terms of appointment provide for payment of the remuneration as per schedule V.

Study Material

11. The appointment of a whole-time company secretary is mandatory when the paid-up share capital of a company is ` --.

(a) **Two crores**

(b) **Three crores**

(c) **Five crores**

(d) **Ten crores**

Answer: c) Hint: Section 203 of the Companies Act, 2013 along with Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

12. A whole-time key managerial personnel of a company can hold office in another company if the other company is:

a) **its holding company**

b) **its subsidiary company**

c) **its associate company**

d) **a small company**

Answer :b) Hint: Section 203(3) of the Companies Act, 2013

13. Board of Directors of Centra Tech Limited desires to appoint Nipun, aged 22 years as the Managing Director of the company. Nipun is currently a director and the son of Ramesh, the immediate Managing Director who expired in a car accident. State whether Nipun can be appointed as Managing Director.

a) **Yes; since he is above the age of 21 years**

b) **No; since he has not attained the age of 25 years**

c) **Since he has not attained the age of 25 years, permission of Registrar of Companies is to be obtained for his appointment as MD**

d) **Since he has not attained the age of 25 years, permission of Central Government is to be obtained for his appointment as MD**

Answer: a) Hint: Section 196(3) of the Companies Act, 2013

14. Maximum sitting fees per meeting that can be paid to a director of a company shall not exceed` ----------

(a) 1,00,000

(b) 2,00,000

(c) 2,50,000

(d) 3,00,000

Answer: a) Hint: Section 197(5) of the Companies Act, 2013 along with Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

15. In addition to a listed company which other public company is required to have whole-time key managerial personnel?

a) **which has paid-up share capital of ` 2 crores**

b) **which has paid-up share capital of ` 3 crores**

c) **which has paid-up share capital of ` 4 crores**

d) **which has paid-up share capital of ` 10 crores**

Answer: d) **Hint**: Section 197(5) of the Companies Act, 2013 along with Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

16. Is it permissible for whole-time key managerial personnel of a company to hold the office of director in any company?

a) **Yes; but with the permission of his Board of Directors**

b) **Yes; but with the permission of shareholders accorded by passing an ordinary resolution**

c) **Yes; but with the permission of shareholders accorded by passing a special resolution**

d) **Yes; but with the permission of shareholders accorded by passing an ordinary resolution which is further ratified by the concerned Registrar of Companies**

Answer: a) **Hint**: proviso to section 203(3) of the Companies Act, 2013

17. Total managerial remuneration payable by a public company to its directors (including MD, WTD and manager) in any financial year shall not exceed -----of its net profits for that financial year.

a) **Five percent**

b) **Seven percent**

c) **Ten percent**

d) **None of the above**

Answer: d) **Hint**: Section 197(1) of the Companies Act, 2013

18.Due to non-compliance of certain requirements under the Companies Act, 2013 not amounting to fraud, a company was required to re-state its financial statements for the financial year 2016-17 during the current year. After the financial statements were re-stated it was found that the Managing Director (MD) of that period, who is now retired, was paid excess remuneration to the extent of ` 5,00,000. State whether such excess amount is recoverable.

a) **Nothing can be recovered from the ex-MD**

b) **Excess amount shall be recovered irrespective of whether at present he is MD or not**

c) **Only 50% of excess amount is recoverable because no fraud is involved**

d) **Only 25% of excess amount is recoverable because no fraud is involved**

Answer: b) Hint: Section 199 of the Companies Act, 2013

19. The five directors of a non-listed public company are being paid ` 40,000 each as sitting fees for every meeting. The two independent directors of this company shall also be paid not less than----------each as sitting fees per meeting.

(a) 40,000
(b) 25% of ` 40,000
(c) 50% of ` 40,000
(d) 75% of ` 40,000

Answer: (a) **Hint:** Proviso to Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

20. A Whole-time director can be appointed or re-appointed for a term not exceeding ---------- at a time.

(a) Two years
(b) Three years
(c) Five years
(d) Seven years

Answer: c) **Hint:** Section 196(2) of the Companies Act, 2013

21. Advise Super Specialties Ltd. in respect of the following proposals under consideration of its Board of Directors:

(i) **Appointment of Managing Director who is above the age of 70 years;**

(ii) **Payment of commission of 4% of the net profits per annum to the directors of the company;**

(iii) **Payment of remuneration of ` 40,000 per month to the whole-time director of the company which is running in loss and having an effective capital of ` 95.00 lacs.**

Answer: Under the proviso to section 196 (3) of the Companies Act, 2013, a person who has attained the age of seventy years may be employed as managing director, whole-time director or manager by the approval of the members by a special resolution passed by the company in the general meeting and the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person.

However, where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.

In the given situation, Super Specialties Ltd. can employ a person who is above the age of 70 years as its Managing Director, if the above-mentioned legal procedure is followed. Thus, the appointment can be regularised by passing a special resolution and if that is not done but the votes cast in favour of the motion exceed the votes, if any, cast against the motion, the approval of Central Government is required to be obtained.

(ii) Under section 197 (1) the limit of total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent of the net profits of that company for that financial year computed in the manner laid down in section 198. Further, the third proviso to section 197 (1) provides that except with the approval of the company in general meeting by a special resolution, the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed

one per cent. of the net profits of the company, if there is a managing or whole-time director or manager; or three per cent of the net profits in any other case.

Therefore, in the given case, the commission of 4% is beyond the limit specified, and the same should be approved by the members by passing a special resolution.

(iii) If, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including managing or whole time director or manager, any remuneration exclusive of any fees payable to directors except in accordance with the provisions of Schedule V. Section II of Part II of schedule V provides that where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may pay remuneration to the managerial person not exceeding ` 60 lacs for the year if the effective capital of the company is negative or up to` 5 crores.

In the given situation, the proposed remuneration of ` 40,000 per month (i.e.4,80,000 per annum) can be paid to the whole-time director of the company which is running in loss because the remuneration is less than permissible ` 60 lacs

22. Mr. X, a Director of MJV Ltd., was appointed as Managing Director on 1st April, 2015. One of the terms of appointment was that in the absence of adequacy of profits or if the company had no profits in a particular year, he will be paid remuneration in accordance with Schedule V. For the financial year ended 31st March, 2017, the company suffered heavy losses. The company was not in a position to pay any remuneration but he was paid ` 50 lacs for the year. The effective capital of the company is `150 crores. Referring to the provisions of Companies Act, 2013, as contained in Schedule V, examine the validity of the above payment of remuneration to Mr. X.

Answer: Under Section II of Part II of Schedule V to the Companies Act, 2013, the remuneration payable to managerial personnel is linked to the effective capital of the company. Schedule V states that where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may pay remuneration to the managerial person not exceeding ` 120 Lakhs in the year in case the effective capital of the company is between ` 100 crores and 250 crores. However, the remuneration in excess of 120 Lakhs may be paid if the resolution passed by the shareholders is a special resolution.

From the foregoing provisions as contained in Schedule V, the payment of ` 50 lacs in the year of loss as remuneration to Mr. X is less than ` 120 lacs which is otherwise permissible when the effective capital of the company is between ` 100 crores and 250 crores. Thus, payment of ` 50 lacs being made to Mr. X is within the prescribed limit and can be validly made to him.

23. Mr. Doubtful was appointed as Managing Director of Carefree Industries Ltd. for a period of five years with effect from 1.4.2016 on a salary of ` 12 lakhs per annum with other perquisites. The Board of Directors of the company came to know about certain questionable transactions entered into by Mr. Doubtful and therefore, terminated his services as Managing Director from 1.3.2019. Mr. Doubtful termed his removal as illegal and claimed compensation from the company. Meanwhile the company paid a sum of ` 5 lakhs on ad hoc basis to Mr. Doubtful pending settlement of his dues. Discuss whether:

(i) **The company is bound to pay compensation to Mr. Doubtful and, if so, how much.**

(ii) **The company can recover the amount of ` 5 lakhs paid on the ground that Mr. Doubtful is not entitled to any compensation, because he is guided by corrupt practices.**

Answer: According to Section 202 of the Companies Act, 2013, compensation can be paid only to a Managing Director, Whole-time Director or Manager. Amount of compensation cannot exceed the remuneration which he would have earned if he would have been in the office for the unexpired term of his office or for 3 years whichever is shorter. No compensation shall be paid, if the director has been found guilty of fraud or breach of trust or gross negligence in the conduct of the affairs of the company.

In light of the above provisions of law, the company is not liable to pay any compensation to Mr. Doubtful, if he has been found guilty of fraud or breach of trust or gross negligence in the conduct of affairs of the company. But, it is not proper on the part of the company to withhold the payment of compensation on the basis of mere allegations. The compensation payable by the company to Mr. Doubtful would be ` 25 Lacs calculated at the rate of ` 12 Lacs per annum for unexpired term of 25 months.

Regarding ad-hoc payment of ` 5 Lacs, it will not be possible for the company to recover the amount from Mr. Doubtful in view of the decision in case of Bell vs. Lever Bros. (1932) AC 161 where it was observed that a director was not legally bound to disclose any breach of his fiduciary obligations so as to give the company an opportunity to dismiss

him. In that case the Managing Director was initially removed by paying him compensation and later on it was discovered that he had been guilty of breaches of duty and corrupt practices and that he could have been removed without compensation

24. International Technologies Limited, a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration:

(i) **Commission at the rate of five percent of the net profits to its Managing Director, Mr. Kamal.**

(ii) **The directors other than the Managing Director are proposed to be paid monthly remuneration of ` 50,000 and also commission at the rate of one percent of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed two percent of the net profits of the company. The commission is to be distributed equally among all the directors.**

(iii) **The company also proposes to pay suitable additional remuneration to Mr. Bhatt, a director,**
for professional services rendered as software engineer, whenever such services are utilized.

You are required to examine with reference to the provisions of the Companies Act, 2013 the validity of the above proposals.

Answer:

International Technologies Limited, a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration:

(i) Commission at the rate of 5% of the net profits to its Managing Director, Mr. Kamal: Part (i) of the Second Proviso to Section 197(1), provides that except with the approval of the company in general meeting by a special resolution, the remuneration payable to any one managing director or whole time director or manager shall not exceed 5% of the net profits of the company and if there is more than one such director then remuneration shall not exceed 10% of the net profits to all such directors and manager taken together.

In the present case, since the International Technologies Limited is being managed by a Managing Director, the commission at the rate of 5% of the net profit to Mr. Kamal, the Managing

Director is allowed and no approval of company in general meeting is required.

(ii) The directors other than the Managing Director are proposed to be paid monthly remuneration of ` 50,000 and also commission at the rate of 1 % of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed 2% of the net profits of the company: Part (ii) of the Second Proviso to Section 197(1) provides that except with the approval of the company in general meeting by a special resolution, the remuneration payable to directors who are neither managing directors nor whole time directors shall not exceed-

(A) 1% of the net profits of the company, if there is a managing or whole-time director or manager;

(B) 3% of the net profits in any other case.

In the present case, the maximum remuneration allowed to directors other than managing or whole-time director is 1% of the net profits of the company because the company is managed by a managing director. Hence, if the company wants to fix directors' remuneration at not more than 2% of the net profits of the company, the approval of the company in general meeting is required by passing a special resolution.

(iii) The company also proposes to pay suitable additional remuneration to Mr. Bhatt, a director, for professional services to be rendered by him as software engineer, whenever such services are utilized by the company:

(1) According to section 197(4), the remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either

(i) by the articles of the company, or

(ii) by a resolution or,

(iii) if the articles so require, by a special resolution, passed by the company in general meeting, and

(2) the remuneration payable to a director determined aforesaid shall be inclusive of the

remuneration payable to him for the services rendered by him in any other capacity.

(3) Any remuneration for services rendered by any such director in other capacity shall not be so included if—

(i) the services rendered are of a professional nature; and

(ii) in the opinion of the Nomination and Remuneration Committee, if the company is covered under sub-section (1) of section 178, or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

Hence, in the present case, the additional remuneration payable to Mr. Bhatt, a director, for professional services rendered by him as software engineer will not be included in the maximum managerial remuneration. Accordingly, such additional remuneration shall be allowed but opinion of Nomination and Remuneration Committee needs to be obtained.

(4) Also, the International Technologies Limited (a listed company) shall disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as are prescribed under Rule 5 of the Companies (Appointment and Remuneration of Managerial personnel) Rules, 2014.

25. **International Technologies Limited, a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration:**

(i) Commission at the rate of five percent of the net profits to its Managing Director, Mr. Kamal.

(ii) The directors other than the Managing Director are proposed to be paid monthly remuneration of ` 50,000 and also commission at the rate of one percent of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed two percent of the net profits of the company. The commission is to be distributed equally among all the directors.

You are required to examine with reference to the provisions of the Companies Act, 2013 the validity of the above proposals.

Answer

International Technologies Limited, a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration:

(i) **Commission at the rate of 5% of the net profits to its Managing Director, Mr. Kamal**: Part (i) of the Second Proviso to Section 197(1), provides that except with the approval of the company in general meeting by a special resolution, the remuneration payable to any one managing director or whole time director or manager shall not exceed 5% of the net profits of the company and if there is more than one such director then remuneration shall not exceed 10% of the net profits to all such directors and manager taken together.

In the present case, since the International Technologies Limited is being managed by a Managing Director, the commission at the rate of 5% of the net profit to Mr. Kamal, the Managing Director is allowed and no approval of company in general meeting is required.

(ii) The directors other than the Managing Director are proposed to be paid monthly remuneration of ` 50,000 and also commission at the rate of 1 % of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed 2 % of the net profits of the company. Part (ii) of the Second Proviso to Section 197(1) provides that except with the approval of the company in general meeting by a special resolution, the remuneration payable to directors who are neither manag ing directors nor whole time directors shall not exceed-

(A) 1% of the net profits of the company, if there is a managing or whole -time director or manager;

(B) 3% of the net profits in any other case.

In the present case, the maximum remuneration allowed to directors other than managing or whole-time director is 1% of the net profits of the company because the company is managed by a managing director. Hence, if the company wants to fix directors' remuneration at not more than 2% of the net profits of the

company, the approval of the company in general meeting is required by passing a special resolution.

26. The following particulars are extracted from the statement of profit and loss of Surya Cement Limited for the year ended 31st March 2020:

Sr. no	Particulars	Amount
1)	Gross Profit	60,00,000
2)	Profit on sale of building (Cost Rs. 10,00,000 and	5,00,000

	written down value Rs 6,00,000)	
3)	Salaries & wages	2,50,000
4)	Sundry Repairs to Fixed Assets	1,00,000
5)	Subsidy from the government	3,00,000
6)	Compensation for breach of contract	1,00,000
7)	Depreciation	1,40,000
8)	Loss on sale of investments	2,00,000
9)	Interest on unsecured loans	50,000
10)	Interest on debentures issued by the company	1,00,000
11)	Repair Expenses to fixed assets (Capital in nature)	2,00,000
12)	Net Profit	13,00,000

You are required to calculate the overall managerial remuneration payable under section 197 of the Companies Act, 2013 subject to the provisions under Schedule V

ANSWER:

The managerial remuneration shall be computed in accordance with the provisions laid down in section 198 of the Companies Act 2013

Particulars		Amount
Net profit		13,00,000
Less:	Capital profits on sale of building (Note 1)	1,00,000
Salaries & Wages (Note 2)		-
Sundry repairs to fixed Assets (Note 2)		-
Subsidy from the government (Note 3)		-
Compensation from breach of contract (Note 2)		-
Depreciation (Note 2)		-
Loss on Sale of Investments (Note 4)		-
Interest on unsecured loans (Note 2)		-
Interest on debentures (Note 2)		-
Add:	Repair expenses to fixed assets (Capital in Nature) (Note 5)	2,00,000
Net profits as per section 198		14,00,000

There

Therefore, the overall maximum managerial remuneration shall be 11% of the Net profits computed in accordance with section 198 i.e. 11% x 14,00,000 = Rs. 1,54,000. It is assumed that the net profit given in the question is arrived after giving effect to all the line items given therein.

Notes:

1) As per section 198(3), credit shall not be given for profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets; provided that where the amount for which any fixed asset is sold exceeds the written-down value thereof, credit shall be given for so much of the excess as is not higher
than the difference between the original cost of that fixed asset and its written- down value.
Accordingly, the calculation of capital profit is computed as under:
Profit = Selling Price – Written down value
5,00,000 = Selling Price – 6,00,000. Therefore, Selling Price = 11,00,000. Capital profit = 11,00,000 – 10,00,000 (original cost) = 1,00,000
2) According to section 198 (4), the following sums shall be deducted:

a) All the usual working charges – salaries and wages are considered as usual working charges

b) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature

c) any compensation or damages to be paid in virtue of any legal liability including a liability arising from a breach of contract

d) interest on debentures issued by the company

e) interest on unsecured loans and advances

f) depreciation to the extent specified in section 123

Since all of the above charges are already deducted while arriving at net profit, no effect will be given.
3) According to section 198 (1), credit shall be given for bounties and subsidies received from any government, or any public authority constituted or authorised in this behalf, by any government, unless and except in so far as the Central Government otherwise directs.

4) According to section 198(5), Loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or any part thereof shall not be deducted. In the given question, in the absence of the specific information about the nature of investments, the said investments are considered as current investments and revenue in nature and accordingly no effect is given as it is already deducted while arriving at net profit.

5) According to section 198(4), expenses on repairs, whether to immovable or to movable property is deducted only for repairs which are not capital in nature. Accordingly, we have added back to the net profit.

27. You are provided with the relevant extract of the financials of Tribhuke Company Limited for the financial year ended as on 31st March 2020 as below:

Sr. No	Particulars	Amount
1	Authorised Share Capital	10,00,00,00,000
2	Issued and Paid up Share Capital	5,00,00,000
3	Share Premium Account	25,00,000
4	Reserves and Surplus (Amount of Rs. 25,00,000 is included as Revaluation Reserve)	35,00,000
5	Term loan repayable after 1 year	12,00,000
6	Current Borrowings (Cash Credit Loan from Banks)	20,00,000
7	Non-Current Investments	10,00,000
8	Accumulated Losses	5,00,000
9	Preliminary expenses not written off	3,00,000

The company has three managerial persons in its board of directors – Mr. A – Managing Director, Mr. B – Whole Time Director and Mr. C – Director. According to their terms of appointment, in case the company has no or inadequate profits, the managerial remuneration payable to them shall be in accordance with Schedule V. You are required to compute the total managerial remuneration payable considering the provisions of Schedule V.

ANSWER:

Section II of Part II of Schedule V states the provisions applicable for the payment of managerial remuneration in case where the company has no profits or its profits are inadequate. In such a case, managerial remuneration is payable on the basis of the effective capital as on the last date of the financial year for which the remuneration is payable.

Accordingly, to compute the total managerial remuneration payable, we should first calculate the effective capital.

Particulars	Amount
Issued and Paid up Capital	5,00,00,000
Add: Share Premium Account	25,00,000
Add: Reserves and surplus excluding revaluation reserve	10,00,000
Add: Term Loan repayable after 1 year (excluding working capital loans)	12,00,000
Less: Non-Current Investments	10,00,000
Less: Accumulated Losses	5,00,000
Less: Preliminary Expenses	3,00,000

Effective Capital	5,29,00,000

Explanation 1 to Section II of Part II of Schedule V states effective capital means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, over drafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.

Section II of Part II of Schedule V states that where the effective capital is 5 crores and above but less than 100 crores, the remuneration payable shall not exceed Rs. 84 lakhs. Accordingly, the total managerial remuneration payable by the Companies to three managerial personnel for the year ended 31st March 2020 shall not exceed Rs. 252 lakhs (Rs. 84 lakhs x 3 managerial personnel).

Chapter 3 Meeting of Board and its powers

Multiple Choice Questions

1.MTP Mar 2019 QN no 11

Sona Sweets Private Limited was incorporated on 5th November, 2018 with an authorised capital of Rs.10.00 lacs. Advise regarding the latest date by which the first meeting of the Board of Directors is required to take place.

(a) Latest by 15th November, 2018.

(b) Latest by 20th November, 2018.

(c) Latest by 5th December, 2018.

(d) Latest by 20th December, 2018.

Answer: Option C

2.RTP Nov 2019 Qn no 6

Beauti Fashion Garments Limited has three independent directors besides eight others of its own. Due to the urgency of transacting certain important business, a Board Meeting was called by giving a shorter notice than the legally required. However, none of the independent directors was present at the Meeting to deliberate upon the motion related to that business. Despite absence of all the independent directors, a board resolution was passed for operationalizing the business by the directors personally present at that Meeting who were much more than the required quorum. Advise, whether the resolution passed at the Board Meeting called at a shorter notice was valid.

(a) The resolution so passed is valid, for it was passed at the Board Meeting where the required quorum was present.

(b) To be valid the resolution so passed needs to be circulated to all the directors and further, it is required to be ratified by all the three independent directors.

(c) To be valid the resolution so passed needs to be circulated to all the directors and further, it is required to be ratified by at least two independent directors.

(d) To be valid the resolution so passed needs to be circulated to all the directors and further, it is required to be ratified by at least one independent director.

Answer:(d)

3.MTP Mar 2019 Qn no 6

Jupiter Shopping Mall Limited was incorporated on 3rd December, 2016. As on 31st March 2018, it had free reserves of Rs. 50.00 lacs and its Securities Premium Account showed a balance of Rs. 7.50 lacs. One of its directors Raha has a leaning towards a particular political party in which his other family members are actively involved. Raha convinced the other two directors of the company i.e. Promila and Rana to contribute a sum of Rs. 10.00 lacs to this political party. Accordingly, the Board of Directors held a

meeting on 16th December, 2018 and passed a resolution to contribute the decided amount. Advise the company as to how much amount they can contribute to a political party in the FY 2018-19.

(e) The company cannot contribute any amount to a political party in the FY 2018-19.

(f) The company can contribute maximum Rs. 2.50 lacs in the FY 2018-19.

(g) The company can contribute maximum Rs. 3.75 lacs in the FY 2018-19.

(h) The company can contribute maximum Rs. 5.00 lacs in the FY 2018-19.

Answer: Option A

4.April 2019 MTP Qn no 8

Ruby Diamonds Limited is required to establish 'Vigil Mechanism' though it is neither a listed company nor a company which has accepted deposits from the public. Name the third criterion because of which it is necessitated that the company needs to create 'Vigil Mechanism'

a) As per the last audited statements, the subscribed capital of the company is in excess of Rs. 50 crores.

b) As per the last audited statements, the paid up capital of the company is in excess of Rs. 50 crores

c) As per the last audited statements, the turnover of the company is in excess of Rs. 50 crores

d) None of the above answer

Answer: Option D

Descriptive Questions

5.March 2018 Qn no 4(a) 8 Marks:

One of the Objects Clauses of the Memorandum of Association of Info Company Limited conferred upon the company power to sell its undertaking to another company with identical objects. Company's Articles also conferred upon the directors whereby power was conferred upon them to sell or otherwise deal with the property of the company. At an Extraordinary General Meeting of the company, members passed an ordinary resolution for the sale of its assets on certain terms and authorized the directors to carry out the sale. Directors refused to comply with the wishes of the members where

upon it was contended on behalf of the members that they were the principals and directors being their agents, were bound to give effect to their (members') decisions.

Examining the provisions of the Companies Act, 2013, answer the following:

Whether the contention of members against the non-compliance of members' decision by the directors is tenable?

Whether it is possible for the members usurp the powers which by the Articles are vested in the directors by passing a resolution in the general meeting?

Answer:

Powers of Board: In accordance with the provisions of the Companies Act, 2013, as contained under Section 179(1), the Board of Directors of a company shall be entitled to exercise all such powers and to do all such acts and things, as the company is authorized to exercise and do.

Provided that, in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made there under including regulations made by the company in general meeting.

Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the members or articles of the company or otherwise to be exercised or done by the company in general meeting.

Section 180 (1) of the Companies Act, 2013, provides that the powers of the Board of Directors of a company which can be exercised only with the consent of the company by a special resolution. Clause (a) of Section 180 (1) defines one such power as the power to sell, lease or otherwise dispose of the whole or substantially the whole of the

undertaking of the company or where the company owns more than one undertaking of the whole or substantially the whole or any of such undertakings.

Therefore, the sale of the undertaking of a company can be made by the Board of Directors only with the consent of members of the company accorded vide a special resolution.

Even if the power is given to the Board by the memorandum and articles of the company, the sale of the undertaking must be approved by the shareholders in general meeting by passing a special resolution.

Therefore, the correct procedure to be followed is for the Board to approve the sale o f the

undertaking clearly specifying the terms of such sale and then convene a general meeting of members to have the proposal approved by a special resolution.

In the given case, the procedure followed is completely incorrect and violative of the provisions of the Act. The shareholders cannot on their own make out a proposal of sale and pass an ordinary resolution to implement it through the directors.

The contention of the shareholders is incorrect in the first place as it is not within their authority to approve a proposal independently of the Board of Directors. It is for the Board to approve a proposal of sale of the undertaking and then get the members to approve it by a special resolution. Accordingly, the contention of the members that they were the principals and directors being their agents were bound to give effect to the decisions of the members is not correct.

Further, in exercising their powers the directors do not act as agent for the majority of members or even all the members. The members therefore, cannot by resolution passed by a majority or even unanimously supersede the powers of directors or instruct them how they shall exercise their powers. The shareholders have, however, the power to alter the Articles of Association of the company in the manner they like subject to the provisions of the Companies Act, 2013.

6.May 2018 Qn no 6(a)(ii) 4 Marks:

When does a Director required to disclose his / her interest to the Company as per Section 184 of the Companies Act, 2013? What are the consequences of non-disclosure?

Answer:

According to Section 184(1) of the Companies Act, 2013 every Director shall disclose his concern or interest in any Company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed in Rule 9 of the companies(Meetings of Board and its Powers):

When to Make general disclosure of Interest: Every director shall disclose his interest

(a) At the First meeting of the Board in which he participates as a director, and

(b) Thereafter, at the first meeting of the Board in every financial year, or

(c) Whenever there is any change in the disclosures already made, then at the first Board meeting held after such change.

Consequences of non-disclosure [Section 184(3) and 184(4)]:

(a) **Voidable at the option of company:** A contract or arrangement entered into by the company without disclosing or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

(b) **Penalty:** If a director of the company contravenes the provisions of section 184, such director shall be punishable

- with imprisonment for a term which may extend to one year or
- with fine which may extend to one lakh rupees,
- or with both.

7.May 2018 Qn no 5(a) 8 Marks:

The register of contracts or arrangement under Section 189 of the Companies Act, 2013 is maintained at the Registered office of Fortune Ltd. under the custody of the Company Secretary. The AGM was held in different place but in the same town where the registered office is situated. Mr. Semar, a shareholder of the company and Mr. Raj, proxy of a shareholder insisted for producing the said register at the commencement of the AGM for inspection. The Company Secretary refused to produce the register stating that being the statutory register it has to be maintained at the registered office only. Examine whether Mr. Semar and Mr. Raj will succeed in their attempt under the provisions of the Companies Act, 2013?

Also identify the particulars to be disclosed to the members of a company to pass a resolution approving any payment by way of compensation for loss of office of a director as per the provisions of Section 191 of the Companies Act, 2013 read with Rule 17 of the Companies (Meetings of Board and its Powers) Rules, 2014.

Answer:

(a) Place of maintenance of Register of Contracts or Arrangements:

As per Section 189 of the Companies Act, 2013, every Company shall keep one or more registers giving separately the particulars of all contracts or arrangements related to disclosure of interest by director as per Section 184(2) or related party transactions given under Section 188.

The register shall be kept at the registered office of the Company and it shall be-

- open for inspection at such office during business hours and extracts may be taken therefrom, and
- copies thereof as may be required by any member of the company shall be furnished by the company

The register to be kept under this Section shall also be produced at the commencement of every annual general meeting of the Company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting. **Thus even a proxy has right to inspect the register**

As per law, register shall be produced at the commencement of every annual general meeting of the Company and shall remain open and accessible during the meeting to any person having the right to attend the meeting.

Hence, Mr. Semar and Mr. Raj, being a shareholder and proxy of a shareholder, have a right to inspect the register of contract and arrangements during the meeting.

Payment by way of compensation for loss of office to Director

As per the Rule 17 of the *Companies (Meetings of Board and its Powers) Rules, 2014*, no director of a company shall receive any payment by way of compensation in connection with any event mentioned in 191(1) unless the following particulars are disclosed to the members of the company and they

pass a resolution at a general meeting approving the payment of such amount -

(a) name of the director;

(b) amount proposed to be paid;

(c) event due to which compensation become payable;

(d) date of Board meeting recommending such payment;

(e) basis for the amount determined;

(f) reason or justification for the payment;

(g) manner of payment - whether payable in cash or otherwise and how;

(h) sources of payment; and

(i) any other relevant particulars as the Board may think fit.

8.May 2018 Qn no 4(a) 8 Marks:

Queen Construction Company Ltd. acquired 60 % of the equity paid up share capital of ABC Ltd. Queen Construction Ltd. has planned to expand its operation for which additional fund is required. The Board of Directors decided to avail additional exposure of` 10 crore from the Bank.

The following data is furnished as on 30th June, 2017.

	` In crores
Authorised Equity Share Capital	25
Issued and Subscribed Equity Share Capital	22
Paid up Equity Share Capital	20
Capital Reserve	2
Revaluation Reserve	1
General Reserve	3
Open cash credit Limit (for working Capital requirement) with the Bank repayable in 3 months	5
Loan obtained under the Hire Purchase agreement for acquiring vehicles.	1
Long term Borrowing from Banks and other parties	15

ABC Ltd. approached Queen Construction Ltd. to grant a loan of ` 25 Lakhs and stand as guarantor for repayment of loan ` 10 Lakhs to be sanctioned by a Bank.

The two loans (25 Lakhs plus 10 Lakhs) will be utilized by ABC Ltd. for its principal business activities.

You being the Financial Advisor of the company, advise the Board of Directors about the procedure to be followed to avail additional exposure of ` 10 Crore from the Bank. Also evaluate whether the loan guarantee given by Queen construction Ltd. to ABC Ltd. is valid according to Section 185 of the Companies Act, 2013.

Answer:

Borrowing by the Company (Section 180 of the Companies Act, 2013)

As per Section 180(1)(c) of the Companies Act, 2013, the Board of Directors of a Company, without obtaining the approval of shareholders in a general meeting through a special resolution, can borrow the funds including funds already borrowed upto an amount which does not exceed the aggregate of paid up capital of the company and its free reserves and Securities premium . Such borrowing shall not include temporary loans obtained from the company's bankers in the ordinary course of business. Here Free reserves shall not include the reserves set apart for specific purpose.

According to the above provisions, the Board of Directors of Queen Construction Ltd. can borrow, without obtaining approval of the shareholders in a general meeting, upto an amount calculated as follows:

Particulars	**` In Crores**
Paid up Equity Share Capital **(A)**	20
General Reserve (being free reserve) **(B)**	3
Capital Reserve (Not a free reserve)	-
Revaluation Reserve (Not a free reserve)	-
Aggregate of paid up capital and free reserve **(A)+(B)**	23
Total borrowing power of the Board of Directors of the company, i.e ., 100% of the aggregate of paid up capital and free reserves **(C)**	23
Less: Amount already borrowed as Long term loan **(D)**	16
Amount upto which the Board of Directors can further borrow without the approval of shareholders in a general meeting. (C) – (D)	7

In the present case, the Directors of Queen Construction Limited by a resolution passed at its meeting decide to borrow an additional sum of ` 10 Crores from the bank. Hence, the borrowing will be beyond the powers of the Board of directors.

Thus, the Management of Queen Construction Limited., should take steps to convene the general meeting and pass a special resolution by the members in the meeting as stated in Section 180(1)(c) of the Companies Act, 2013. Then, the borrowing will be valid and binding on the company and its members.

According to Section 185 of the Companies Act, 2013, no Company shall, directly

or indirectly, advance any loan, including any loan represented by a book debt, to

any of its directors or to any other person in whom the director is interested or give any

guarantee or provide any security in connection with any loan taken by him or such other person.

However, the above sub-section shall not apply to any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary Company. [Section 185(1)(c)]. It is also provided that the loans made under this clause are utilized by the subsidiary company for its principal business activities.

In the instant case, Queen Construction Ltd. acquired 60% of the equity paid up share capital of ABC Ltd. Hence, ABC Ltd. is a subsidiary company of Queen Construction Ltd. [as per Section 2(87)]

Hence, as per Section 185(1)(c), granting of loan of ` 25 Lakhs by Queen Construction Ltd to ABC Ltd is not valid but providing of guarantee for repayment of loan of ` 10 lakhs to be sanctioned by bank is valid.

9.RTP May 2018 Qn no 3

Examine the following aspect related to convening of board meeting with reference to the provisions of the Companies Act, 2013:

(i) **The Chairman of Greenhouse Limited convened a board meeting and two weeks' notice was served on all directors of the company. Two of the independent directors on the board objected on the grounds that no proper agenda for the meeting was circulated.**

(ii) **Purple Florence Limited proposes to hold its board meeting at a shorter notice through video conferencing.**

Answer:

(i) According to section 173 (3) of the Companies Act, 2013, a meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

According to the question, two of the independent directors on the Board has objected on the grounds that no proper agenda for the meeting was circulated.

The Companies Act, 2013 does not specifically provide for sending agenda along with the notice of the meeting. However, generally as a good secretarial practice, the notice is accompanied with the agenda of the meeting. Thus, the contention of the independent directors objecting on the grounds that no agenda for the meeting was circulated, does not hold good.

Further, the Chairman of Greenhouse Limited has convened the Board meeting by serving a two weeks' notice (i.e. more than 7 days). Hence, the meeting shall be valid.

(ii) According to section 173 of the Companies Act, 2013,

(a) The directors can participate in a meeting of the Board either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time. Further, Central Government may provide for matters which cannot be dealt in a meeting through video conferencing or other audio visual means.

(b) A meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company.

Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting. Further, in case the independent directors are not present at such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

Hence, Purple Florence Limited can hold a board meeting at a shorter notice through video conferencing, for transacting urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting. Further, if the independent directors are absent from the meeting of the Board, decision taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

10.Aug 2018 Qn no 1(a) 8 Marks:

XYZ, Public Ltd. with the turnover of Rs. 500 crore entered into a contract of purchasing of raw material from a private company. XYZ Ltd. appointed Mr. Khurana, a director of the company, to act in this deal of transaction. Mr. Khurana is also a member of that

private company. He settled the said transaction into 60 crore and entered into the contract. After few transactions made under the contract, XYZ Ltd. finds degradation in the quality of the product supplied. In the Board Meeting, this contract was challenged considering it as a related party transaction and in contravention to section 188(1). During this period, Mr. Khurana was appointed as a director in newly setup, PQR Ltd.

In the light of the given facts, examine the following situations as per the Companies Act, 2013.

- **What is the legal position of the contract entered between XYZ Ltd through Mr. Khurana, and the private company?**
- **Is there any contravention of section 188 (1)? if yes, then the liability of the wrong deor.**

Comment upon the appointment of Mr. Khurana as a director in PQR Ltd.

Answer:

As per the given facts, Mr. Khurana, a director of XYZ Ltd., was also a member of a private company with which he entered into contract for the purchase of the raw material. In terms of section 2(76) of the Companies Act, 2013, XYZ Ltd. is a related party to a such private company. However , as per section 188(1) of the Act, no company shall enter into any contract or arrangement with a related party with respect to the transaction related to the sale, purchase or supply of any goods or materials or made through an appointment of any agent for purchase or sale of goods, materials, services or property, except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as given in rule 15 of the *Companies (Meetings of Board and its Powers) Rules, 2014* .

However, no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as prescribed in Rule 15(3) of *the Companies (Meetings of Board and its Powers) Rules, 2014* , shall be entered into except with the prior approval of the company by a resolution. [First proviso to section 188(1)]

A company shall not enter into transaction/s related sale, purchase or supply of any goods or materials, directly or through appointment of agent, where the transaction or transactions to be entered into is amounting to 10% or more of the turnover of the company ~~or rupees 100 crore, whichever is lower~~, except with the prior approval of the company by a resolution.

Since in the given case, XYZ, Public Ltd. has turnover of Rs. 500 crore, here the transaction is amounting to more than 10% of the turnover i.e., 500 cr x10/100 = 50 cr, but without seeking prior approval of the company by a resolution.

So, in terms of the above provision, this contract is of voidable nature at the option of the Board, or as the case may of the shareholders according to section 188(3) of the Companies Act, 2013.

In case of contravention of Section 188(1): Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a resolution in the general meeting as required under section 188(1), and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within 3 months from the date on which such contract or arrangement was entered into. Further, if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

Company may proceed to recover loss in contravention of the provisions of this section: Section 188 (4) provides that it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.

Penalty: Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall be punishable with fine which shall not be less than 25,000 rupees but which may extend to 5 lakh rupees.

(ii) **Appointment of Director under Section 164:** A person shall not be eligible for appointment as a director of a company, where he has been convicted

of the offence of dealing with related party transactions under section 188 at any time during the last preceding 5 years;

In the given instance, Mr. Khurana was not convicted, only levied with the penalty, against the offence dealt with related party transactions under section 188, so he eligible and can be appointed as a director in the PQR Ltd.

11.Oct 2018 Qn no 1(a) 8 Marks:

Srajan Ltd., a company incorporated in July 2015. The Board of Directors of Srajan Ltd., proposed to donate Rs. 2,00,000 to a school established exclusively for the benefit of the employees of the company. Besides, also proposed to donate Rs.1 lac to a political

party during the financial year ending March 31, 2018. The net profit during the financial year 2017 -2018, was Rs.35,00,000.

Evaluate the given below situations in the light of the stated facts under the relevant provisions of the Companies Act, 2013-

- **Whether the proposed political donation made by the Srajan Ltd., are within the powers of the Board of Directors of the company**
- **Whether the contribution by Srajan Ltd. to school established for the benefit of an employee is charitable contribution.**

Answer:

Political Contribution: As per section 182, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party:

Provided that no such contribution shall be made by a company **unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors** and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making of the contribution authorised by it.
Every company shall disclose in its profit and loss account the total amount contributed by it under this section during the financial year to which the account relates.

In the given case BoD of Srajan Ltd. proposed political contribution of 1 Lac for the financial year 2017-2018. As per the above provision, any amount can be contributed by Srajan Ltd. through the resolution passed at a meeting of the Board of Directors authorising the making of such contribution. Such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making of the contribution authorised by it. So, the political contribution proposed is well within the powers of the Board. Such a proposal shall be passed at a meeting through the

resolution authorising such contribution and full disclosure of the name of political party and amount contributed shall be made in the profit and loss account.

(ii) Charitable Contribution: As per the facts, the Board of Directors of Srajan Ltd., proposed to donate Rs. 2,00,000 to a school established exclusively for the benefit of the employees of the company. As per section 181 of the Companies Act, 2013, the Board of Directors of a company may contribute to bona fide charitable and other funds. A contribution by a company is said to be charitable contribution if it is made without any object of availing any benefit for the company or for its employees and such contribution does not have any direct relation with the business of the company.

Since, here the contribution proposed is for the school which is exclusively for the benefit of the employees' children. Therefore, it cannot be considered as charitable within the meaning of section 181.

12.Oct 2018 Qn no 4(a) 8 Marks:

XYZ, Ltd. with the turnover of Rs. 500 crore entered into a contract of purchasing of raw material from a private company. XYZ Ltd. appointed Mr. Khurana, a director of the company, to act in this deal of transaction. Mr. Khurana is also a member of that private company. He settled the said transaction into 60 crore and entered into the contract. After few transactions made under the contract, XYZ Ltd. finds degradation in the quality of the product supplied. In the Board Meeting, this contract was challenged considering it as a related party transaction and in contravention to section 188(1). During this period, Mr. Khurana was appointed as a director in newly setup, PQR Ltd.

In the light of the given facts, examine the following situations as per the Companies Act, 2013.

(i) **What is the legal position of the contract entered between XYZ Ltd through Mr. Khurana, and the private company?**

(ii) **Is there any contravention of section 188 (1)? if yes, then the liability of the wrong doer.**

Comment upon the appointment of Mr. Khurana as a director in PQR Ltd.

Answer:

As per the given facts, Mr. Khurana, a director of XYZ Ltd., was also a member of a private company with which he entered into contract for the purchase of the raw material. In terms of section 2(76) of the Companies Act, 2013, XYZ Ltd. is a related party to a such private company. However , as per section 188(1) of the Act, no company shall enter into

any contract or arrangement with a related party with respect to the transaction related to the sale, purchase or supply of any goods or materials or made through an appointment of any agent for purchase or sale of goods, materials, services or property, except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as given in rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014 .

However, no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as prescribed in Rule 15(3) of *the Companies (Meetings of Board and its Powers) Rules, 2014* , shall be entered into except with the prior approval of the company by a resolution. [First

proviso to section 188(1)]

A company shall not enter into transaction/s related sale, purchase or supply of any goods or materials, directly or through appointment of agent, where the transaction or transactions to be entered into is amounting to 10% or more of the turnover of the ~~company or rupees 100 crore, whichever is lower~~, except with the prior approval of the company by a resolution.

Since in the given case, XYZ, Public Ltd. has turnover of Rs. 500 crore, here the transaction is amounting to more than 10% of the turnover i.e., 500 cr x 10/100 = 50 cr, but without seeking prior approval of the company by a resolution.

So, in terms of the above provision, this contract is of voidable nature at the option of the Board, or as the case may of the shareholders according to section 188(3) of the Companies Act, 2013.

(ii) **In case of contravention of Section 188(1):** Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a resolution in the general meeting as required under section 186(1), and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within 3 months from the date on which such contract or arrangement was entered into. Further, if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

Company may proceed to recover loss in contravention of the provisions of this section: Section 188 (4) provides that it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.

Penalty: Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall be punishable with fine which shall not be less than 25,000 rupees but which may extend to 5 lakh rupees.

(iii) **Appointment of Director under Section 164:** A person shall not be eligible for appointment as a director of a company, where he has been convicted of the offence of dealing with related party transactions under section 188 at any time during the last preceding 5 years;

In the given instance, he was not convicted, only levied with the penalty, against the offence

dealt with related party transactions under section 188, so he eligible and can be appointed as a director in the PQR Ltd.

13.Oct 2018 Qn no 6(a) 4 Marks:

Examine with reference to the provisions of the Companies Act, 2013 whether notice of a Board Meeting is required to be sent to the following persons:

(a) **An interested Direct**

(b) **A director who has gone abroad less than 3 months.**

Answer:

Notice of Board meeting

Section 173(3) of the Companies Act, 2013 makes it mandatory for every director to be given proper notice of every board meeting. It is immaterial whether a director is interested or not.

(a) An Interested Director: Notice must be given to a director even though he is precluded from voting at the meeting on the business to be transacted.

(b) A director who has gone abroad: A director who has gone abroad is still a director. Therefore, he is entitled to receive notice of board meetings during his stay abroad.

The Companies Act, 2013. allows delivery of notice of meeting by electronic means also. This is important because the Companies Act, 2013 permits a director to participate in a meeting by video conferencing or any other audio visual means.

14.RTP Nov-2018:

M/s. Multiplex Builders Limited is contemplating to enter into a joint venture agreement with another construction company for the development of landed properties located at Delhi. Since it is not possible to convene the Board Meeting immediately, as the directors are at different place in connection with various works, the Managing Director seeks your advice on the following matters:

(a) **Whether the resolution pertaining to the joint venture agreement is required to be passed at the Board Meeting convened for this purpose or whether it can be passed by means of a circular resolution?**

(b) **What are the resolutions that are required to be passed only at the meetings of the Board of Directors?**

(c) **The steps that are required to be taken to pass the Board resolution by circulation.**

Advise the Managing Director in the light of the provisions of the Companies Act, 2013.
Answer:

The directors of the company act together as a body and generally at the meeting of the Board duly convened, unless special powers are delegated to an individual director or the managing director. Where it is not possible to hold board meetings because the directors are busy elsewhere or the time for convening such a meeting is short, it is possible that the required resolution can be passed by way of circular resolution as provided in section 175 of the Companies Act 2013.

However, under section 179 of the Companies Act 2013, certain powers can be exercised by the Board of directors by means of a resolution passed at meeting convened for this purpose.

They are:

(i) to make calls on shareholders in respect of money unpaid on their shares

(ii) to authorize buy back of securities under section 68

(iii) to issue securities, including debentures, whether in or outside India

(iv) to borrow monies

Note: By way of Explanation II, it is clarified that in respect of dealings between a company and its bankers, the excerise of the power by the company specified in clause (d) above shall mean the arrangement made by the company with its bankers for **Borrowing of Money** by way of Overdraft or cash credit or otherwise. This doesnot refer to actual Day-to –day operation of overdraft, cash credit or other accounts by means of which the arrangement so made is actually relieved of.

(v) to invest the funds of the company

(vi) to grant loans or give guarantee or provide security in respect of loans

(vii) to approve financial statements and the Board's report

(viii) to diversify the business of the company

(ix) to approve amalgamation, merger or reconstruction

(x) to take over a company or acquire a controlling or substantial stake in another company.

(xi) Any other matter as prescribed in Rule 8 of the *Companies (Meetings of the Board and its Powers) Rules, 2014.* These matters, also to be excersied only by means of resoultions passed at the meetings of the

board are:

1. To make political contributions
2. To appoint or remove Key Managerial Personnel
3. To appoint internal auditors and secretarial auditor.

In view of the above, the Managing Director can go ahead and complete the joint venture agreement after obtaining the approval of the board by passing a circular resolution.

For this purpose, the proposed resolution has to be circulated in draft along wit h the other necessary papers, if any, to all the directors in India at their usual residential addresses.

The resolution will become valid if the same is approved by majority of the directors and who are entitled to vote on the resolution. There after the resolution as passed by way of circulation will be entered in the minutes book of the Board of Directors and is enough compliance of the provisions of Companies Act, 2013 in this regard.

15.RTP Nov-2018:

ASK Housing Finance Limited are prepared to give housing loans to the employees of M/s NEWS Pharmacy Limited subject to the condition that the loans are guaranteed by M/s. NEWS Pharmacy Limited. M/s NEWS Pharmacy Limited is not a listed company and the company will be exceeding the limits prescribed under the Companies Act, 2013 by providing the guarantees. Advise the company about this legal requirement under the Companies Act, 2013 to give effect to the above proposal. What would be your advice if the company was required to provide security instead of guarantee?

Answer:

(ii) As per Section 186(2) of the Companies Act, 2013, no company shall directly or indirectly

(a) give any loan to any person or other body corporate;

(b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and

(c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,

exceeding sixty per cent. of its paid-up share capital, free reserves and securities

premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more, except with the prior approval by means of a special resolution passed at a general meeting.

However, explanation provided in Section 186(2) of the Companies Act, 2013 states that for the purposes of this sub-Section, the word "person" does not include any individual who is in the employment of the Company.

As per the given facts, ASK Housing Finance Company Limited was prepared to give housing loans to the employees of M/s NEWS Pharmacy Limited on the condition that such loans are guaranteed by the M/s NEWS Pharmacy Limited exceeding the limits prescribed in the Companies Act, 2013.

Here, the loans are to be guaranteed by M/s. News Pharmacy Limited for its employees which falls within the purview of the explanations which includes guarantees given for the employees. So, Section 186(2) shall not be applicable to it. Hence, it can give the guarantee without any condition on the limits imposed in the Section 186(2). Hence, there are no legal requirements to be fulfilled under the Companies Act, 2013 to give effect to the above proposal.

Answer will remain the same, even if the company provides security instead of guarantee as the provisions of the Section 186(2) are applicable for providing security also.

16.MTP Mar 2019 Qn no 1(b) 8 Marks

The last three years' Balance Sheet of PTL Ltd., contains the following information and figures:

	As at 31.03.2016 Rs.	As at 31.03.2017 Rs.	As at 31.03.2018 Rs.
Paid up capital	50,00,000	50,00,000	75,00,000
General Reserve	40,00,000	42,50,000	50,00,000
Credit Balance in Profit & Loss Account	5,00,000	7,50,000	10,00,000
Debenture Redemption Reserve	15,00,000	20,00,000	25,00,000
Securities Premium	2,00,000	2,00,000	2,00,000
Secured Loans	10,00,000	15,00,000	30,00,000

On going through other records of the Company, the following is also determined:

Net Profit for the year (as calculated in accordance with the provisions of the Companies Act, 2013)	**12,50,000**	**19,00,000**	**34,50,000**

In the ensuing Board Meeting scheduled to be held on 5th November, 2018, among other items of agenda, following items are also appearing:

(i) **To decide about borrowing from Financial institutions on long-term basis.**

(ii) **To decide about contributions to be made to Charitable funds.**

Based on above information, you are required to find out as per the provisions of the Companies Act, 2013, the amount upto which the Board can borrow from Financial institution and the amount upto which the Board of Directors can contribute to Charitable funds during the financial year 2018 - 19 without seeking the approval in general meeting .

Answer

Borrowing from Financial Institutions: As per Section 180(1)(c) of the Companies Act, 2013, the Board of Directors of a company, without obtaining the approval of shareholders in a general meeting, can borrow money including moneys already borrowed upto an amount which does not exceed the aggregate of paid up capital of the company, free reserves and securities premium. Such borrowing shall not include temporary loans obtained from the company's bankers in ordinary course of business. Here, free reserves do not include the reserves set apart for specific purpose.

Since the decision to borrow is to be taken in a meeting to be held on 5th November, 2018, the figures relevant for this purpose are the figures as per the Balance Sheet as at 31.03.2018. According to the above provisions, the Board of Directors of PTL Ltd. can borrow, without obtaining approval of the shareholders in a general meeting, upto an amount calculated as follows:

Particulars	***Rs.***
Paid up Capital	75,00,000
General Reserve (being free reserve)	50,00,000
Credit Balance in Profit & Loss Account (to be treated as free reserve)	10,00,000

Debenture Redemption Reserve (This reserve is not to be considered since it is kept apart for specific purpose of debenture redemption)	----
Securities Premium	2,00,000
Aggregate of paid up capital, free reserve and securities premium	137,00,000
Total borrowing power of the Board of Directors of the company, i.e, 100% of the aggregate of paid up capital, free reserves and securities premium	137,00,000
Less: Amount already borrowed as secured loans	30,00,000
Amount upto which the Board of Directors can further borrow without the approval of shareholders in a general meeting.	107,00,000

Contribution to Charitable Funds: As per Section 181 of the Companies Act, 2013, the Board of Directors of a company without obtaining the approval of shareholders in a general meeting, can make contributions to genuine charitable and other funds upto an amount which, in a financial year, does not exceed five per cent of its average net profits during the three financial years immediately preceding, the financial year.

According to the above provisions, the Board of Directors of the PTL Ltd. can make contributions to charitable funds, without obtaining approval of the shareholders in a general meeting, upto an amount calculated as follows:

Net Profit for the year (as calculated in accordance with the provisions of the Companies Act, 2013):

Particulars	***Rs.***
For the financial year ended 31.3.2016	12,50,000
For the financial year ended 31.3.2017	19,00,000
For the financial year ended 31.3.2018	34,50,000
TOTAL	66,00,000
Average of net profits during three preceding financial years	22,00,000
Five per cent thereof	1,10,000

17.RTP May 2019 Qn no 9

The Board of Directors of IBC Consultants Limited, registered in Maharashtra, proposes to hold the next board meeting in the month of May, 2019.They seek your advice in respect of the following matters:

(i) **Can the board meeting be held in Delhi through video conferencing, when all the directors of the company reside at Maharashtra.**

(ii) **Is it necessary that the notice of the board meeting should specify the nature of business to be transacted?**

Answer

(i) There is no provision in the Companies Act, 2013 under which the board meetings must be held at any particular place. Therefore, there is no difficulty in holding the board meeting at Delhi even if all the directors of the company reside at Maharashtra and the registered office is situated at Maharashtra provided that the requirements regarding the holding of a valid board meeting and the other provisions relating to the signing of register of contracts, taking roll calls, etc. are complied with.

(ii) Section 173 (3) of the Companies Act, 2013 provides for the giving of notice of every board meeting of not less than seven days to every director of the company. There is no provision in the Act laying down the contents of the notice. Hence, it may be construed that notice may be interpreted as intimation of the meeting and does not

necessarily include the sending of the Agenda of the meeting. However, considering the importance of Board Meetings and the responsibilities placed on the directors for decisions taken at the meetings, it is inevitable for them to be properly prepared and informed about the items to be discussed at the Board Meetings.

In view of the above and as a matter of good secretarial practice, the Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda should be given to the Directors at least seven days before the date of the board meeting, unless the Articles prescribe a longer period. Usually, the articles of a company make it mandatory to do so in almost all cases.

As the board meeting is being conducted through video conferencing, Rule 3 (3) (b) of the *Companies (Meetings of Board and its Powers) Rules, 2014* requires that the notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio-visual means, and shall

provide all the necessary information to enable the directors to participate through video conferencing mode or other audio-visual means.

18.May 2019 Qn no 1(b) 6 Marks:

M/s Tristar Ltd. (an unlisted public limited company) with the annual turnover of ` 700 crores entered into a contract of purchasing of raw material from M/s. PTC Pvt. Ltd. during the year 2018. M/s Tristar Ltd. appointed Mr. Sudhir, a Director of the Company, to act in this deal of transaction on behalf of the company. Mr. Sudhir is also one of the member of M/s PTC Pvt. Ltd. Mr. Sudhir settled the said transaction of purchase for ` 85 crores and entered into the contract. After a few transactions executed under the contract, the Board of M/s Tristar Ltd. finds degradation in the quality of the raw material supplied. Further, in a board meeting this contract was challenged considering it as a related party transaction and in contravention to section 188 (1) of the Companies Act, 2013 read with rules framed thereunder. During the period Mr. Sudhir was appointed as director in a newly incorporated company M/s Raaga Limited.

In the light of the given facts, examine the following situations as per the Companies Act, 2013.

(i) **What is the legal position of the contract entered between M/s Tristar Ltd. through its director Mr. Sudhir, and M/s. PTC Pvt. Ltd.?**

(ii) **Is there any contravention of section 188 (1)? If yes, then state the liability of the wrongdoer.**

(iii) **Comment upon the appointment of Mr. Sudhir as a Director in M/s Raaga Limited.**

Answer

As per the given facts, Mr. Sudhir, a director of M/s Tristar Ltd., was also a member of M/s PTC private Ltd. with which he entered into contract for the purchase of the raw material. In terms of section 2(76) of the Companies Act, 2013, M/s Tristar Ltd. is a related party to M/s PTC private Ltd..

Also, as per section 188(1) of the Act, no company shall enter into any contract or arrangement with a related party with respect to the transaction related to the sale, purchase or supply of any goods or materials or made through an appointment of any agent for purchase or sale of goods, materials, services or property, except with the consent

of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as given in rule 15 of the *Companies (Meetings of Board and its Powers) Rules, 2014* .

However, no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as prescribed in Rule 15(3) of *the Companies (Meetings of Board and its Powers) Rules, 2014*, shall be entered into except with the prior approval of the company by a resolution. [First proviso to section 188(1)]

A company shall not enter into transaction/s related to sale, purchase or supply of any goods or materials, directly or through appointment of agent, where the transaction or transactions to be entered into is amounting to 10% or more of the turnover of the company ~~or rupees 100 crore, whichever is lower~~, except with the prior approval of the company by a resolution.

Since in the given case, M/s Tristar Ltd. has turnover of ` 700 crore. The transaction of purchase settled by Mr. Sudhir, is ` 85 crore which is more than 10% of the turnover (i.e., 700 crore x10/100= 70 crore). Neither M/sTristar Ltd. had taken prior approval of the company by a resolution, nor it was ratified by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into. [Section 188(3)]

(i) So, in terms of the above provision, this contract is of voidable nature at the option of the shareholders according to section 188(3) of the Companies Act, 2013.

(ii) **Contravention of Section 188(1):** Yes, as per the answer given under Part (i), there is a contravention of section 188(1).

Following is the liability of the Sudhir, Director of M/s Tristar Ltd: Section 188(3) specifies, if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

Therefore, M/s Tristar Ltd, may proceed to recover loss**.** Section 188 (4) provides that it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.

Penalty: Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall be punishable with fine which shall not be less than 25,000 rupees but which may extend to 5 lakh rupees.

Appointment of Director in M/s Raaga Ltd.: As per section 164(1)(g) of the Companies Act,2013, a person shall not be eligible for appointment as a director of a company, where he has been convicted of the offence of dealing with related party transactions under section 188 at any time during the last preceding 5 years;

In the given instance, Mr. Sudhir was not convicted rather only the contract was challenged in the board meeting considering it as a related party transaction which is in contravention to section 188(1) and may attract penalty in terms of Section 188(5) against the offence dealt with related party transaction hence Mr. Sudhir remains eligible to be appointed as a director of M/s Raaga Ltd.

19.May 2019 Qn no 6(a)(ii) 4 Marks:

The following information is provided in respect of M/s Fortune Limited under three different case scenarios on the borrowing powers of the Board of Directors of the company. Mr. Murli, the CFO seeks your advice with explanations as to the nature of resolution which needs to be passed under each of the case scenarios as per the provisions of section 180(1) (c) of the Companies Act, 2013. Detailed workings should form part of your answer.

Particulars	*Case I (` in Crores)*	*Case II (` in Crores)*	*Case III (` in Crores)*
Equity Share Capital (Paid- up)	*150*	*150*	*150*
Preference Share Capital (Paid-up)	*50*	*50*	*50*
Securities Premium Account	*50*	*50*	*50*
Free Reserves	*20*	*20*	*20*
Total:	*270*	*270*	*270*
Working Capital Loan (repayable on demand-Existing) from Sigma Capital Limited	*50*	*50*	*50*
Cash Credit Limit from a scheduled bank (repayable on demand-Existing)	*120*	*120*	*120*
6 months loan for purchase of Plant & Machinery from scheduled bank	*30*	*40*	*130*

(proposed)			
24 months loan for purchase of Plant & Machinery from scheduled bank (proposed)	*10*	*20*	*150*
Total	*210*	*230*	*450*

Answer:

According to section 180(1)(c) of the Companies Act, 2013, the Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely:—(c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital, free reserves and securities premium, apart from temporary loans obtained from the company's bankers in the ordinary course of business:

Explanation—For the purposes of this clause, the expression "temporary loans" means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature.

Particulars	Case I (` In crores)	Case II (` In crores)	Case III (` In crores)
Total amount of Paid up share capital, free reserves and securities premium	**270**	**270**	**270**
Hence, Total amount that the company can borrow without passing Special Resolution **Amount (A)**	**270**	**270**	**270**

(a) Existing Working Capital Loan (Repayable on demand) from Sigma Capital Limited since it is not a banker	50	50	50
(b) Total amount of Loan that Company needs is:	30	40	130
(i) 6 months loan for purchase of Plant & Machinery	10	20	150
	40	**60**	**280**
(ii) 24 months loan for purchase if Plant & Machinery	**90**	**110**	**330**
Amount (B)			
Is **Amount (A)> Amount (B),** then **SR need not be passed**	SR not to be passed	SR not to be passed	SR to be passed

Working Notes:

1. Paid up share capital includes both equity share capital and Preference share capital
2. 'Cash credit limit from scheduled bank' are temporary loans as they are repayable on demand.
3. '6 months loan for purchase of Plant & Machinery' is not treated as a temporary loan as temporary loans does not include loans raised for the purpose of financial expenditure of a capital nature.

20.Nov 2019 Qn no 1(b) 6 Marks

The Articles of Association of M/s. DEF Limited (Non-Government Company) restricts the Company to contribute to National Defence Fund in any financial year for a sum not exceeding ` 5 lakhs. The Articles is silent about contribution to bonafide Charitable Fund and to a Political Party. The Company earned net profit during the last five financial years as under:

Financial Year	Net Profit (` in Lakhs)
2018-19	45
2017-18	25
2016-17	20
2015-16	15
2014-15	10

The Board of Directors proposes to contribute in July 2019 for the first time during the financial year 2019-20:

(i) **` 7 Lakhs to National Defence Fund**

(ii) **` 3 Lakhs to a bonafide Charitable Fund**

(iii) **` 5 Lakh to a Political Party**

The Company Seeks your advice on the following matters in respect of each of the above proposals under the provisions of the Companies Act, 2013.

(i) **The appropriate approving authority:**

(ii) **The quantum of contribution that can be made;**

(iii) **The mode of payment of such contribution**

Answer

(i) Appropriate approving authority

(a) **In case of National Defence Fund:** As per section 183(1), the Board of Directors of any company or any person or authority exercising the powers of the Board of Directors of a company, or of the company in general meeting, may, contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the Central Government for the purpose of national defence.

(b) **In case of Bonafide Charitable Fund:** As per section 181(1), the Board of Directors of a company may contribute to *bona fide* charitable and other funds. However, prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five per cent of its average net profits for the three immediately preceding financial years.

(c) **In case of Political Party:** As per section 182(1), a company may contribute any amount directly or indirectly to any political party. However, no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making of the contribution authorised by it.

Quantum of contribution

- **In case of National Defence Fund: As per section 183, t**he Board of Directors

of any company or any person or authority exercising the powers of the Board of Directors of a company, or of the company in general meeting, may, notwithstanding

anything contained in sections 180, 181 and 182 or any other provision of this Act or in the memorandum, articles or any other instrument relating to the company, contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the Central Government for the purpose of national defence.

Hence, the company can contribute ` 7 Lakhs to National Defence Fund inspite of restriction by the company to contribute in any financial year for a sum not exceeding ` 5 lakhs as the Section 183 prevails over Articles of the company and there is no limit on such contribution.

- **Bonafide Charitable Fund:** According to section 181, **t**he Board of Directors of a company may contribute to *bona fide* charitable and other funds. However, prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five per cent of its average net profits for the three immediately preceding financial years.

Average Net profit: `30 Lakhs [(45+25+20)/3] 5% of average net profit: `1.5 Lakhs

Since, the amount of contribution exceeds five per cent of its average net profits for the three immediately preceding financial years, hence it requires prior permission of the company in general meeting for contributing ` 3 Lakhs to a bonafide Charitable Fund.

- **Political party:** Section 182 specifies that a company other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party.

Hence, the company can contribute `5 Lakhs to a political party.

Mode of payment of such contribution:

- **National Defence fund:** No mode of payment is provided under section 183.
- **Bonafide Charitable Fund:** No mode of payment is provided under section 181.
- **Political Party:** According to Section 182(3A), notwithstanding anything contained in sub-section (1), the contribution under this section shall not be made except by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account. However, a company may make contribution through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.

21. The Board of Directors of Infotech Consultants Limited, registered in Kolkata, proposes to hold the next board meeting in the month of May, 2019.They seek, your

advice in respect of the following matters:

(i) **Can the board meeting be held in Chennai through video conferencing, when all the directors of the company reside at Kolkata?**

(ii) **Is it necessary that the notice of the board meeting should specify the nature of business to be transacted?**

Answer

(i) No provision in the Companies Act, 2013 requires that the board meetings must be held at a particular place. Accordingly, there is no difficulty in holding the current board meeting at Chennai through video conferencing even if all the directors of the company reside at Kolkata and the registered office is also situated at Kolkata. However, it is to be seen that the legal requirements as prescribed by Section 173 (2) and Rule 3 of the of the Companies (Meetings of Board and its Powers) Rules, 2014 are meticulously followed.

(ii) Section 173 (3) of the Companies Act, 2013 provides for the giving of notice of every board meeting of not less than seven days to every director of the

company. There is no provision in the Act laying down the contents of the notice. Hence, it may be construed that notice may be interpreted as intimation of the meeting and may not necessarily include Agenda of the meeting. However, considering the importance of board meetings and the responsibilities placed on the directors for decisions taken at the meetings, it is inevitable for them to be properly prepared and informed about the items to be discussed at the board meetings.

In view of the above and as a matter of good secretarial practice, the Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda should be given to the Directors at least seven days before the date of the board meeting, unless the Articles prescribe a longer period. Usually, the articles of a company make it mandatory to do so in almost all cases.

As the board meeting is being conducted through video conferencing, Rule 3 (3) (b) of the Companies (Meetings of Board and its Powers) Rules, 2014 requires that the notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio-visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio-visual means.

22. XYZ Ltd. is a foreign collaborator in ABC Ltd. incorporated in India under the Companies Act, 2013. The foreign collaborator holds 49% of the shareholding. The Board meetings of ABC Ltd are usually held in India and sometimes meetings of the Board are called at a very short notice for which there is a provision in the Articles of Association that during such situations, notices of the meetings of the Board can be sent by e-mail. State in this connection whether such a provision in the Articles of Association of ABC Ltd. is valid.

Answer: In terms of the proviso to section 173(3) of the Companies Act, 2013 a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting. No exception is made for any class or classes of companies.

Further, under section 173(3) a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

If we examine the above provision, it is amply clear that the notice is allowed to be sent, inter-alia, by electronic means also. Hence, the sending of notice by e-mail is a permissible mode of delivery and can be resorted to without any hinderance. In case Articles contain such a provision, there is no illegality involved even if there is a foreign collaborator in the company.

Therefore, in the given case the shorter notice by e-mail is legally permitted. It is to be noted that there should be the presence of quorum and at least one independent director at the meeting. The provision of the Articles in this regard is not so relevant since the position is quite clear in the Act itself.

23. Discuss the following situations with respect to the quorum.

(a) There are 9 directors in a company and out of which 2 offices of the directors have fallen vacant.

(b) There are total 15 directors in a company and during discussion on a particular item, 13 of the directors happen to be 'interested' within the meaning of

section 184(2) of the Companies Act, 2013.

Answer:

(a)According to section 174(1) of the Companies Act, 2013, quorum is one third of the total strength of Board (any fraction contained in the said one third being rounded of as one) or two directors whichever is higher. The total strength is to be derived after deducting the number of directors whose offices are vacant. Therefore, where total number of directors is 9 and 2 offices of the directors have fallen vacant, the total strength comes to seven. In this case 1/3 of 7 = 2 1/3 directors which will be rounded off as 3 which is higher than 2. Therefore, 3 directors would constitute the quorum for the Board meetings.

(b)Under section 174(3) of the Companies Act, 2013, if at any time the number of the interested directors exceeds or is equal to two thirds of the total strength of the Board of Directors, the number of the directors who are

non-interested but present at the meeting, not being less than two shall constitute the quorum.

In the given situation, there are total 15 directors and the Board meeting commences with all of them. During the meeting, an item comes up for discussion in respect of which 13 directors happen to be 'interested directors'. In spite of the fact that the interested directors are more than two-thirds, minimum two non-interested directors who are present at the meeting shall constitute the quorum and they can validly transact that particular item of business in view of Section 174 (3).

24. A meeting of the Board of 'No Holiday Ltd' was held on a holiday on account of Ganesh Chaturthi. However due to lack of quorum, the proceedings of the meeting could not be held and therefore the Chairman of the meeting with the consent of the majority decided that the Board meeting be adjourned to next week on the same day. However, the date fixed for the adjourned meeting happened to be a Sunday. Whether the adjourned meeting of the Board can be held on a Sunday.

Answer

When a board meeting is adjourned due to lack of quorum, then under section 174(4) the adjourned meeting can be held on the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a

national holiday, at the same time and place, unless the Articles provide otherwise.

Since Section 174(4) specifies exclusion of only a national holiday, any original/adjourned/committee meetings can be held on Sundays and other holidays. In view of this provision, the adjourned meeting of the Board of 'No Holiday Ltd' can be held on Sunday without involvement of any illegality.

25. **The Board of Directors of Stepping Stones Publications Ltd. resolved to borrow a sum of 15 crores from a nationalized bank at a Board meeting held on 15.1.2019. One of the directors, who opposed the said borrowing as not in the interest of the company has raised an issue that the said borrowing is outside the borrowing powers of the Board. The Company seeks your advice and the following data is given for your information:**

(i) **Share Capital ` 5 crores**

(ii) **Reserves and Surplus ` 5 crores**

(iii) **Secured Loans ` 15 crores**

Unsecured Loans ` 5 crores Advise the management of the company

Answer

According to the provisions of Section 180(1)(c) of the Companies Act, 2013, the powers of the Board are not uncontrolled and there are restrictions on the borrowing powers to be exercised by the Board of Directors. According to the said section, the borrowings should not exceed the aggregate of the paid-up share capital, free reserves and securities premium. While calculating the limit, the temporary loans obtained by the company from its bankers in the ordinary course of business will be excluded. However, from the figures available in the present case, the proposed borrowing of ` 15 crore will exceed the limit calculated as per the given information. Thus, the proposed borrowings are beyond the powers of the Board of directors.

In view of the above position, the management of Stepping Stone Publications Ltd., should take steps to pass a special resolution authorising to borrow the proposed amount of ` 15.00 crores, so that the requirement of Section 180(1)(c) is satisfied.

Only thereafter, the proposed borrowing can be availed of.

26. The Board of Directors of Very Well Ltd., is contributing every year to a charitable organization a sum of ` 60, 000. In a particular year, the company suffered losses and the directors are contemplating to contribute the said amount in spite of the losses. In this connection, state whether the directors can do so?

Answer

Under section 181 of the Companies Act, 2013, the Board of Directors of a company is authorized to contribute to bona fide charitable and other funds. However, in case the aggregate amount of such contribution in any financial year exceeds five per cent. of its average net profits for the three immediately preceding financial years, prior permission of the company in general meeting shall be required.

The section does not make it mandatory for the company to have a profit for making a charitable contribution in any financial year. As the amount of donation is restricted to the average of immediately previous 3 years' profits, it is possible for a company suffering a loss to make contribution provided it is made to a bona fide charitable fund and the average of the three immediately preceding financial years' profits (including current losses) is positive.

In the present case, even though the company has incurred a loss it can contribute to the charitable fund only if it is a bona fide charitable fund and the amount is up to 5% of the average of the immediately preceding three years' profits (including current losses). In case the contribution exceeds the limit, the prior approval of the members must be taken at a general meeting of the company.

27. The Board of Directors of LM Ltd., incorporated in April, 2017, proposes to donate ` 50,000 to a political party for the F.Y. 2019-20. The average net profits determined in accordance with the provisions of the Companies Act, 2013 during the two immediately preceding financial years are ` 20,00,000. Advise, whether the proposed donation is within the powers of Board of Directors of the company?

Answer:

As per section 182(1) of the Companies Act, 2013 any company may contribute any amount directly or indirectly to any political party except a government company and a company which has been in existence for less than three financial years.

In the given case, LM Ltd. happens to be a company which has been in existence for less than three financial years. Hence, it is not permitted to donate any amount to the concerned political party for the F.Y. 2019-20.

28. Sea Hawk Cycles Limited is a company incorporated four years ago. It has earned profits amounting to ` 5 lakhs, ` 8 lakhs and ` 11 lakhs respectively during the last three financial years. The Board of Directors of the company proposes to donate a sum of ` 50,000 to a political party. Whether the proposed donation is within the powers of Board of Directors of the company.

Answer

According to section 182(1) of the Companies Act, 2013, a company except a Government Company and a company which has been in existence for not less than three financial years, can make political contributions, directly or indirectly, to any political party. Further, the contribution shall be made by a company only after passing a resolution at a meeting of the Board of Directors authorizing such contribution.

In view of the above provisions, Sea Hawk Cycles Limited can contribute the said amount of ` 50,000 to the concerned political party. However, it needs to pass a board resolution authorising making of such contribution at a meeting of the Board of Directors

29. Y Ltd. entered into a contract with Z Ltd. which has a paid-up capital of ` 50 lakhs. One of the directors of Y Ltd. is holding equity shares of the nominal value of ` 50,000 in Z Ltd. but he did not disclose his interest at the appropriate Board meeting. Is the concerned director liable for punishment for such non-disclosure?

Answer

As per section 184 (2) of the Companies Act, 2013 the disclosure of interest by directors is not required in any contract or arrangement between two companies where any of the directors of one company or two or more of them together holds or hold not more than 2% of the paid-up share capital in the other company. In the present case, the holding of the director of Y Ltd. in Z Ltd. is only 1% [i.e. (50,000/50,00,000)*100 = 1%] which is much less than 2%. Therefore, he is not liable for any punishment if he does not disclose his interest regarding holding of equity shares in Z Ltd.

30. Mr. Mohan was appointed as director at the Annual General Meeting of a company held on 30th September, 2018 and he functioned in the capacity as director from then onwards. Subsequently, during the mid of August, 2019, it was noticed that there were certain irregularities in his appointment and therefore, on 31st August, 2019, his appointment was declared invalid. However, Mr. Mohan continued to act as director even after 31st August, 2019. Whether the subsequent acts done by him as director are

valid and binding on the company?

Answer:

According to Section 176 of the Companies Act, 2013, any act done by a person as a director shall be deemed to be valid, notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles of the company.

The Proviso to Section 176, however, states that nothing in this section shall be deemed to give validity to acts done by a director after his appointment has been noticed by the company to be invalid or to have terminated. In view of the above provisions of Section 176, the acts done by Mr. Mohan till the date of noticing irregularity in his appointment shall be deemed as valid and binding on the company.

Any act done by him after the date on which irregularity in his appointment was noticed by the company shall be invalid. Accordingly, acts done by Mr. Mohan after 31st August, 2019 shall be invalid and not binding upon the company.

31. The provision regarding conducting of four Board meetings every year is not applicable to:

(a) **One Person Company (OPC), small company and dormant company**

(b) **One Person Company (OPC), dormant company and associate company**

(c) **Small company and dormant company**

(d) **One Person Company (OPC) and small company**

Answer: (a) Hint: Section 173(5) of the Companies Act, 2013

32. One of the matters which cannot be dealt with in a board meeting conducted through electronic mode is:

(a) **Making political contributions**

(b) **Approval of the Board's report**

(c) **Appointing a Key Managerial Personnel**

(d) None of the above

Answer: b) Hint: Section 173(2) of the Companies Act, 2013 along with Rule 3 of the Companies (Meetings of Board and its powers) Rules, 2014

33. A Board resolution cannot be passed by circulation when at least ---------- of the total members require it to be decided at a meeting of the Board.

(a) 1/2

(b) 1/3

(c) 1/4

(d) 1/5

Answer: b) Hint: Proviso to section 175(1) of the Companies Act, 2013

34. A Board meeting needs to be called by at least----------days' notice in writing sent to all the directors at their addresses registered with the company.

a) 7

b) 5

c) 3

d) None of the above

Answer: a) Hint: Section 173(3) of the Companies Act, 2013

35. CK Limited was incorporated on 25th June, 2018. When can it make political contributions?

a) After one year from the date of its incorporation.

b) After two years from the date of its incorporation

c) After three years from the date of its incorporation.

d) After five years from the date of its incorporation.

Answer: c) Hint: Section 182 of the Companies Act, 2013

36. A company having minimum turnover of ` ---------- crores is required to constitute a Nomination and Remuneration Committee.

a) 25

b) 50

c) 100

d) 200

Answer: Hint: Section 178(1) of the Companies Act, 2013

37. Where at any time the number of interested directors exceeds or is equal to of the total strength of the Board of Directors, the quorum shall be the number of non-interested directors who are present at the meeting and not less than two.

(a) 1/2

(b) 2/3

(c) 1/3

(d) None of the above

Answer: b) Hint: Section 174(3) of the Companies Act, 2013

38. In case of a company where minimum ---------- per cent members (in number) are relatives of promoters or are related parties, they are not precluded from voting on a resolution for approving any related party transaction.

(a) 80

(b) 85

(c) 90

(d) 95

Answer: c) Hint: Section 188 of the Companies Act, 2013

39. Under normal circumstances, a company is not permitted to make investment through more than----------layer(s) of investment companies.

a) One

b) Two

c) Three

d) Four

Answer: b) Hint: Section 186 of the Companies Act, 2013

40. The Board of Directors can exercise its powers by means of resolution, passed at a meeting only and by no other means, to transact which of the following businesses:

a) Authorising buy back of securities

b) Taking note of the disclosures of director's interest and shareholding

c) Reviewing or changing the terms and conditions of public deposits

d) None of the above

Answer: a) Hint: Section 186 of the Companies Act, 2013

41. Out of the total strength of six directors of SQ Ltd, five are attending a Board meeting to consider the investment of funds of the company. The resolution relating to investment shall be taken as passed in which of the following cases:

a) When all the five directors attending the meeting consent to it

b) When any four directors out of five consent to it

c) When any three directors out of five consent to it

d) Investment proposal must be consented to by the total strength of directors (six directors in this case)

Answer: a) Hint: Section 186(5) of the Companies Act, 2013

42. In case of a Board meeting which is conducted through the means of video conferencing, the draft minutes shall be circulated among all the directors within days of the meeting either in writing or in electronic mode as may be decided by the Board.

(a) 5

(b) 10

(c) 15

(d) 20

Answer: c) Hint: Rule 3 of the Companies (Meetings of Board and its powers) Rules, 2014

43. Audit Committee may make omnibus approval for:

a) Making of investment in other companies

b) Related party transactions proposed to be entered into by the company

c) Transferring of non-functional undertaking

d) All of the above

Answer: b) Hint: Section 177(4) of the Companies Act, 2013

44. In case a company enters into a transaction with a related party in the ordinary course of business on an arm's length basis, which authority specifically needs to approve such transaction:

a) Board of Directors

b) Company by passing an ordinary resolution

c) Company by passing a special resolution

d) None of the above

Answer: d) Hint: Fourth proviso to section 188(1) of the Companies Act, 2013

45. Which of the following points is not related to omnibus approval to be made by an Audit Committee:

a) Audit Committee shall consider repetitiveness of the transactions (in past or in future);

b) The indicative base price or current contracted price and the formula for variation in the price,

c) **Omnibus approval shall be valid for a period not exceeding two financial years and shall require fresh approval after the expiry of such financial year.**

d) **Omnibus approval shall not be made for transactions in respect of selling or disposing of the undertaking of the company**

Answer: c) Hint: Rule 6A of the Companies (Meetings of Board and its powers) Rules, 2014

46. In case of transfer of whole of its undertaking by a company, no compensation is payable to the directors for loss of office if:

a) **the company has failed to appoint additional director**

b) **the company has failed to pay dividend on preference shares**

c) **the company has failed to appoint all the directors as prescribed by its articles**

d) **None of the above**

Answer: b) Hint: Rule 17 of the Companies (Meetings of Board and its powers) Rules, 2014

47.(i) What is the procedure to be followed, when a board meeting is adjourned for want of quorum?

(ii) How is a resolution by circulation passed by the Board or its Committee.

Answer: (i) Section 174(4) of the Companies Act, 2013 provides that, if a Board meeting could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned to the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a national holiday, at the same time and place.

(ii) (a) The Companies Act, 2013 permits a decision of the Board of Directors to be taken by means of a resolution by circulation. Board's approvals can be taken in two ways - one, by a resolution passed at a Board Meeting and the other, by means of a resolution passed by circulation.

In terms of Section 175(1) of the Companies Act, 2013 no resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the

following provisions have been complied with:

(1) the resolution has been circulated in draft, together with the necessary papers, if any,

(2) the draft resolution has been circulated to all the directors, or members of the committee, as the case may be;

(3) the Draft resolution has been sent at their addresses registered with the company in India;

(4) such delivery has been made by hand or by post or by courier, or through prescribed electronic means;

Rule 5 of the Companies (Meetings of Board and its Powers) Rules, 2014 provides that a resolution in draft form may be circulated to the directors together with the necessary papers for seeking their approval, by electronic means which may include E-mail or fax.

(5) such resolution has been approved by a majority of the directors or members, who are entitled to vote on the resolution

(6) However, if at least 1/3rd of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the Chairperson shall put the resolution to be decided at a meeting of the Board (instead of being decided by circulation).

(7) A resolution that has been passed by circulation shall have to be necessarily noted in the next meeting of Board or the Committee, as the case may be, and made part of the minutes of such meeting.

48. Mr. P and Mr. Q who are the directors of C-Tech Limited informed the company about their inability to attend the Board meeting because the notice thereof was not served on them. Discuss whether there is any default on the part of C-Tech Limited and the consequences thereof.

Answer: Under section 173(3) of the Companies Act, 2013 a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

Section 173(4) further provides that every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of ` 25,000.

In the given case, as no notice was served on Mr. P and Mr. Q who are the directors of C-Tech Limited, every officer responsible for such default in serving notice shall be punishable with fine of ` 25,000 as required by Section 173 (4).

Neither the Companies Act, 2013 nor the Companies (Meetings of the Board and its Powers) Rules, 2014 lay down any specific provision regarding the validity of a

resolution passed by the Board of Directors in case notice was not served to all the directors. We shall have to go by the provisions of the Companies Act, 2013 which clearly provide for the notice to be sent to every director. The Supreme Court, in case of Parmeshwari Prasad vs. Union of India (1974) has held that the resolutions passed in the board meeting shall not be valid, since notice to all the Directors was not given in writing. Hence, even though the directors concerned knew about the Board meeting, the meeting shall not be valid and resolutions passed thereat also shall not be valid.

49. A director goes abroad for a period of more than 3 months and an alternate director has been appointed in his place under Section 161(2). During the period of absence of the original director, a board meeting was called. In this connection, with reference to the provisions of the Companies Act, 2013, advise who should be given the notice of Board meeting i.e. the "original director" or the "alternate director"?

Answer: According to Section 161(2) of the Companies Act, 2013, the Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India.

According to Section 173(3), a meeting of the Board may be called by giving at least 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

There is no legal precedence whether the notice of the meeting is to be sent to the original director or the alternate director. But as a matter of prudence such notice may be served to both the alternate director as well as the original director who is for the time being outside India

50. Examine with reference to the provisions of the Companies Act, 2013 whether notice of a Board Meeting is required to be sent to the following persons:

(i) **An interested Director;**

(ii) **A Director who has expressed his inability to attend a particular Board Meeting;**

(iii) **A Director who has gone abroad (for less than 3 months).**

Answer: Notice of Board meeting

(i) Interested director: Section 173(3) of the Companies Act, 2013 makes it mandatory that every director needs to be given proper notice of every board meeting. It is immaterial whether a director is interested or not. In case of an interested director, notice must be given to him even though in terms of Section 184 (2) he is precluded from participation i.e. engaging himself in discussion or voting at the meeting on the business in which he is interested.

(ii) A Director who has expressed his inability to attend a particular Board Meeting: In terms of section 173(3) even if a director states that he will not be able to attend the next Board meeting, notice must be given to that director also.

(iii) A director who has gone abroad: A director who has gone abroad is still a director. Therefore, he is entitled to receive notice of board meetings during his stay abroad. The Companies Act, 2013, allows delivery of notice of meeting by electronic means also i.e. through e-mail. This factor carries weight because the Companies Act, 2013 permits a director to participate in a meeting by video conferencing or any other audio-visual means also, in addition to physical presence

51. Out of the powers exercisable by the Board under Section 179 of the Companies Act, 2013, the Board of MN Limited wants to delegate the power to borrow monies otherwise than on debentures to the Managing Director. Advise whether such a delegation is possible? Would your answer be different, if the delegation is made to the manager or any other principal officer including a branch officer of the company?

Answer: Under section 179(3) of the Companies Act, 2013, the Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board:

(a) To make calls on shareholders in respect of money unpaid on their shares;

(b) To authorise buy-back of securities under section 68;

(c) To issue securities, including debentures, whether in or outside India;

(d) To borrow monies;

(e) To invest the funds of the company;

(f) To grant loans or give guarantee or provide security in respect of loans;

(g) To approve financial statement and the Board's report;

(h) To diversify the business of the company;

(a) To approve amalgamation, merger or reconstruction;

(b) To take over a company or acquire a controlling or substantial stake in another company;

(c) Any other matter which may be prescribed.

Provided that the Board may, by a resolution passed at a meeting, delegate to any Committee of Directors, the Managing Director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify.

In respect of a company covered under Section 8 of the Companies Act, 2013, which has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar, the matters referred to in clauses (d), (e), and (f) of Section 179 (3) may be decided by the Board by circulation instead of at a meeting. This modification is permitted by Notification No. GSR 466 (E), dated 5thJune, 2015 as amended by Notification No. GSR 584 (E), dated 13thJune, 2017.

From the foregoing provisions, it is clear that the Board of MN Limited shall be perfectly in order if it delegates the power to borrow monies under clause (d) of Section 173 (3) to the Managing Director or to the manager or any other principal officer.

52. Advise the Board of Director of Spectra Papers Ltd. regarding validity and extent of its powers, under the provisions of the Companies Act, 2013 in relation to the following matters:

(i) **Buy-back, for the first time, the shares of the Company up to 10% of the paid-up equity share capital without passing a special resolution.**

(ii) **Delegation of power to the Managing Director so that he can invest surplus funds of the company in the shares of some other companies.**

Answer: According to clause (b) of Section 179(3), The Board of Directors of a company shall exercise the power to authorise buy-back of securities under section 68, on behalf of the company by means of resolutions passed at meetings of the Board.

According to Section 68(2), no company shall purchase its own shares or other specified securities, unless—

(a) the buy-back is authorised by its articles;

(b) a special resolution has been passed at a general meeting of the company authorising the buy-back:

However, nothing contained in this clause shall apply to a case where—

(1) the buy-back is, 10% or less of the total paid-up equity capital and free reserves of the company; and

(2) such buy-back has been authorised by the Board by means of a resolution passed at its meeting,

From the foregoing provisions, it is clear that in case a company, for the first time, resorts to buy-back of its own shares, when the buy-back is limited to 10% of its paid- up share capital, a special resolution will not be required if such buy-back has been authorised by the Board by means of a resolution passed at its meeting. Thus, the Board of Director of Spectra Papers Ltd. is empowered to buy-back the shares because the buy-back is limited to 10% of the paid-up share capital, by means of a resolution passed at the Board meeting.

(ii) According to clause (e) of Section 179(3), the Board of Directors of a company shall exercise the power to invest the funds of the company, on behalf of the company by means of resolutions passed at the meetings of the Board.

The Board may, under the Proviso to Section 179(3), delegate the power to invest the funds of the company through a board resolution passed at a duly convened Board Meeting. However, the investment in shares of other companies will also be governed by a specific provision contained in Section 186(5), according which no investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained.

Thus, a unanimous resolution of the Board is required. Further, Section 186 does not provide for delegation. Hence, the proposed delegation of power to the Managing Director to invest surplus funds of the company in the shares of some other companies, is not in order.

53. An Audit Committee of a listed company constituted under Section 177 of the Companies Act, 2013, submitted its report containing the recommendations in respect of certain matters to the Board. The Board, however, did not accept the recommendations. In the light of the situation, analyze whether:

(a) **The Board is empowered not to accept the recommendations of the Audit Committee.**

(b) **If so, what alternative course of action, would the Board resort to?**

Answer:

(a) According to Section 177(8) of the Companies Act, 2013, the Board's Report shall, under the provisions of Section 134 (3) which is laid before the general meeting where the financial statements of the company are placed before the members, disclose the composition of the Audit Committee and where the Board has not accepted any recommendations of the Audit Committee, the same shall also be disclosed along with the reasons therefor. Hence, the Board is empowered not to accept the recommendations of the Audit Committee but only under genuine circumstances and supported by legitimate reasons for non-acceptance.

(b) If the Board does not accept the recommendations of the Audit Committee, it shall disclose the same in its report under section 134 (3) which is placed before the general meeting of the company

54. MNC Ltd., a company, whose paid up capital was ` 8.00 Crores, has issued right shares in the ratio of 1:1. The said company is listed with Mumbai Stock Exchange. Whether the company is required to appoint any Audit Committee and if yes, draft a suitable Board Resolution to appoint an Audit committee covering the aspects as provided in the Companies Act, 2013.

Answer: Under section 177(1) of the Companies Act, 2013 the Board of Directors of every listed public company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee. Therefore, MNC Ltd being a listed company will be bound to constitute an audit committee under the Act.

Further under section 177(2) the Audit Committee shall consist of a minimum of three directors with independent directors forming a majority.

Further, majority of the members of Audit Committee including its Chairperson shall be persons with ability to read and understand the financial statement.

The draft Board Resolution for the constitution of an Audit Committee may be as follows:

"Resolved that pursuant to the provision contained in section 177 of the Companies Act 2013 and the applicable clause of Listing Agreement with the Mumbai Stock Exchange, an Audit Committee of the Company be and is hereby constituted with effect from the conclusion of this meeting, with members as under:

1. Mr. A -- An Independent Director.
2. Mr. B -- An Independent Director
3. Mr. C – An Independent Director

4. Mr. D -- An Independent Director

5. Mr. FE -- Financial Executive

6. Mr. MD -- Managing Director

Further resolved that the Chairman of the Committee, who shall be an Independent Director, be elected by the committee members from amongst themselves.

Further resolved that the quorum for a meeting of the Audit Committee shall be the chairman of the Audit Committee and 2 other members (other than the Managing Director),.

Further resolved that the terms of reference of the Audit Committee shall be in accordance with the provisions of section 177(4) of the Companies Act, 2013.

Further resolved that the Audit committee shall conduct discussions with the auditors periodically about internal control system, the scope of audit including the observations of the auditors.

Further resolved that the Audit Committee shall review the quarterly and annual financial statements and submit the same to the Board with its recommendations, if any.

Further resolved that the recommendations made by the Audit Committee on any matter relating to financial management including the audit report shall be binding on the Board. However, where such recommendations are not accepted by the Board, the reasons for the same shall be recorded in the minutes of the Board meeting and communicated to the shareholders.

Further resolved that the Company Secretary of the Company shall be the Secretary to the Audit Committee.

Further resolved that the Chairman of the Audit Committee shall attend the annual general meeting of the Company to provide any clarifications on matters relating to audit as may be required by the members of the company.

Further resolved that the Board's Report/Annual Report to the members of the Company shall include the particulars of the constitution of the Audit Committee and the details of the non- acceptance of any recommendations of the Audit Committee with reasons therefor."

55. The Balance Sheets of last three years of PTL Ltd., contain the following information and figures:

	As at 31.03.2017 `	As at 31.03.2018 `	As at 31.03.2019 `
Paid up capital	50,00,000	50,00,000	75,00,000
General Reserve	40,00,000	42,50,000	50,00,000
Credit Balance in Profit & Loss Account	5,00,000	7,50,000	10,00,000
Debenture Redemption Reserve	15,00,000	20,00,000	25,00,000
Securities Premium	2,00,000	2,00,000	2,00,000
Secured Loans	10,00,000	15,00,000	30,00,000

On going through other records of the Company, the following is also determined:

Net Profit for the year (as calculated in accordance with the provisions of the Companies Act, 2013)	12,50,000	19,00,000	34,50,000

In the ensuing Board Meeting scheduled to be held on 5th September, 2019, among other items of agenda, following items are also appearing:

(i) **To decide about borrowing from Financial institutions on long-term basis.**

(ii) **To decide about contributions to be made to Charitable funds.**

Based on above information, you are required to find out as per the provisions of the Companies Act, 2013, the amount up to which the Board can borrow from Financial institution and the amount up to which the Board of Directors can contribute to Charitable funds during the financial year 2019- 20 without seeking the approval in general meeting.

56. Following data relates to Prince Company Limited:

Authorised Capital (Equity Shares)	**` 100 crores**
Paid – up Share Capital	**` 40 crores**
General Reserves	**` 20 crores**
Debenture Redemption Reserve	**` 10 crores**
Provision for Taxation	**` 5 crores**
Securities premium	**` 2 crores**
Loan (Long Term)	**` 10 crores**
Short Term Creditors	**` 3 crores**

Board of Directors of the company by a resolution passed at its meeting decided to borrow an additional sum of ` 90 crores from the company's Bankers. Being the company's financial advisor, you are required to advise the Board of Directors regarding the procedure to be followed in this respect under the Companies Act, 2013.

Answer: (i) Borrowing from Financial Institutions: As per Section 180(1)(c) of the Companies Act, 2013, the Board of Directors of a company, without obtaining the approval of shareholders in a general meeting, can borrow money including moneys already borrowed up to an amount which does not exceed the aggregate of paid up capital of the company, free reserves and securities premium. Such borrowing shall not include temporary loans obtained from the company's bankers in the ordinary course of business. Here, free reserves do not include the reserves set apart for specific purpose.

Since the decision to borrow is to be taken in a meeting to be held on 5th September, 2019, the figures relevant for this purpose are the figures as per the Balance Sheet as at 31.03.2019. According to the above provisions, the Board of Directors of PTL Ltd. can borrow, without obtaining approval of the shareholders in a general meeting, up to an amount calculated as follows:

Particulars	`
Paid up Capital	75,00,000
General Reserve (being free reserve)	50,00,000
Credit Balance in Profit & Loss Account (to be treated as free reserve)	10,00,000

Debenture Redemption Reserve (This reserve is not to be considered since it is kept apart for specific purpose of debenture redemption)	----
Securities Premium	2,00,000
Aggregate of paid-up capital, free reserves and securities premium	137,00,000
Total borrowing power of the Board of Directors of the company, i.e, 100% of the aggregate of paid-up capital, free reserves and securities premium	137,00,000
Less: Amount already borrowed as secured loans	30,00,000
Amount up to which the Board of Directors can further borrow without the approval of shareholders in a general meeting.	107,00,000

(ii) Contribution to Charitable Funds: As per Section 181 of the Companies Act, 2013, the Board of Directors of a company without obtaining the approval of shareholders in a general meeting, can make contributions to genuine charitable and other funds up to an amount which, in a financial year, does not exceed five per cent of its average net profits during the three financial years immediately preceding, the financial year.

According to the above provisions, the Board of Directors of the PTL Ltd. can make contributions to charitable funds, without obtaining approval of the shareholders in a general meeting, up to an amount calculated as follows:

Net Profit for the year (as calculated in accordance with the provisions of the Companies Act, 2013):

Particulars	₹
For the financial year ended 31.3.2017	12,50,000
For the financial year ended 31.3.2018	19,00,000
For the financial year ended 31.3.2019	34,50,000
TOTAL	66,00,000
Average of net profits during three preceding financial years	22,00,000
Five per cent thereof	1,10,000

Hence, the maximum amount that can be donated by the Board of Directors of PTL Ltd to a genuine charitable fund during the financial year 2019 -20 will be limited to 1,10,000; and the said donation shall not require seeking of approval from the shareholders at a general meeting.

57. One of the Objects Clauses of the Memorandum of Association of Info Company Limited conferred upon the company power to sell its undertaking to another company with identical objects. Company's Articles also conferred upon the directors whereby power was conferred upon them to sell or otherwise deal with the property of the company. At an Extraordinary General Meeting of the company, members passed an ordinary resolution for the sale of its assets on certain terms and authorized the directors to carry out the sale. Directors refused to comply with the wishes of the members whereupon it was contended on behalf of the members that they were the principals and directors being their agents, were bound to give effect to their (members') decisions.

Examining the provisions of the Companies Act, 2013, answer the following:

Whether the contention of members against the non-compliance of members' decision by the directors is tenable?

Whether it is possible for the members to usurp the powers which by the Articles are vested in the directors by passing a resolution in the general meeting?

Answer: Powers of Board: In accordance with the provisions of the Companies Act, 2013, as contained under Section 179(1), the Board of Directors of a company shall be entitled to exercise all such powers and to do all such acts and things, as the company is authorized to exercise and do:

Provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made thereunder including regulations made by the company in general meeting.

Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the members or articles of the company or otherwise to be exercised or done by the company in general meeting.

Section 180 (1) of the Companies Act, 2013, specifies the powers which the Board of Directors of a company shall exercise only with the consent of the company by a special resolution. Clause (a) of Section 180 (1) defines one such power as the power to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking of the whole or substantially the whole or any of such undertakings.

Therefore, the sale of the undertaking of a company can be made by the Board of Directors only with the consent of members of the company accorded by passing a special resolution.

Even if the power is given to the Board by the memorandum and articles of the company, the sale of the undertaking must be approved by the shareholders in general meeting by passing a special resolution.

58. (i) R Ltd. wants to constitute an Audit Committee. Draft a board resolution covering the following matters [compliance with Companies Act, 2013 to be ensured].

(1) **Members of the Audit Committee**

(2) **Chairman of the Audit Committee**

(3) **Any 2 functions of the said Committee**

(ii) **What would be the minimum likely turnover or capital of this company?**

(iii) **What is the role of the Audit Committee vis-a-vis the statutory auditor when the company wishes to engage them to perform certain engagements which are not restricted under Section 144?**

Answer:

(i) Audit Committee – Board's Resolution:

"Resolved that pursuant to Section 177 of the Companies Act, 2013, an Audit Committee consisting of the following Directors be and is hereby constituted.

1. Mr -----Independent Director
2. Mr -----Independent Director
3. Mr ----Independent Director
4. Mr -----Independent Director
5. Mr -----Managing Director.
6. Mr -----Chief Financial Officer"

"Further resolved that the Chairman of the Audit Committee shall be elected by its members from amongst themselves and shall be an independent director".

"Further resolved that the quorum for a meeting of the Audit committee shall be three directors (other than the Managing Director), out of which at least two must be independent directors".

"Resolved further that the Audit Committee shall perform all the functions as laid down in section 177(4) of the Companies Act, 2013 including but not limited to:

a. make the recommendation for appointment, remuneration and terms of appointment of the auditors of the company;

b. review and monitor the independence and performance of auditors of the company and the effectiveness of the audit process".

"Further resolved that the Audit Committee shall review the quarterly and annual financial statements and submit the same to the Board with its recommendations if any".

(ii) Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014 states that every listed public company and a company covered under Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014 shall constitute an Audit Committee. Rule 4 has prescribed the following classes of companies to constitute an Audit Committee:

(a) public companies having a paid-up share capital of 10 crore rupees or more;

(b) public companies having turnover of 100 crore rupees or more;

(c) public companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees.

Hence, in the given case, the likely turnover of R Ltd. shall be ` 100 crore or more or capital shall be ` 10 crore or more.

(iii) According to section 177(5), the Audit Committee is empowered to:

(1) call for the comments of the auditors about:

(A) internal control systems,

(B) the scope of audit, including the observations of the auditors,

(C) review of financial statement before their submission to the Board,

discuss any related issues with the internal and statutory auditors and the management of the company.

Chapter 4 –Inspection, Inquiry and Investigations

Multiple Choice Questions

1.MTP Mar 2019 QN no 16

A group of creditors of X Limited makes a complaint to the Registrar of Companies. They asserted that the management of the company is indulged in destruction and falsification of the accounting records of the company. The complainants request the Registrar to take an immediate steps to stop the management to tamper with the records. The complaint was received in the morning on 1st January 2019 and the ROC entered the premises within half an hour for the search. The course of action that can be taken by Registrar are:

(a) Registrar may enter and search the place where such books or papers are kept and seize them

(b) Registrar may enter and search the place where such books or papers are kept and can seize only after obtaining an order from the special court

(c) Registrar may enter and search the place where such books or papers are kept only on the order of the special court

(d) Registrar may enter and search the place where such books or papers are kept and give an opportunity to the company to represent why such documents may not be seized.

Answer: Option B

Descriptive Questions

2.March 2018 Qn no 2(a) 7 Marks:

Mr. Atul is an employee of the company ABC Limited and an investigation is going on him under the provisions of Companies Act, 2013. The company wants to terminate Mr. Atul on the ground of investigation going against him. They have filed the application to tribunal for approval of termination. Company has not received any reply from the tribunal within 30 days of filling an application. The company consider it as a deemed approval and terminated Mr. Atul.

- **Is the contention of company being valid in law?**
- **What remedy is available to Mr. Atul, where no reply is received from the Tribunal within 30 days of application?**
- **What remedy to Mr. Atul, if reply of Tribunal has been received within 30 days of application?**

Answer:

The provision of Section 218 of the Companies Act, 2013 states that, the company shall require **to take approval of the tribunal** before taking action against the

employee if there is any pendency of any proceedings against any person concerned in the conduct and management of the affairs of the company.

The company shall require approval in the following circumstances:

- discharge or suspension of an employee; or
- punishment to an employee by dismissal, removal, reduction in rank or otherwise; or
- change in the terms of employment to the disadvantage of

employee(s); The Tribunal shall notify its objection to the action proposed in writing.

In case, **the company other body corporate or person concerned does not receive the approval of the Tribunal within 30 days of making the application, it may proceed to take the action proposed against the employee. That means it can be considered as a deemed approval by the tribunal.**

Appeal to the Appellate Tribunal: If the company, other body corporate or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within a period of 30 days of the receipt of the notice of the objection, refer an appeal to the Appellate Tribunal in such manner and on payment of fees of ` 1,000 as per the schedule of Fees.

The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company, other body corporate or person concerned.

Based upon the above provisions, following are the answers:

- Yes, the termination of Mr. Atul made by the company is totally valid in law and company can do so by considering deemed approval of tribunal.
- In this scenario, Mr. Atul has no any remedy available. As per the provision of the law appeal to the appellate tribunal can be made only if the person is dissatisfied with the objection raised by the tribunal. Hence, in this case, the tribunal has not replied, Mr. Atul cannot refer an appeal to Appellate Tribunal.
- In this case, Mr. Atul can refer and appeal to Appellate Tribunal within 30 days of the receiving letter of objection raised by the tribunal and with payment of Fees on ` 1,000 as per schedule of Fees.

3.May 2018 Qn no 2(a) 7 Marks:

The business of Weak Fabrication Limited is conducted fraudulently and the management activities are not in the interests of the Company. The paid up capital of the company is One crore rupees. A group of shareholders numbering 110 members representing 1/9 of total voting power decided to approach Tribunal (NCL T) to carryout investigation into the Company's affairs under the provisions of the

Companies Act, 2013. They seek your advice in the following matters, stating the relevant provisions of the Companies Act, 2013.

(1) **Whether the group can make valid application?**

(2) **Other than member, can any other person make application?**

(3) **Are the applicants required to furnish security for payment of cost and expenses of Investigation?**

4.Whether the Group can make a valid application?

According to Section 213(a)(i) of the Companies Act, 2013, the Tribunal may on an **application made by not less than one hundred members or members holding not less than one-tenth of the total voting power,** in the case of a Company having a share capital, order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government.

In the instant case, the application by 110 members representing 1/9 of total voting power of Weak Fabrication Limited to carryout investigation into the company's affairs is valid.

2)Other than member, can any other member make an application?

According to Section 213(b)(i) of the Companies Act, 2013, the Tribunal may, on filling of an application by other person (not being a member of Company), if satisfied, that there are circumstances suggesting that the business of the Company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the Company was formed for any fraudulent or unlawful purpose, may order after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the Company ought to be investigated by an Inspector or Inspectors appointed by the Central Government and where such an Order is passed, the Central Government shall appoint one or more competent persons as Inspectors to investigate into the affairs of the Company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct.

Thus, any other person (other than a member) can also make an application.

3)Section 214 of the Companies Act, 2013 provides for security for payment of costs and expenses of investigation:

Where an investigation is ordered by the Central Government in pursuance of an order made by the Tribunal under Section 213, the Central Government may before appointing an Inspector under clause (b) of Section 213, require the applicant to give such security not exceeding 25,000 rupees as may be prescribed, as it may think fit, for payment of the costs and expenses of the investigation. Such security shall be refunded to the applicant if the investigation results in prosecution.

5.Nov 2018 Qn no 2(a)(i)&(ii) 7 Marks:

(i) The shareholders of Kumar Ltd. passed a special resolution that the affairs of the Company ought to be investigated. The Company submitted the special resolution to the Central Government. Examine, explaining the relevant provision of the Companies Act, 2013, whether the power of the Central Government to order an investigation is mandatory or discretionary?

(ii) Enumerate the procedures to be followed by the Serious Fraud Investigation Office to arrest a person who has been found guilty of an offence committed under Section 447 of the Companies Act, 2013.

Answer:

(i) Investigation in the opinion of Central Government [Section 210(1) of the Companies Act, 2013]: Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company,—

(a) on the receipt of a report of the Registrar or inspector under section 208;

(b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or

(c) in public interest,

it may order an investigation into the affairs of the company.
Hence, the power of the Central Government to order an investigation is discretionary.

(ii) As per section 212(6) of the Companies Act, 2013, offences covered under section 447 of this Act shall be cognizable as well as non-bailable. So, the person found guilty for commission of an offence under the said section, shall be liable to be arrested, by SFIO.

The Central Government by general or special order authorize the Director, Additional Director or Assistant Director of SFIO in this behalf, on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6) i.e. Section 447,to arrest such person and shall, as soon as may be, inform him of the grounds for such arrest. [Section 212(8)].

Immediately after arrest, they shall forward a copy of the order, along with the material in his possession, to the SFIO in a sealed envelope, in such manner as may be prescribed and the SFIO shall keep such order and material for such period as may be prescribed. [Sub section (9)] and present the person so arrested before the Judicial Magistrate or a Metropolitan Magistrate having jurisdiction within twenty-four hours. The period twenty four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's court. [Sub section (10)]. An Interim report is submitted, if so directed, to the Central Government, till the completion of the investigation. [Sub section (11)&(12)].

6.Nov 2018 Qn no 2(b) 5 Marks:

An investigation was ordered by the Central Government under Section 216 of the Companies Act, 2016, against PKR Limited for determining the true membership of the Company. In connection with this investigation, it appears to the Tribunal that there is good reason to find out the relevant facts about 9% Redeemable Cumulative Preference Shares (RCPS) issued by the Company on 15.10.2017 and the Tribunal is of the opinion that unless restriction is imposed on further issue of such shares, the purpose cannot be solved. Accordingly, the Tribunal, by an Order dated 15.08.2018, directed the Company that the further issue of RCPS shall be subject to restrictions for a period of four years. Despite the Order of the Tribunal as above, PKR Limited proceeded with further issue of RCPS on 20.08.2018 in order to fund the working capital requirements for its expansion project.

Referring to the provisions of the Companies Act, 2013, examine the following:

(i) **Can the Tribunal restrict further issue of RCPS? If yes, then to what period?**

(ii) **What are the penal provisions in case of contravention to the above Order?**

Answer:

Imposition of Restrictions upon Securities (Section 222 of the Companies Act, 2013)

(i) **Tribunal may by order put restrictions upon securities [sub-section (1)]:** Where it appears to the Tribunal, in connection with any investigation under section 216 or on a complaint made by any person in this behalf, that there is good reason to find out the relevant facts about any securities issued or to be issued by a company and the Tribunal is of the opinion that such facts cannot be found out unless certain restrictions, as it may deem fit, are imposed, the Tribunal may, by order, direct that the securities shall be subject to such restrictions as it may deem fit for such period not exceeding three years as may be specified in the order.

In the instant case, the Tribunal can restrict the further issue of RCPS for such period not exceeding three years.

Punishment in case of contravention to an order: Where securities in any company are issued or transferred or acted upon in contravention of an order of the Tribunal under sub-section (1), **the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.**

7.Oct 2018 Qn no 2(b) 5 Marks:

Origin paper Ltd. has been incurring business losses for past couple of years. The company therefore, passes a special resolution for voluntary winding up. Meanwhile, complaints were made to the tribunal and to the Central Government about foul play of the directors of the company, which adversely affected the interests of shareholders of the company as well as public.

In this situation advise whether investigation may be initiated against the company under the provision of the Companies Act, 2013. Further state whether application can be made to Tribunal for Relief in the above affairs of the company once the investigation is initiated against the company.

Answer:

According to section 226 of the Companies Act, 2013, an investigation may be initiated and no such investigation shall be stopped or suspended by reason only of, the fact that—

(i) an application has been made under section 241;

(ii) the company has passed a special resolution for voluntary winding up; or

(iii) any other proceeding for the winding up of the company is pending before the Tribunal.

In the instant case Origin Paper Ltd. has been incurring business losses for past couple of years. The company passed a special resolution for voluntary winding up. Meanwhile complaints were made to the Tribunal and to the Central Government about foul play of the directors of the company, which adversely affected the interests of shareholders of the company as well as the public.

As the company has passed a special resolution for voluntary winding up of the company, then also the investigation may be initiated against the company under section 226 of the Companies Act, 2013.

Yes, as per the above provision, though investigation was initiated against the company, it shall not bar members to file an application to Tribunal for Relief under section 241 of the companies Act, 2013.

According to the said section, any member of a company may apply to the Tribunal for an order on the complains that—

(1) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or

(2) the material change taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no

share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members,

The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order.

Where any members of a company are entitled to make an application, any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

8.Oct 2018 Qn no 3(a) 3 Marks:

The Registrar, after inspection of the book of accounts of the PQR Ltd., submitted its report with further recommendation of investigation into the affairs of the company. Explain the law as to the recommendation for further investigation by the registrar.

Answer:

As per section 208 of the Companies Act, 2013, the Registrar or inspector shall, after the inspection of the books of account or an inquiry under section 206 and other books and papers of the company undersection 207, submit a report in writing to the Central Government along with such documents, if any, and such report may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary giving his reasons in support.

Therefore, the registrar is authorised to submit in its report after conduct of inspection of the book of accounts, the recommendation for further investigation into the affairs of the company.

9.RTP Nov-2018:

Some creditors of NTY Limited approached you to guide them to apply to the Tribunal for seeking an order for conducting an investigation into the affairs of the company due to the fact that the business of the company is being conducted with intention to defraud its creditors. Referring to the provisions of the Companies Act, 2013, guide them regarding the circumstances under which and how a person, not being a member of the company can apply to the Tribunal to seek an order for conducting an investigation into the affairs of a company.

Answer:

According to Section 213(b)(i) of the Companies Act, 2013, the Tribunal may, on filling of an application by any other person (not being a member of company) or otherwise, if the Tribunal is satisfied that there are circumstances suggesting that the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose, may order after giving a reasonable

opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct.

The creditors of NTY Ltd should be guided in terms of the provisions stated above.

10.RTP Nov-2018:

A group of creditors of MBIND Bronze Limited makes a complaint to the Registrar o f Companies, Himachal Pradesh alleging that the management of the company is indulging in destruction and falsification of the accounting records of the company. The complainants request the Registrar to take immediate steps to seize the records of the company so that the management may not be allowed to tamper with the records. The complaint was received at 11 am on 6 January, 2018 and the registrar has attempted to enter the premise of the company but has been denied by the company, due to not having order from the special court.

Is the contention of company being valid in terms of Companies Act, 2013? Discuss.

Answer:

Section 209 of the Companies Act, 2013 states that, if the Registrar has reasonable ground to believe that the books and papers of:

- A company or
- Relating to the key managerial personnel or
- any director or
- Auditor or
- Company secretary in practice if the company has not appointed a company secretary

are likely to be destroyed, mutilated, altered, falsified or secreted he may, after obtaining an order from the special court for the seizure of such books and papers:

a. enter with such assistance as may be required and search the place where such books or papers are kept, and

b. Seize such books and papers as he considers necessary after allowing the company to take copies of or extracts from , such books or papers at its cost.

In the given scenario, the registrar has failed to obtain possession from special court. So, he is not authorised to enter the premises of the company and seize the books of accounts of MBIND Bronze Limited. Hence, the contention of MBIND Bronze Limited is valid in law.

11.RTP May 2019 Qn no 4

Origin paper Ltd. has been incurring business losses for past couple of years. The company therefore, passes a special resolution for voluntary winding up. Meanwhile, complaints were made to the tribunal and to the Central Government about foul play of the directors of the company, which adversely affected the interests of shareholders of the company as well as public. In this situation advise whether investigation may be initiated against the company under the provision of the Companies Act, 2013. Further decide whether application can be made to Tribunal for Relief in the above affairs of the company once the investigation is initiated against the company.

Answer

According to section 226 of the Companies Act, 2013, an investigation may be initiated notwithstanding, and no such investigation shall be stopped or suspended by reason only of, the fact that—

(i) an application has been made under section 241;

(ii) the company has passed a special resolution for voluntary winding up; or

(iii) any other proceeding for the winding up of the company is pending before the Tribunal.

In the instant case Origin Paper Ltd. has been incurring business losses for past couple of years. The company passed a special resolution for voluntary winding up. Meanwhile complaints were made to the Tribunal and to the Central Government about foul play of the directors of the company, which adversely affected the interests of shareholders of the company as well as the public.

As the company has passed a special resolution for voluntary winding up of the company, then also the investigation may be initiated against the company under section 226 of the Companies Act, 2013.

Yes as per the above provision, though investigation was initiated against the company, it shall not bar members to file an application to Tribunal for Relief under section 241 of the companies Act, 2013.

According to the said section, any member of a company may apply to the Tribunal for an order on the complains that—

(i) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or

(ii) the material change taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the

affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members,

The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order.

Where any members of a company are entitled to make an application, any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

12.MTP Mar 2019 QN no 2(A) 8 Marks

(a) Mr. Shram, is an employee of the company ABC Limited and investigation is going on him under the provisions of Companies Act, 2013. The company wants to terminate the Mr. Shram on the ground of investigation proceeding against him. ABC Ltd. filed the application to tribunal for approval of termination. However, not received any reply from the tribunal within 30 days of filling an application. The companyconsider it as a deemed approval and terminated Mr. Shram. Examine the given situations in the light of the stated facts as per the Companies Act, 2013-

- **Is the contention of company being valid in law?**
- **What is remedy available to Mr. Shram?**
- **What is remedy available to Mr. Shram, if reply of Tribunal has been received within 30 days of application?**

Answer

The provision of Section 218 of the Companies Act, 2013, states that, the company shall require to take approval of the tribunal before taking action against the employee if there is any pendency of any proceedings against any person concerned in the conduct and management of the affairs company.

The company shall require approval in the following circumstances:

- discharge or suspension of an employee; or
- punishment to an employee by dismissal, removal, reduction in rank or otherwise; or
- change in the terms of employment to the disadvantage of employee(s); The Tribunal shall notify its objection to the action proposed in writing.

In case, the company, other body corporate or person concerned does not receive the approval of the Tribunal within 30 days of making the application, it may proceed to take the action proposed against the employee. That means it can be consider as a deemed approval by the tribunal.

Appeal to the Appellate Tribunal

If the company, other body corporate or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within a period of 30 days of the receipt of the notice of the objection, refer an appeal to the Appellate Tribunal in such manner and on payment of fees of INR 1,000 as per the schedule of Fees.

The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company, other body corporate or person concerned.

In the light of the above stated provisions, following are the answers:

- Yes, the termination of Mr. Shram made by the company is totally valid in law and company can do so by considering deemed approval of tribunal.
- In this scenario, Mr. Shram has not any remedy available. As per the provision of the law appeal to the appellate tribunal can be made only if the person is dissatisfied with the objection raised by the tribunal. Hence, in this case the tribunal has not replied Mr. Shram cannot refer an appeal to Appellate Tribunal.
- In this case, Mr. Shram can refer and appeal to appellate tribunal within 30 days of the receiving letter of objection raised by the tribunal and with payment of Fees on Rs. 1,000 as per schedule of Fees.

13.A group of shareholders of M/s. FMG Limited made a complaint to the concerned Registrar of Companies (RoC) that the business of the Company is being carried on for unlawful and fraudulent purposes and filed an application to enquire into the affairs of the Company. Referring to and analyzing the provisions of the Companies Act, 2013, decide:

(i) Whether the RoC has the power to order for an inquiry into the affairs of the Company?

(ii) If yes, state the procedure to be followed by the RoC.

(iii) Whether the inquiry should be pursued by the RoC in case the complaint is withdrawn by the same group of shareholders subsequent to the Order for enquiry?

(iv) Whether the Central Government has the power to direct the RoC to carry out the inquiry?

(i) Yes, the RoC has the power to order for an inquiry as he deems fit after providing the company a reasonable opportunity of being heard, into the affairs of the company if he is satisfied on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act. [Section 206(4) of the Companies Act, 2013]

(ii)Procedure followed by RoC: The Registrar may, after informing the company of the allegations made against it by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order

within such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard.

(iii) The inquiry can be pursued by the ROC in case the complaint is withdrawn by same group of shareholders subsequent to the order for inquiry in terms of section 206(4**).**

(iv) Yes, the Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar for the purpose to carry out the inquiry under section 206(4).

14.RTP May 2019 Qn no 11

Decide the liability of the person for commission of the act during the course of inspection, inquiry or investigation under the Companies Act, 2013:

(i) **A person who is required to make statement during the course of investigation pending against its company, is a party to the manipulation of documents related to the transfer of securities and naming of holders in the register of members by the company.**

(ii) **An employee of the company publicized among his social networking of sound financial position of his organization in order to incite them to purchase the shares of its company. In actuality, the company was running in loss.**

Answer

Section 229 of the Companies Act, 2013 states that where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation,—

(a) destroys, mutilates or falsifies, or conceals or tampers or unauthorisedly removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal of, documents relating to the property, assets or affairs of the company or the body corporate;

(b) makes, or is a party to the making of, a false entry in any document concerning the company or body corporate; or

(c) provides an explanation which is false or which he knows to be false,

-he shall be punishable for fraud in the manner as provided in section 447. As per the above provisions:

(i) With respect to this part of the question, the person shall be liable for fraud. Since, in the given case, he is a party in the manipulation of documents relating to the transfer of securities and in the register

of members of the company which is under investigation.

(ii) Employee shall not be liable here, as the said company in which he is an employee, is not undergoing investigation. Secondly, the person purchasing the shares can act with due diligence before purchasing shares rather fully relying on the publicity made on social networking.

Study Material

15. **Shareholders of Hide and Seek Ltd. are not satisfied about performance of the company. It is suspected that some activities being run in the name of the company are not in the interest of the company or its members. 101 out of total 500 share holders of the company have made an application to the Central Government to appoint an inspector to carry out investigation and find out the true picture.**

With reference to the provisions of the Companies Act, 2013, mention whether the shareholders' application will be accepted? Elaborate.

Answer: The shareholders' application will not be accepted as under 210 of the Companies Act, 2013, Central Government may order an investigation into affairs of the company on the intimation of a special resolution passed by a company that the affairs of the company ought to be investigated and then may appoint the inspectors. Here, 101 out of total 500 shareholders of the company have made an application to the Central Government to appoint an inspector to carry out investigation but it is not sufficient as the company has not passed the special resolution.

16. Mr. Sharma who was a Key Managerial Personal (Manager) of XYZ Ltd. retired on 12th May 2018. An examination of the final accounts of the company for the year ended on 31st March 2018, the Registrar of Companies found some serious irregularities in writing off of the huge amounts of bad debts and no satisfactory explanation was provided for the same from the company. In such a situation the Registrar of Companies wants some explanation from the company and Mr. Sharma. Can the ROC seek explanation from Mr. Sharma? Advice –

(a) **No, Mr. Sharma can't be called upon, as he does not hold the position in the company any more.**

(b) **Mr. Sharma can be called upon within a period of one year from the date of completion of his service.**

(c) **Mr. Sharma can be called upon for necessary explanation within a period of 180 days from the date of leaving his office through a written notice served upon him.**

(d) **Mr. Sharma can be called upon by the Registrar through a written notice served on him without any time period limit.**

Answer: d) **Hint:** As per the provisions of Section 206(2) of the Companies Act, 2013, the Registrar can call for any information or explanation or any other further documents related to the company from the company or any officer if the company, which he thinks, is necessary for deciding any matter of the company. Proviso to Section 206(2) provides that, where such information or explanation relates to any past period, the officers who had been in the employment of the company for such period, if so called upon by the Registrar through a notice served on him, in writing, shall also furnish such information or explanation to the best of their knowledge. So, in the given case Mr. Sharma, the ex-manager of the company can be called upon for such information/explanation which was related to their period of service

17.A group of creditors of X Limited makes a complaint to the Registrar of Companies. They asserted that the management of the company is indulged in destruction and falsification of the accounting records of the company. The complainants request the Registrar to take an immediate steps to stop the management to tamper with the records. The complaint was received in the morning on 1st January 2019 and the ROC entered the premises within half an hour for the search. The course of action that can be taken by Registrar are:

a) **Registrar may enter and search the place where such books or papers are kept and seize them.**

b) **Registrar may enter and search the place where such books or papers are kept and can seize only after obtaining an order from the special court.**

c) **Registrar may enter and search the place where such books or papers are kept only on the order of the NCLT.**

d) **Registrar may enter and search the place where such books or papers are kept and give an opportunity to the company to represent why such documents may not be seized.**

Answer: b) **Hint:** According to section 209 of the Companies Act, 2013, Registrar may enter and search the place where such books or papers are kept and seize them only after obtaining an order from the Special Court.

18. Provide various grounds on which the investigation is assigned to Serious Fraud Investigation Office?

Answer

As per section 212 of the Companies Act, 2013, the Central Government may assign the investigation into affairs of a company to the Serious Frauds Investigation Office on the basis of an opinion formed from the following:

(a) After the inspection of books of account or papers or inquiry the Registrar shall submit a written report to the Central Government. The report may recommend the need for further investigation along with reasons in support. The Central Government on receipt of such report

can order an investigation under Serious Frauds Investigation Office.

(b) The company may pass a special resolution and can request Central Government to investigate into the affairs of the company.

(c) The Central Government can order investigation under Serious Frauds Investigation Office, in public interest.

The departments Central Government and State Governments can request for investigation under Serious Frauds Investigation Office

19. Discuss the powers of Inspectors regarding investigation into affairs of related companies.

Answer:

Section 219 states that, if the inspector appointed under Sections 210, 212 or 213 to investigate into the affairs company considers it necessary for the purposes of the investigation to investigate, he can do the investigation of the affairs of other related companies or body corporate with the prior approval of the Central Government.

- **Holding or Subsidiary Company:** which is or has been at the relevant time been the company's subsidiary or holding or subsidiary of its holding company;
- **Related Party:** which is or has been at the relevant time been managed by any person as a managing director or manager who is or was at the relevant time the managing director or the manager of the company;
- **Deemed Control:** whose Board of Directors' comprises nominees of the company or is accustomed to act in accordance with the directions of the company or any of its directors; or
- **In Employment of Company**: in case any person is or has at any

relevant time been the company's managing director or manager or employee.

- The results of the investigation are relevant to the investigation of the affairs of the company for which he is appointed

20. A group of creditors of XYZ Limited makes a complaint to the Registrar of Companies, Gujarat alleging that the management of the company is indulging in destruction and falsification of the accounting records of the company. The complainants request the Registrar to take immediate steps to seize the records of the company so that the management may not be allowed to tamper with the records. The complaint was received at 11 A.M. on 06th June, 2018 and the

registrar has attempted to enter the premise of company but has been denied by the company, due to not having order from special court.

Is the contention of company being valid in terms of Companies Act, 2013?

Answer:

Section 209, of the Companies Act, 2013 states that, if the Registrar has reasonable ground to believe that the books and papers of

- A company or
- relating to the key managerial personnel or
- any director or
- auditor or
- company secretary in practice if the company has not appointed a company secretary

are likely to be destroyed, mutilated, altered, falsified or secreted he may, after obtaining an order from the special court for the seizure of such books and papers,

(d) enter with such assistance as may be required and search the place where such books or papers are kept; and

(e) seize such books and papers as he considers necessary after allowing the company to take copies or extracts there from.

According the above provisions the registrar may enter, search and seize the books only after obtaining an order from the Special Court.

In the given scenario, the registrar has failed to obtain permission from the special court so, he is not authorized to enter the premises of the company and seize the books of accounts of XYZ Limited. Hence, the contention of the XYZ Limited is valid in law.

21. Mr. Atul is an employee of the company ABC Limited and investigation is going on him under the provisions of Companies Act, 2013. The company wants to terminate the employee on the ground of investigation is going against him. They have filed the application to tribunal for approval of termination. Company has not received any reply from the tribunal within 30 days of filling an application. The company consider it as a deemed approval and terminated Mr. Atul.

- **Is the contention of company being valid in law?**
- **What is remedy available to Mr. Atul?**
- **What is remedy available to Mr. Atul, if reply of Tribunal has been received**

within 30 days of application?

Answer

The provision of Section 218 states that, the company shall require to take approval of the tribunal before taking action against the employee if there is any pendency of any proceedings against any person concerned in the conduct and management of the affairs company.

The company shall require approval in the following circumstances:

- discharge or suspension of an employee; or
- punishment to an employee by dismissal, removal, reduction in rank or otherwise; or
- change in the terms of employment to the disadvantage of employee(s);

The Tribunal shall notify its objection to the action proposed in writing.

In case, the company, other body corporate or person concerned does not receive the approval of the Tribunal within 30 days of making the application, it may proceed to take the action proposed against the employee. That means it can be consider as a deemed approval by the tribunal.

Appeal to the Appellate Tribunal

If the company, other body corporate or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within a period of 30 days of the receipt of the notice of the objection, refer an appeal to the Appellate Tribunal in such manner and on payment of fees of INR 1,000 as per the schedule of Fees.

The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company, other body corporate or person concerned.

- Yes, the termination of Mr. Atul made by the company is totally valid in law and company can do so by considering deemed approval of tribunal.
- In this scenario, Mr. Atul has not any remedy available. As per the provision of the law appeal to the appellate tribunal can be made only if the person is dissatisfied with the objection raised by the tribunal. Hence, in this case the tribunal has not replied Mr. Atul cannot refer an appeal to Appellate Tribunal.
- In this case, Mr. Atul can refer and appeal to appellate tribunal within 30 days of the receiving letter of objection raised by the tribunal and with payment of Fees on
- ` 1,000 as per schedule of Fees.

22. A Ltd. (transferee) decides to acquire B Ltd. (transferor) by acquiring its shares via a process of takeover u/s 235 of the Companies Act, 2013. A Ltd. prepared a scheme by which an offer was made to the shareholders of B Ltd. The offer was made on 1st August, 2019. The offer remained open for 4 months. Such offer was approved by shareholders having 92% value of the shares. Subsequently A Ltd. gave a notice to the remaining shareholders that it desires to acquire their shares. Such notice was given on 5th January, 2019. Certain dissenting shareholders made an application to the tribunal that acquisition of their shares should not be permitted. Such application was dismissed by the tribunal. Hence A Ltd. acquired shares of 5% of the dissenting shareholders (out of balance 8%). The shareholding of balance 3% shareholders continued to remain with them. Comment on the validity of such a takeover by A Ltd.

ANSWER:

The basic requirements as to acquisition of shares mentioned in Sec 235 of the Companies Act, 2013 are as follows:-

1. The scheme or contract involving the transfer of shares in a company (transferor company) to another company (transferee company) has been approved by the holders of not less than 9/10th(90%) in value of the shares whose transfer is involved.
2. The approval of 9/10th shareholders in value shall be received within 4 months after making of an offer in that behalf by the transferee company.

3. The transferee company shall express his desire to acquire the remaining shares of dissenting shareholder in 2 months after the expiry of the said 4 months and shall give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares. The transferee company shall be entitled as well as bound to acquire the shares of the dissenting shareholders where no application is made by any dissenting shareholders to the tribunal in 1 month of receipt of notice of acquisition of shares or where an application is made by any dissenting shareholder but such application is dismissed by the tribunal. In the given case since application made by the dissenting shareholders has been dismissed by the tribunal hence A Ltd is entitled and bound to acquire all the shares of the dissenting shareholders i.e. entire 8% shareholding.

Since A Ltd only acquired 5% shareholding of the dissenting shareholders hence this is in contravention of Sec 235 of the Companies Act, 2013. Hence the takeover is invalid.

23. The issued and paid up capital of MNC Limited is ` 5 crores consisting of 5,00,000 equity shares of ` 100 each. The said company has 500 members. A petition was submitted before the Tribunal signed by 80 members holding 10,000 equity shares of the company for the purpose of relief against oppression and mismanagement by the majority shareholders. Examining the provisions of the Companies Act, 2013, decide whether the said petition is maintainable. Also explain the impact on the

maintainability of the above petition, if subsequently 40 members, who had signed the petition, withdrew their consent.

ANSWER:

Right to apply for oppression and mismanagement: As per the provisions of Section 244 of the Companies Act, 2013, in the case of a company having share capital, members eligible to apply for oppression and mismanagement shall be lowest of the following:
100 members; or
1/10th of the total number of members; or
Members holding not less than 1/10th of the issued share capital of the company.
The share holding pattern of MNC Limited is given as follows:
` 5,00,00,000 equity share capital held by 500 members
The petition alleging oppression and mismanagement has been made by some members as follows:
(i) No. of members making the petition – 80
(ii) Amount of share capital held by members making the petition – ` 10,00,000
The petition shall be valid if it has been made by the lowest of the following:
100 members; or
50 members (being 1/10th of 500); or
Members holding ` 50,00,000 share capital (being 1/10th of ` 5,00,00,000)
As it is evident, the petition made by 80 members meets the eligibility criteria specified under section 244 of the Companies Act, 2013 as it exceeds the minimum requirement of 50 members in this case. Therefore, the petition is maintainable.

The consent to be given by a shareholder is reckoned at the beginning of the proceedings. The withdrawal of consent by any shareholder during the course of proceedings shall not affect the maintainability of the petition [*Rajamundhry Electric Corporation Vs. V. Nageswar Rao A.I.R.*].

24. A group of members holding 380 lakh issued share capital in Zolo Ltd. a listed public company having total issued share capital of 15000 lakhs as per latest financial statements alleged that company board of director is conducting an act which is ultra vires the articles or memorandum of the company without altering the memorandum or articles of the company. They make application to tribunal (NCLT) to restrain the company from doing such ultra-virus act. With reference to the provision of Companies Act, 2013 ascertain whether the application will be admitted by tribunal (NCLT).

ANSWER:

As according to section 245 of Companies Act, 2013, such number of member or members, depositor or depositors or any class of them, as the case may be, as are indicated in sub-section (2) may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for seeking an orders, to restrain the company from committing an act which is

ultra-virus the articles or memorandum of the company. Requisite number of members to make Application under Section 245(1) for Class Action for depositors is as prescribed in rule 84(4) of the National Company Law Tribunal (Second Amendment) Rules, 2019. Accordingly, in case of a company having a share capital the requisite number of member or members to file an application under section 245(1) shall be:-
(a) at least five per cent. of the total number of members of the company; or
(b) one hundred members of the company, whichever is less; or
(c) In case of a listed company,member or members holding not less than two per cent. of the issued share capital of the company.
In above case, members holds 2.53% (380/15000*100) of issued share capital of Zolo Ltd. which is a listed company make application before tribunal (NCLT). Hence as members meet condition of 2% of issued share capital, therefore their application can be admitted by the NCLT.

Chapter 5- Compromises, Arrangements and Amalgamations

Multiple Choice Questions

1.RTP Nov 2019 Qn no 8

X Ltd. amalgamated with Y Ltd. The transferee company decided to dispose of the books and papers of the X Ltd. in order to come up with maintenance of revised book and papers under the name of the transferee company to bring all the financial details of the amalgamated company also in the records. State the correct statement as to decision of the transferee company on the disposal of the Books and papers of the X Ltd.

a) **Decision of Transferee Company is invalid, as books and papers of the amalgamated company shall be maintained for atleast three years.**

b) **Decision of Transferee Company is invalid, as books and papers of amalgamated company shall be maintained for at least eight years.**

c) **Decision of Transferee Company will be valid only on the sanction of the prior permission of the Central Government.**

d) **Decision of Transferee Company will be valid only after seeking prior permission of the requisite number of the creditors/shareholders of the amalgamated company**

Answer: (c)

2.MTP Apr 2019 Qn no 14

Which amongst the following is a restriction on transferee company in event of merger or amalgamation?

a) **hold any shares in its own name**

b) **hold any shares in the name of any trust on its behalf**

c) **hold any shares in the name of any trust on behalf of any of its subsidiary**

d) **All of the above**

Answer: Option D

3.MTP Mar 2019 Qn no 1

ABHI Limited is a wholly owned subsidiary company of ETERNAL Limited. ETERNAL Ltd., makes an application for merger of Holding and Subsidiary Companies under the section 232 of the Companies Act, 2013. The Company Secretary of the ETERNAL Ltd., states that company cannot apply for merger under section 232 of the said Act. In fact said that the company shall have to apply for merger as per section 233 i.e. Fast Track Merger. State the correct statement in terms of the

validity of the difference in the opinion of the Company secretary-

(e) Opinion of the Company Secretary of the ETERNAL Ltd. is valid holding that merger shall be as per section 233.

(f) Opinion of the Company Secretary of the ETERNAL Ltd. is invalid as merger shall be possible only as per section 232.

(g) Opinion of the Company Secretary of the ETERNAL Ltd. is invalid as the provisions given for fast track merger in the section 233 are of the optional nature.

(h) Opinion of the Company Secretary of the ETERNAL Ltd. is invalid as the provisions given for fast track merger in the section 233 can be made between only small companies.

ANSWER: Option C

Descriptive Questions

4.March 2018 Qn no 3(a) 3 Marks:

Long Lasting Ltd. applied to the Tribunal for the approval of proposed merger scheme. State the process to be complied with for the approval of the proposed merger scheme drawn by the directors of the Long Lasting Ltd. under the Companies Act, 2013.

Answer:

Filing of an application for purpose of reconstruction or companies involving merger/ amalgamation or transfer of undertaking, property etc.: Where an application is made to the Tribunal under section 230 of the Companies Act, 2013 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal—

(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and

(b) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies,

the Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-sections (3) to (6) of section 230 shall apply

mutatis mutandis.

Circulation of information for the meeting by the merging companies / the companies in respect of which a division is proposed: As per section 232(2) where an order has been made by the Tribunal as above, merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, -

(a) the draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company;

(b) confirmation that a copy of the draft scheme has been filed with the Registrar;

(c) a report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders, key managerial personnel, promotors and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;

(d) the report of the expert with regard to valuation, if any;

(e) a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.

5.May 2018 Qn no 3(a) 3 Marks:

CPR Ltd. and TJC Ltd. are wholly owned by Government of Tamil Nadu. As a policy matter, the Government issued administrative orders for merging TJC Ltd. with CPR Ltd. in the public interest. State the authority with whom the application for merger is required to be filed under the provisions of the Companies Act" 2013. Also state the provisions governing the preservation of Books and Records of TJC Ltd. after merger under the said Act.

Answer*:*

Authority to whom the application for merger is to be made

According to Section 237 of the Companies Act, 2013, where the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company.

Thus, In the given situation of merger between two wholly owned Government companies in public interest, there is no specific authority with whom the application for merger is required as the Central Government shall by notification in the Official Gazette, will provide for the amalgamation of the two said companies into a single company.

Preservation of books and records of amalgamated companies

According to Section 239 of the Companies Act, 2013, the books and papers of a Company which has been amalgamated with, or whose shares have been acquired by, another Company shall not be disposed of without the prior permission of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the transferor company or its amalgamation or the acquisition of its shares.

6.May 2018 Qn no 2(b) 5 Marks:

Pioneer Textiles Limited desired to amalgamate its enterprise with Latex Textiles Limited. A scheme of amalgamation for this purpose was approved by an overwhelming majority of shareholders and all creditors of both companies at meetings held under the provisions of Section 232 of the Companies Act, 2013. Thereupon it was presented to the Company Law Tribunal for its sanction. While the scheme was pending in the Tribunal, some of the dissentient shareholders of Pioneer Textiles Limited requisitioned an extraordinary general meeting to negotiate with Latex Textiles Limited as according to the requisitionists the exchange ratio was not fair and reasonable.

Examine whether the directors may refuse to call the extraordinary general meeting. Also discuss the powers of the Tribunal in this respect.

Answer:

According to Section 235 of the Companies Act, 2013,

Where a scheme or contract involving the transfer of shares or any class of shares in a Company (the "Transferor Company") to another company (the "Transferee Company") has, within **four months after making of an offer** in that behalf by the transferee company, been **approved by the holders of not less than nine-tenths in value** of the shares whose transfer is involved, other than shares already held at the date of the offer by, or by a nominee of the transferee company or its subsidiary Companies, the transferee Company may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.

(1) Where a notice under sub-section (1) is given, the transferee Company shall, unless on an application made by the dissenting shareholder to the Tribunal, within one month from the date on which the notice was given and the Tribunal thinks fit to order otherwise, be entitled to and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee Company.

According to Section 232(3) of the Companies Act, 2013, the Tribunal, after satisfying itself that the procedure specified in 232(1) and (2) has been complied with, may, by order, sanction the compromise or

arrangement or by a subsequent order, make provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement.

In the light of the above stated provisions,

(i) Once the scheme of amalgamation has been approved by an overwhelming majority, transferee Company gets the right to give notice to any dissenting shareholder that it desires to acquire his shares. Further, as per the facts of the question, the dissenting shareholders has not applied to the Tribunal against the scheme of amalgamation.

Hence, it is not mandatory for the directors to call the extraordinary general meeting.

(ii) According to Section 232(3) of the Companies Act, 2013, the Tribunal may make provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement.

[**Note:** It is assumed that overwhelming majority as specified in the question signifies approval by the holders of not less than nine-tenths in value of the shares (which is a pre- requisite to apply the provisions of section 235 of the Companies Act, 2013)].

7.RTP May 2018 Qn no 5

A meeting of members of Evergreen Limited was convened under the orders of the Court for the purpose of considering a scheme of compromise and arrangement. The meeting was attended by 300 members holding 9,00,000 shares. 120 members holding 7,00,000 shares in the aggregate voted for the scheme. 140 members holding 2,00,000 shares in aggregate voted against the scheme. 40 members holding 1,00,000 shares abstained from voting. Determine with reference to the relevant provisions of the Companies Act, 2013 whether the scheme was approved by the requisite majority?

Answer

As per section 230 (6) of the Companies Act, 2013 where majority of persons at a meeting held **representing 3/4th in value,** voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order. The majority of person representing 3/4 th Value shall be counted of the following:

- the creditors, or
- class of creditors or
- members or

- class of members, as the case may be,

The majority is dual, in number and in value. A simple majority of those voting is sufficient. Whereas the 'three-fourths' requirement relates to value. The three-fourths value is to be computed with reference to paid-up capital held by members present and voting at the meeting.

In this case 300 members attended the meeting, but only 260 members voted at the meeting. As 120 members voted in favor of the scheme the requirement relating to majority in number (i.e. 131) is not satisfied.

260 members who participated in the meeting held 9,00,000 shares, three-fourth of which works out to 6,75,000 while 120 members who voted for the scheme held 7,00,000 shares. The majority representing three-fourths in value is satisfied.

Thus, in the instant case, the scheme of compromise and arrangement of Evergreen Limited is not approved as though the value of shares voting in favor is significantly more, the number of members voting in favor do not exceed the number of members voting against.

8.May 2019 Qn no 2(a)(ii) 4 Marks:

A meeting of members of ABC Limited was convened as per the orders of the Court to consider a scheme of compromise and arrangement. Notice of the meeting was sent to 1000 members holding in aggregate 500000 equity shares. The meeting was attended by 800 members holding 350000 shares. 450 members holding 240000 shares voted in favour of the scheme; 200 members holding 60000 shares voted against the scheme. The remaining 150 members abstained from voting. Explain with reference to the provisions of the Companies Act, 2013, whether the scheme is approved by the requisite majority.

Answer:

As per section 230 (6), of the Companies Act, 2013 where majority of persons at a meeting held representing 3/4th in value, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order. The majority of person representing 3/4th Value shall be counted of the following:

- the creditors, or
- class of creditors or
- members or
- class of members, as the case may be,

Usage of word "majority" in the provision is dual in nature i.e., may be taken into account in number & in value. A simple majority of those voting is sufficient. Whereas the 'three-fourths' requirement relates to value. The three-fourths value is to be computed with reference to paid-up capital held by members present and voting at

the meeting.

In this case, out of 1000 members, 800 members attended the meeting and 450 members voted in favor of the scheme, thus, the requirement relating to majority in number (i.e. more than 325) is satisfied.

Further, as per the facts, total 650 members participated in the meeting holding 3,00,000 shares. According to the provision, three-fourth of which works out to 2,25,000, while 450 members who voted for the scheme held 2, 40,000 shares.

Hence, the requirements as to the holding of $3/4^{th}$ values of shares as a majority is also met.

Therefore, the scheme is approved by the requisite majority.

9.Oct 2018 Qn no 2(a) 7 Marks:

ABC Limited was amalgamated and merged in XYZ Limited. Some workers of ABC Limited refuse to join as workers of XYZ Limited and claim compensation for premature termination of service. XYZ Limited resists the claim on the ground that their services are transferred to XYZ Limited by the order of amalgamation and merger and, therefore, the workers must join service of XYZ Limited and cannot claim any compensation. According to the provisions of the Companies Act, 2013, examine whether the workers' contention is correct.

Answer:

An order under section 232 of the Companies Act, 2013 transferring the property, rights and liabilities of one company to another does not automatically transfer contracts of personal service, which are in their nature, incapable of being transferred and no contract of service is thereby created between an employee of the transferor company on the one hand and the transferee company on the other.

In compliance with section 232(1) and (2), the tribunal may by order make a provision for the transfer of the employees of the transferor company and the transferee company. And provisions shall also be made for any persons who dissent from the compromise or arrangement scheme.

According to the above provisions, the workers/employees and their services cannot be transferred without their consent. Tribunal may by order safeguard the interest of the employees/ workers. Therefore, the workers of ABC Ltd. (Transferor) will succeed against XYZ Ltd.

10.RTP Nov-18:

Cotton On Yarn Ltd., and Country Cotton Blossom Ltd., are two listed companies engaged in the Business of Textiles. The companies are not making profits and as

such their share's market price have gone down. A substantial portion of their share capital is held by Central Government as well as some Public Financial Corporations. In order to increase the share value, the Central Government wants to amalgamate the aforesaid two companies into a single company. Examine the powers of Central Government to amalgamate the two companies in public interest as per the provisions of the Companies Act, 2013.

Answer:

Central Government may by order provide for amalgamation in public interest.

According to Section 237 of the Companies Act, 2013, where the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government, may, by order notified in the official gazette, provide for the amalgamation of those companies into a single company with such constitution, with such property, powers, rights, interests, authorities and privileges and with such liabilities, duties and obligations, as may be specified in the order.

Continuation by or against the transferee company of any legal proceedings

The order may also provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company and such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to amalgamation.

Same interest rights or compensation

Every member or creditor including a debenture holder of each of the transferor companies before the amalgamation shall have, as nearly as may be, the same in terest in or rights against the transferee company as he had in the company of which he was originally a member or creditor and in case the interest or rights of such member or creditor in or against the transferee company are less than the interest in or rights against the original company, he shall be entitled to compensation to that extent, which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the official gazette and the compensation so assessed shall be paid to the member or creditor concerned by the transferee company.

11.Dragon Copper Limited was facing acute financial difficulty as operations were continuously disrupted due to (a) non-availability of raw material (b) successive drought in its marketing areas and loss of demand and (c) frequent breakdown due to non- replacement of old plant and machinery. On the verge of liquidation, the Management proposes one last arrangement between creditors and the company,

whereby the creditors have to forego 50% of their dues to the company. This has evoked strong protest from some of the creditors who may block the arrangement. Examine the arrangement in the light of the Companies Act, 2013 and advise the course of action/procedure to be adopted by the company to implement the same.

Answer

Scheme of Compromise or arrangement (Section 230 of the Companies Act, 2013):
The scheme provides for sacrifice on the part of creditors as they have to forego 50% of their dues to the company. The company is sick and therefore it can be considered as a company liable to be wound up within the meaning of Section 230(a) of the Companies Act, 2013. The proposed scheme involves as a compromise or arrangement with creditors and it attracts section 230.

While the company or any creditor or member can make application to the Tribunal under section 230 (6)(1), it is usual for the company to make an application. On such application, the Tribunal may order that a meeting of creditors and/or members be called and held as per directions of the Tribunal.

Company must arrange to send notice of meeting to every creditor containing a statement setting forth the terms of compromise or arrangement explaining its effect. Material interest of directors, Managing Director, or manager of the company in the scheme and the effect of scheme on their interest should be fully disclosed [Section 230(1)(a). Advertisement issued by the company must comply with the requirements of section 230(2). At the meetings convened, as per directions of the Tribunal, majority in number representing at least ninety percent in value of creditors present and voting (either in person or by proxy if allowed) must agree to compromise or arrangement.

Thereafter the company must present a petition to the Tribunal for confirmation of the compromise or arrangement. The notice of application made by the companywill be served on the Central Government and the Tribunal will take into consideration representation, If, any made by the Central Government. The Tribunal will sanction the scheme, if it is satisfied that the company has disclosed all material facts relating to the company e.g. latest financial position, auditors report on accounts of the company, pendency of investigation of company, etc. Copy of Tribunal order must be filed with the Registrar of Companies and then only the order will come into effect. Copy of Tribunal order must be annexed to every Memorandum of Association issued thereafter.

If the Tribunal sanctions the scheme, it will be binding on all members and creditors even those who were dissenting. (Case Law: *S. K. Gupta Vs. K. P. Jain, AlR 1979 SC 374*)

12.Aug 2018 Qn no 3(a) 3 Marks:

How the compromise or arrangement scheme is adopted by the companies entering into any contract under the companies Act, 2013?

Answer:

Section 230 of the Companies Act, 2013 deals with the powers of the Tribunal on the filing of application for the compromise or arrangement. According to the contract, where a compromise or arrangement is proposed between a company and its creditors or any class of them; or a company and its members or any class of them, the Tribunal may, on the application of the company, creditor, member of the company, or liquidator, may order a meeting of the creditors/ class of creditors, or of

the members/class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs. Where a meeting is proposed to be called in pursuance of an order of the Tribunal, a notice of such meeting shall be sent.

Further section 230(4) provides that a notice shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice.

Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent of the shareholding or having outstanding debt amounting to not less than five per cent of the total outstanding debt as per the latest audited financial statement.

Where, at a meeting held, majority representing three-fourths in value of the creditors/class of creditors, or of the members/class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors/class of creditors, or of the members/class of members, as the case may be, or, in case of a company being wound up, on the liquidator, "appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be, "and the contributories of the company.

13.Nov 2019 Qn no 2(a) 4 Marks

At the meeting of the members of M/s QRS Limited, a scheme of compromise and arrangement was approved by requisite majority. The National Company Law Tribunal (NCLT) after complying the provisions, issued an Order, approving the scheme of compromise and arrangement.

List out the matters to be provided in the Order issued by NCLT under Section 230(7) of the Companies Act, 2013. What shall be the order to be filed?

Answer

According to section 230(7) of the Companies Act, 2013, an order made by the Tribunal under sub-section (6) shall provide for all or any of the following matters, namely:—

(a) where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to ei ther obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;

(b) the protection of any class of creditors;

(c) if the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions of section 48;

(d) if the compromise or arrangement is agreed to by the creditors under sub-section (6), any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall abate;

(e) such other matters including exit offer to dissenting shareholders, if any, as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement.

The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order. [Section 230(8)]

14.MTP Nov 2019 Qn no 3(a) 8 Marks

Eminence Ltd. after passing special resolution filed an application to the registrar for removal of the name of company from the register of companies. On the complaint of certain members, Registrar came to know that already an application is pending before the Tribunal for the sanctioning of a compromise or arrangement proposal. The application was filed by the Eminence Ltd. two months before the filing of this application to the Registrar.

Determine the given situations in the lights of the given facts as per the Companies Act, 2013:

(i) **Legality of filing an application by Eminence Ltd. before the registrar.**

(ii) **Consequences if Eminence Ltd. files an application in the above given situation.**

In case registrar notifies eminence Ltd as dissolved under section 248 in compliances to the required provisions, what remedy will be available to the aggrieved party?

Answer

(a) According to the Section 248(2) of the Companies Act, 2013, a company may, after extinguishing all its liabilities, by a special resolution, or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in section 248(1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner. Further Section 249 provides restrictions on making application under section 248 .

An application under section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company—

(a) has changed its name or shifted its registered office from one State to another;

(b) has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business,

for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;

(c) has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;

(d) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or

(e) is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.

Violation of above conditions on filing of application: If a company files an application in violation of restriction given above, it shall be punishable with fine which may extend to one lakh rupees.

Rights of registrar on non-compliance of conditions by the company: An application filed under above circumstances, shall be withdrawn by the company or rejected by the Registrar as soon as conditions are brought to his notice.

Aggrieved person to file an appeal against the order of registrar: As per section 252(1),any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the

register of companies. However a reasonable opportunity is given to the company and all the persons concerned.

According to the above provisions, following are the answers:

(i) As per the restrictions marked in the Section 249(d) stating that an application under section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded.

As per the facts application to the registrar for removal of the name of company from the register of companies, was filed by the Eminence Ltd. within three months to the filing of an

application to the Tribunal for approval of compromise or arrangement proposal. Therefo re, filing of such an application by Eminence Ltd is not valid.

(i) If a company files an application in above situation, it shall be punishable with fine which may extend to one lakh rupees. An application so filed,

shall be withdrawn by the company or rejected by the Registrar as soon as conditions are brought to his notice.

(ii) According to the provision given in section 252(1),a person aggrieved by an order of the Registrar, notifying Eminence Ltd. as dissolved under section 248, may:

- file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar, and
- if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the Eminence Ltd. in the register of companies.
- A reasonable opportunity is given to the Eminence Ltd. and all the persons concerned.

Study Material

15. Under what circumstances the meeting of the creditors may be dispensed by the NCLT?

(a) if 70% of the creditors in value agree and confirm to the scheme by way of affidavit

(b) if 80% of the creditors in value agree and confirm to the scheme by way of affidavit

(c) if 90% of the creditors in value agree and confirm to the scheme by way of affidavit

(d) None of the above

Answer: c) Hint: As per Section 230 (9) of the Companies Act, 2013, the Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent. value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.

16. PQR Limited and LMN Limited have proposed Scheme of Amalgamation between them under Section 232 of the Companies Act 2013. They are seeking your advice on which of the following approvals can be asked for in the petition to be filed before NCLT for the proposed scheme.

a) Change in Main Object Clause of Memorandum of Association;

b) Reduction of Share Capital;

c) Dissolution of the Transferor Company without winding up;

d) All of the above.

Answer: d) Hint: As per the provisions of Section 230, Section 232 of Section 233 of the Companies Act, 2013 and The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016; the Scheme of Amalgamation is a Complete Code for absorbing the objects of the Transferor Company, Increase in Authorized Share Capital of the Transferee Company, Reduction of Share Capital required if any and the dissolution of the Transferor Company without winding up. Hence, the petition for approval of the proposed Scheme of Amalgamation between PQR Limited and LMN Limited can seek approval for all three options namely Change in Main Object clause of MOA, Reduction of Share Capital and Dissolution of the Transferor Company without winding up as effect of Amalgamation

17. ABHI Limited is a wholly owned subsidiary company of ETERNAL Limited. ETERNAL Ltd., makes an application for merger of Holding and Subsidiary Companies under the section 232 of the Companies Act, 2013. The Company Secretary of the ETERNAL Ltd., states that company cannot apply for merger under section 232 of the said Act. He further stated that the company shall have to apply for merger as per section 233 i.e. Fast Track Merger. State the correct statement in terms of the validity of the difference in the opinion of the Company secretary-

a) Opinion of the Company Secretary of the ETERNAL Ltd. is valid holding that merger shall be as per section 233.

b) Opinion of the Company Secretary of the ETERNAL Ltd. is invalid as merger shall be possible only as per section 232.

c) Opinion of the Company Secretary of the ETERNAL Ltd. is invalid as the provisions given for fast track merger in the section 233 are of the optional nature.

d) Opinion of the Company Secretary of the ETERNAL Ltd. is invalid as the provisions given for fast track merger in the section 233 can be made between only small companies

Answer: **(c) Hint:** As per section 233 (1), a scheme of merger or amalgamation may be entered between,

- 2 or more small companies, or
- a holding company and its wholly-owned subsidiary company, or
- such other class or classes of companies as may be prescribed.

The provisions given for fast track merger in the section 233 are in the optional nature and not a compulsion to the company. If a company wants to make application for merger as per section 232, it can do so.

Hence, here the Company Secretary of the XYZ Eternal limited has erred in the law and his contention is not valid as per law. The company shall have an option to choose between normal process of merger and fast track merger

18. ABC Limited is a wholly owned subsidiary company of XYZ Limited. The Company wants to make application for merger of Holding and Subsidiary Companies under Section 232. The Company Secretary of the XYZ Limited is of the opinion that company cannot apply for merger as per section 232. The company shall have to apply for merger as per section 233 i.e. Fast Track Merger. Is the contention of Company Secretary being valid as per law?

Answer:

As per section 233 (1), notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered between,

- 2 or more small companies
- a holding company and its wholly-owned subsidiary company. If 100% of its share capital is held by the holding company, except the shares held by the nominee or nominees to ensure that the number of members of subsidiary company is not reduced below the statutory limit as provided in section 187
- such other class or classes of companies as may be prescribed.

The provisions given for fast track merger in the section 233 are in the optional nature and not a compulsion to the company. If a company wants to make application for merger as per section 232, it can do so.

Hence, here the Company Secretary of the XYZ limited has erred in the law and his contention is not valid as per law. The company shall have an option to choose between normal process of merger and fast track merger.

19. A meeting of members of ABC Limited was convened under the orders of the Court to consider a scheme of compromise and arrangement. Notice of the meeting was sent in the prescribed manner to all the 600 members holding in the aggregate 25,00,000 shares. The meeting was attended by 450 members holding 15,00,000 shares. 210 members holding 11,00,000 shares voted in favor of the scheme. 180 members holding 3,00,000 shares voted against the scheme. The remaining members abstained from voting.

Examine with reference to the relevant provisions of the Companies Act, 2013 whether the scheme is approved by the requisite majority.

Answer

As per section 230 (6), of the Companies Act, 2013 where majority of persons at a meeting held representing 3/4th in value, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order. The majority of person representing 3/4th Value shall be counted of the following:

- the creditors, or
- class of creditors or
- members or
- class of members, as the case may be,

The majority is dual, in number and in value. A simple majority of those voting is sufficient. Whereas the 'three-fourths' requirement relates to value. The three-fourths value is to be computed with reference to paid-up capital held by members present and voting at the meeting.

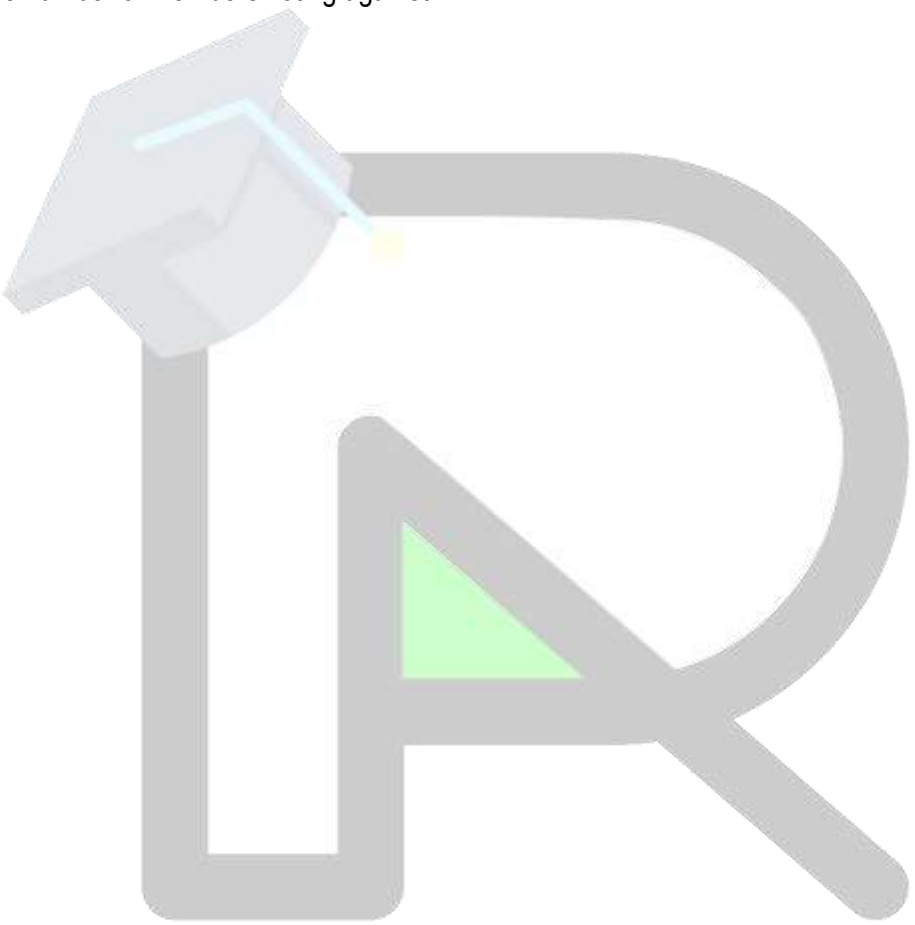
In this case out of 600 members, 450 members attended the meeting, but only 390 members voted at the meeting. As 210 members voted in favor of the scheme the requirement relating to majority in number (i.e. 196) is satisfied. 390 members who participated in the meeting held 14,00,000, three-fourth of which works out to 10,50,000 while 210 members who voted for the scheme held 11,00,000 shares. As both the requirements are fulfilled, the scheme is approved by the requisite majority.

20. A meeting of members of DEF Limited was convened under the orders of the Court for the purpose of considering a scheme of compromise and arrangement. The meeting was attended by 300 members holding 9,00,000 shares. 120 members holding 7,00,000 shares in the aggregate voted for the scheme. 140 members holding 2,00,000 shares in aggregate voted against the scheme. 40 members holding 1,00,000 shares abstained from voting. Examine with reference to the relevant provisions of the Companies Act, 2013 whether the scheme was approved by the requisite majority?

As per section 230 (6), of the Companies Act, 2013 where majority of persons at a meeting held representing 3/4th in value, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order. The majority of person representing 3/4th Value shall be counted of the following:

- the creditors, or
- class of creditors or
- members or
- class of members, as the case may be,

The majority is dual, in number and in value. A simple majority of those voting is sufficient. Whereas the 'three-fourths' requirement relates to value. The three-fourths value is to be computed with reference to paid-up capital held by members present and voting at the meeting. In this case 300 members attended the meeting, but only 260 members voted at the meeting. As 120 members voted in favor of the scheme the requirement relating to majority in number (i.e. 131) is not satisfied. 260 members who participated in the meeting held 9,00,000 shares, three-fourth of which works out to 6,75,000 while 120 members who voted for the scheme held 7,00,000 shares. The majority representing three-fourths in value is satisfied. Thus, in the instant case, the scheme of compromise and arrangement of DEF Limited is not approved as though the value of shares voting in favor is significantly more, the number of members voting in favor do not exceed the number of members voting against.



Chapter 6 – Prevention of Oppression and Mismanagement

Multiple Choice Questions

1.MTP Mar 2019 Qn no 7

Astistav Private Limited is a company with ten shareholders. A member holding less than one-tenth of the share capital of the company apply to the Tribunal for relief against oppression and mismanagement. State whether a member have a right to apply to the tribunal in above situation:

(a) A single Member cannot apply to the Tribunal for relief against oppression and mismanagement

(b) A member cannot apply as he is holding less than one-tenth of the share capital of the company

(c) A member can apply being one-tenth of the total number of members.

(d) A member cannot apply as the requirement of atleast hundred members is not complied with.

Answer: Option C

Descriptive Questions

2.RTP May 2018 Qn no 6

The issued and paid up capital of Crown Jewels Limited is `5 crores consisting of 5,00,000 equity shares of ` 100 each. The said company has 500 members. A petition was submitted before the Tribunal signed by 80 members holding 10,000 equity shares of the company for the purpose of relief against oppression and mismanagement by the majority shareholders. Examining the provisions of the Companies Act, 2013, decide whether the said petition is maintainable. Also explain the impact on the maintainability of the above petition, if subsequently 40 members, who had signed the petition, withdrew their consent.

Answer

Right to apply for oppression and mismanagement: As per the provisions of Section 244 of the Companies Act, 2013,

in the case of a company having share capital, members eligible to apply for oppression and mismanagement shall be lowest of the following:

- 100 members; or
- 1/10th of the total number of members; or
- Members holding not less than 1/10th of the issued share

capital of the company. The share holding pattern of Crown Jewels Limited is given as follows:

` 5,00,00,000 equity share capital held by 500 members

The petition alleging oppression and mismanagement has been made by some members as follows:

(i) No. of members making the petition – 80

(ii) Amount of share capital held by members making the petition – ` 10,00,000 The petition shall be valid if it has been made by the lowest of the following:

100 members; or

50 members (being $1/10^{th}$ of 500); or

Members holding ` 50,00,000 share capital (being $1/10^{th}$ of ` 5,00,00,000)

As it is evident, the petition made by 80 members meets the eligibility criteria specified under section 244 of the Companies Act, 2013 as it exceeds the minimum requirement of 50 members in this case. Therefore, the petition is maintainable.

The consent to be given by a shareholder is reckoned at the beginning of the proceedings. The withdrawal of consent by any shareholder during the course of proceedings shall not affect the maintainability of the petition [*Rajamundhry Electric Corporation Vs. V. Nageswar Rao A.I.R. (1956) Sc. 2013.]*.

3.March 2018 Qn no 2(b) 5 Marks:

The members of company with no paid up share capital, filed a complaint against change in the management of the company due to which it was likely that the affairs of the company will be conducted in a manner that it will be prejudicial to the interest of its 25 members. Total number of members of company were 100. On inquiry and investigation on the complaint, having a reasonable ground to believe that the transfer or disposal of assets of the company may be against to the interests of its shareholders. The Tribunal passed an order that such transfer or disposal of assets shall not be made during one year of such order.

Evaluate on the basis of the given facts, the following situations according to the Companies Act, 2013:

(i) Eligibility of the members to file a complaint.

(ii) Where if the management dispose of the certain assets in contravention to the order of the Tribunal.

Answer:

Section 244 of the Companies Act, 2013 provides the eligibility of members who hold the right to file the application under section 241 for oppression and mismanagement with the Tribunal. These qualification as provided in section 244 ensure that only the persons with sufficient interest in the affairs of the company can file the petition under section 241 of the Act. According to the section in the case of a company not having a share capital, not less than one-fifth of the total number of its members are eligible to make an application before the Tribunal. Where any members of a company are entitled to make an application under Section 244 (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

In the given scenario, requirement of minimum numbers of members is fulfilled i.e. it is more than $1/5^{th}$ of the total number of its members of the company (1/5x 100= 20). So the members of the company are eligible to file the petition to tribunal under section 241.

However, the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in section 244, so as to enable the members to apply under section 241.

(ii) According to section 221 of the Companies Act, 2013, if it appears to the Tribunal, on a complaint made by members as specified under section 244(1) that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of its members, Tribunal ordered that such transfer, removal or disposal shall not take place during such period not exceeding three years as may be specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit.

Here in the given case, management disposed of the certain assets within 1 year of such order of Tribunal. So accordingly, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than f ifty thousand rupees but which may extend to five lakh rupees, or with both.

4.Aug 2018 Qn no 2(b) 5 Marks:

XYZ Ltd. proposed for amalgamation with the PQR Ltd. The issued and paid up capital of XYZ Ltd. is Rs. 5 crore consisting of 5,00,000 equity shares of Rs. 100 each. The said company has 500 members. It was believed by certain members of the company that the proposed Scheme of amalgamation resulting into the transfer and disposal of funds and assets of the company to the transferee, will be effecting their interest. So, 80 members holding 10,000 equity shares of the company decided to file an application for relief before the Tribunal.

Examine the given situation in the light of the Companies Act, 2013-

(i) Whether the said petition will be maintainable.

In case where it appears to the Tribunal, that such proposal is likely to effect the interest of the members, remedy available to the aggrieved members.

Answer:

Right to apply for oppression and mismanagement: As per the provisions of Section 244 of the Companies Act, 2013, in the case of a company having share capital, members eligible to apply for oppression and mismanagement shall be lowest of the following:

100 members; or

1/10th of the total number of members; or

Members holding not less than 1/10th of the issued share capital of the company. The share holding pattern of MNC Limited is given as follows:

Rs. 5,00,00,000 equity share capital held by 500 members

The petition alleging oppression and mismanagement has been made by some members as follows:

(1) No. of members making the petition – 80

(2) Amount of share capital held by members making the petition – Rs. 10,00,000 The petition shall be valid if it has been made by the lowest of the following:

100 members; or

50 members (being 1/10th of 500); or

Members holding Rs. 50,00,000 share capital (being 1/10th of Rs. 5,00,00,000)

As it is evident, the petition made by 80 members meets the eligibility criteria specified under section 244 of the Companies Act, 2013 as it exceeds the minimum requirement of 50 members in this case. Therefore, the petition is maintainable.

(ii) Further section 221 of the Companies Act, 2013 states that where it appears to the Tribunal, on any complaint made by such number of members as specified under sub-section (1) of section 244 having a reasonable ground to believe that the

removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of the company or its shareholders or creditors or in public interest, it may by order direct that such transfer, removal or disposal shall not take place during such period not exceeding three years as may be specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit.

In case of contravention of order of Tribunal, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

5.May 2018 Qn no 6(c) 8 Marks:

JSK, a shareholder of CRI (Private) Ltd. filed an application before erstwhile Company Law Board, alleging various acts of oppression and mis-management in the affairs of the Company and sought certain relief measures. The petition was transferred to NCLT on its constitution. The NCLT passed an order on 5th October, 2017 without the consent of the parties. Aggrieved by the order, the shareholder decided to prefer an appeal. Nevertheless the shareholder was suffering from low blood pressure. He was medically advised not to move and he did not move. Therefore, he preferred the appeal with NCLAT on 5th December, 2017. Examine whether the appeal is admissible with reference to time limitation?

Identify the provisions governing further appeal on the orders of NCLAT under Section 423 of the Companies Act, 2013.

Answer:

(1) Appeal from Orders of Tribunal: According to Section 421 of the Companies Act, 2013, any person aggrieved by an Order of the Tribunal may prefer an appeal to the Appellate Tribunal. However, no appeal shall lie to the Appellate Tribunal from an Order which was made by the Tribunal with consent of parties.

Time period of appeal: Every appeal in the above case, shall be filed within a period of forty-five days from the date on which a copy of the order of Tribunal is made available to the person aggrieved.

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

In the given situation, NCLT passed an order on 5th October, 2017 without the consent of the parties on the acts of oppression and mis-management in the affairs of the company and for the obtaining certain relief measures.

JSK, a shareholder, aggrieved by an order of NCLT, can prefer an appeal in the NCLAT within 45 days from the date on which a copy of the order of Tribunal is made available to the person aggrieved. However, on reasonable ground this period may be further extended by 45 days i.e. within 90 days from the date on which a copy of the order of Tribunal is received by JSK.

Further Appeal on the orders of NCLAT: Section 423 of the Companies Act, 2013 provides that any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order.

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days

Assumption: In the question, date of order of the NCLT may be taken as the date on which a copy of the order of Tribunal is made available to the person aggrieved to answer the question within the provided information.

6.Aug 2018 Qn no 2(a) 7 Marks:

Mr. B. Dutt is the Managing Director of Food Plaza Restaurants Private Limited (FPRPL). FPRPL was incorporated in furtherance of a Joint Venture Agreement ("JVA") between Mr. B. Dutt and Jack India Pvt. Limited(JIPL) in 2017, both having 50% of equal share in the said company. FPRPL was to be governed by the terms and conditions set out in its Memorandum of Association and its Articles of Association.

During the course, JIPL held the Board meeting, without giving prior notice of such meeting to Mr. B. Dutt, took decision to remove Mr. B Dutt with an allegation of mismanagement of fund in FPRPL. JIPL pressurised him to sell his shares at Rs. 5 crore, against Rs. 15 crore which is the fair market price of Mr. B. Dutt shares.

Advise whether Mr. B. Dutt has right to claim any relief and would he succeed in obtaining relief from Tribunal on the ground of oppression by JIPL?

Answer:

As per the given instance, the act of JIPL to remove Mr. B Dutt, a Managing director from FPRPL and pressurizing him to sell his shares much below the fair market price is an act of oppression and violations of Section 241and 242 of the Companies Act,2013. Mr. B Dutt was not given prior notice of board meeting and no chance to disprove the false allegations made against him.

According to Section 242(2) the Tribunal Without prejudice to the generality of the powers under sub-section (1) can order for –

the regulation of conduct of affairs of the company in future;

a. the purchase of shares or interests of any members of the company by other members thereof or by the company;
b. in the case of a purchase of its shares by the company, the consequent reduction of its share capital;
c. restrictions on the transfer or allotment of the shares of the company;
d. the termination, setting aside or modification, of any agreement entered between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;
e. the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

f. the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;
g. removal of the managing director, manager or any of the directors of the company;
h. recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;
i. the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);
j. appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;
k. imposition of costs as may be deemed fit by the Tribunal;
l. Any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

The above mentioned case, falls within the purview of the Section 241 and 242 of the Companies Act 2013, ensuring that the transfer of shares to the company (JIPL) by the member will not effect to the interests of the company or any of its shareholders. It gives broad powers to the Tribunal, leading to the establishment of its jurisdiction, even when a separate JVA exist.

Under Section 242(2) of the Companies Act, 2013, the Tribunal can pass an order for purchase of shares/interest of any members of the company by other members thereof or by the company if it thinks fit. Mr. B. Dutt can be reappointed by Tribunal as the Managing director of the company and it can also issue orders for the future conduct of the company along with provision of just and equitable relief to the applicant (i.e. Mr. B Dutt).

7.May 2019 Qn no 2(a)(i) 4 Marks:

A group of shareholders consisting of 30 members decide to file a petition before the Tribunal for relief against oppression and mismanagement by the Board of Directors of M/s. Aravalli Manufacturing Company Limited having a paid up Share Capital of ` 1 crore. The company has a total of 500 members and the group of 30 members holds one-tenth of the total paid-up share capital accounting for one-fifteenth of the issued share capital. The grievance of the group is that due to the mismanagement by the Board of Directors, the company is incurring losses and has not declared any dividend for the past five years. In the light of the provisions of the Companies. Act, 2013, please advise the group of shareholders regarding the admission of the petition and the relief thereof.

Answer*:*

Section 244 of the Companies Act, 2013 provides the right to apply to the Tribunal for relief against oppression and mis-management. This right is available only when the petitioners hold the prescribed limit of shares as indicated below:

(1) In the case of company having a share capital, not less than 100 members of the Company or not less than one tenth of the total number of its members whichever is less or any member or members holding not less than one tenth of the issued share capital of the company, provided that the applicant(s) have paid all calls and other dues on the shares.

(2) In the case of company not having share capital, not less than one-fifth of the total number of its members.

As per the facts, a group of 30 members decided to file a petition. Total number of members are 500 & one tenth of 500 will be 50 and lower of above is 50. Thus, the group of shareholders who decides to file the petition are less than 50. However, the group of 30 members holds one-fifteenth of the issued share capital which is less than the required one tenth of the issued share capital. In view of this, the group is not having requisite number of shares and shareholding for being eligible to approach the Tribunal for relief.

Also, the shareholders may not succeed in getting any relief from the tribunal as continuous losses cannot, by itself, be regarded as oppression (*Ashok Betelnut Co. P. Ltd. vs. M.K. Chandrakanth*). Similarly, the failure to declare dividend or payment of low dividends also does not amount to oppression. (*Thomas VeddonV.J. Vs. Kuttanad Rubber Co. Ltd.*)

8.Nov 2018 Qn no 3(a) 3 Marks:

MNC Private Ltd. is a Company in which there are six shareholders. Mr. Srinath, who is a director and also the legal representative of a deceased shareholder holding less than one tenth of the share capital the Company made a petition to the Tribunal for relief against oppression and mismanagement. Examine under the provisions of the Companies Act, 2013 whether the petition made by Mr. Srinath valid and maintainable?

Answer:

(a) 1. According to section 244 of the Companies Act, 2013, in the case of a company having share capital, the following member(s) have the right to apply to the Tribunal under section 241:

(a) Not less than 100 members of the company or not less than one-tenth of the
total number of members, whichever is less; or

(b) Any member or members holding not less than one-tenth of the issued share capital of the company provided the applicant(s) have paid all the calls and other sums due on the shares.

2. Legal heir of the deceased shareholder with minority status is entitled to file the petition.

In the given case, there are six shareholders. As per the condition (a) above, 10% of 6
i.e. 1 (round off 0.6) satisfies the condition. Therefore, in the light of the provisions of the Act, a single member (even the legal representative of a deceased shareholder) can present a petition to the Tribunal, regardless of the fact that he holds less than one-tenth of the company's share capital.

Thus, the petition made by Mr. Srinath is valid and maintainable.

9.RTP Nov-2018:

A group of depositors in M/s. Bright Limited, a listed company, appointed Mr. Fair, an advocate as a representative to file an application in the National Company Law Tribunal (NCLT) on the behalf of the depositors to bring a Class Action suit against the management of the company as they are of the opinion that the management and conduct of affairs of the company are being conducted in a manner which is prejudicial to the interest of the depositors being oppressive.

Examine in the given situation, whether the appointment of Mr. Fair is valid as regards to the filling of the application before the Tribunal in the light to the provisions of the Companies Act, 2013?

Answer:

In the given instance, an appointment of Mr. Fair was made by a group of depositors of M/s. Bright Limited (listed company), as their representative to bring a Class Action Suit against the management of the Company.

The given problem will be dealt with Section 432 read with the 245(10) of the Companies Act, 2013. Section 432 states that a party to any proceeding or appeal before the Tribunal or Appellate Tribunal as the case may be, may appear in person or authorize one or more Chartered Accountant or Company Secretaries or Cost Accountants or legal practioners or any other person to present his case before the Tribunal or Appellate Tribunal as the case may be.

Whereas, Section 245(10) of the Companies Act, 2013, provides that an application may be filed or any other action may be taken under this section by any person, group of persons or any association of persons representing the persons affected by any act or omission, specified in section 245(1) subject to the compliances of this section .

In view of the above, the appointment of Mr . Fair is valid and an application of Mr. Fair who is a representative of depositors, will be admitted by the Hon'ble Tribunal, provided, the requirement of minimum number of members filing the application under Section 245(3)(ii) is fulfilled.

10.MTP Apr 2019 Qn no 2(a) 8 Marks

Mansi Ltd. with the issued and paid up capital of Rs. 8 crores consisting of 8,00,000 equity shares of Rs. 100 each, has 600 members. A petition was submitted before the Tribunal signed by 65 members holding 20,000 equity shares of the company for the purpose of relief against oppression and mismanagement by the majority shareholders. Examining the below situations in the light of the provisions of the Companies Act, 2013:

(i) Whether the petition filed by the signed members is maintainable.

If subsequently 40 members, who had signed the petition, withdrew their consent. The impact on the maintainability of the above petition.

Answer:

Right to apply for oppression and mismanagement: As per the provisions of Section 244 of the Companies Act, 2013, in the case of a company having share capital, members eligible to apply for oppression and mismanagement shall be lowest of the following:

(i) 100 members; or

(ii) 1/10th of the total number of members; or

(iii) Members holding not less than 1/10th of the issued share capital of the company.

The share holding pattern of Mansi Limited is given as follows:

Rs. 8,00,00,000 equity share capital held by 600 members

Particulars of the petition alleging oppression and mismanagement made by members are as follows:

(i) No. of members making the petition – 65

(ii) Amount of share capital held by members making the petition - - Rs. 20,00,000 The petition shall be valid if it has been made by the lowest of the following:

100 members; or

60 members (being 1/10th of 600); or

Members holding Rs. 80,00,000 share capital (being 1/10th of Rs. 8,00,00,000)

As it is evident, the petition made by 65 members meets the eligibility criteria specified under section 244 of the Companies Act, 2013 as it exceeds the minimum requirement of 60 members in this case. Therefore, the petition is maintainable.

The consent to be given by a shareholder is reckoned at the beginning of the proceedings. The withdrawal of consent by any shareholder during the course of proceedings shall not affect the maintainability of the petition [Rajamundhry Electric Corporation Vs. V. Nageswar Rao A.I.R.].

11.RTP May 2019 Qn no 14

M/s DJ Limited, a listed company, as per the audited financial statements as on 31st March, 2018 is having issued and paid-up equity share capital comprising of 10 lakhs shares of ` 10 each and issued and paid up preference share capital of 5 Lakhs shares of ` 10 each respectively. The members of the company after complying with the provisions of section 169 of the Companies Act, 2013 removed one Mr. Satish from the directorship of the company on 1st August 2018 before the completion of his term of office. Mr. Satish is also one of the members of the company holding 110000 fully paid-up equity shares. Mr. Satish has alleged oppression on his removal and has moved the jurisdictional Honourable National Company Law Tribunal (NCLT) under section 241 read with section 244 of the Companies Act, 2013. The Board of Directors of the company is of the opinion that the application is not maintainable as per the provisions of Section 244 of the Companies Act, 2013. Decide.

Also, state if any other recourse that is available with Mr. Satish under the provisions of the Companies Act, 2013.

Answer

According to section 244(1) (a) of the Companies Act, 2013, the following members of a company shall have the right to apply under section 241, namely:—

-in the case of a company having a share capital , not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their

shares.

However, the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified above so as to enable the members to apply under section 241.

In the instant case, the equity share capital of the company is `1 crore (10 lakh shares of
` 10 each) and preference share capital is ` 50 Lakh (5 lakh shares of ` 10 each). The total issued and paid up share capital is ` 1.50 crore comprising of 15 lakh shares.

Mr. Satish is holding 110000 fully paid up equity shares. His holding is less than one-tenth of the issued share capital of the company [1/10th of 15 Lakh i.e. 150000 shares].

Hence, his application is not maintainable as per provisions of section 244 of the Companies Act, 2013 and therefore the opinion of Board of directors is correct.

However, as per proviso to section 244(1), Mr. Satish may make an application to the Tribunal in this behalf for the waiver of the above condition so that he may apply under section 241.

12.MTP Nov 2019 Question no 2(a) 8 Marks

The members of company with no paid up share capital, filed a complaint against change in the management of the company due to which it was likely that the affairs of the company will be conducted in a manner that it will be prejudicial to the interest of its 25 members. Total number of members of companywere 100. On inquiry and investigation of the complaint, having a reasonable ground to believe that the transfer or disposal of assets of the companymay be against the interests of its shareholders. The Tribunal passed an order that such transfer or disposal of assets shall not be made during the period of one year of such order.

Evaluate on the basis of the given facts, the following situations according to the Companies Act, 2013:

(i) Eligibility of the members to file a complaint.

(ii) Where if the management dispose of the certain assets in contravention to the order of the Tribunal.

Answer

Section 244 of the Companies Act, 2013 provides the eligibility of members who hold the right to file the application under section 241 for oppression and mismanagement with the Tribunal. These qualification as provided in section 244 ensure that only the persons with sufficient interest in the affairs of the company can file the petition under section 241 of the Act. According to the section in the case of a company not having a share capital, not less than one-fifth of the total number of its members are eligible to make an application before the Tribunal. Where any members

of a company are entitled to make an application under Section 244 (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

In the given scenario, requirement of minimum numbers of members is fulfilled i.e. it is more than 1/5th of the total number of its members of the company (1/5x 100= 20). So the members of the company are eligible to file the petition to tribunal under section 241.

(ii) According to section 221 of the Companies Act, 2013, if it appears to the Tribunal, on a complaint made by members as specified under section 244(1) that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of its members, Tribunal may order that such transfer, removal or disposal shall not take place during such period not exceeding three years as may be specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit.

Here in the given case, management disposed of the certain assets within 1 year of such order of Tribunal. So accordingly, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

13. Astistav Private Limited is a company with ten shareholders. A member holding less than one-tenth of the share capital of the company apply to the Tribunal for relief against oppression and mismanagement? State whether a member have a right to apply to the tribunal in above situation:

(a) A single Member cannot apply to the Tribunal for relief against oppression and mismanagement

(b) A member cannot apply as he is holding less than one-tenth of the share capital of the company

(c) A member can apply being one-tenth of the total number of members.

(d) A member cannot apply as the requirement of atleast hundred members is not complied with.

Answer: c) **Hint:** Under section 244 of the Companies Act, 2013, in the case of a company having share capital, the following member(s) have the right to apply to the Tribunal under section 241:

(a) Not less than 100 members of the company or not less than one-tenth of the total number of members, whichever is less; or

(b) Any member or members holding not less than one-

tenth of the issued share capital of the company provided the applicant(s) have paid all the calls and other sums due on the shares.

In the given case, since there are ten shareholders. As per the condition (a) above, 10% of 10 i.e. 1 satisfies the condition. Therefore, a single member can present a petition to the Tribunal, regardless of the fact that he holds less than one-tenth of the company's share capital.

14. With whom will the Central Government file an application if it is of the opinion that such a scheme is not in public interest or in the interest of the creditors?

a) Cannot move an application

b) it may file an application before the Tribunal

c) it may file an application before the Parliament

d) It may be through Special Petition before Supreme Court.

Answer: b) Hint: As per section 241(2), the Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter XVI of the Companies Act, 2013.

15. ABC Private Limited is a company in which there are eight shareholders. Can a member holding less than one-tenth of the share capital of the company apply to the Tribunal for relief against oppression and mismanagement? Give your answer according to the provisions of the Companies Act, 2013.

Answer: Under section 244 of the Companies Act, 2013, in the case of a company having share capital, the following member(s) have the right to apply to the Tribunal under section 241:

(a) Not less than 100 members of the company or not less than one-tenth of the total number of members, whichever is less; or

(b) Any member or members holding not less than one-tenth of the issued share capital of the company provided the applicant(s) have paid all the calls and other sums due on the shares.

In the given case, since there are eight shareholders. As per the condition (a) above, 10% of 8 i.e. 1 satisfies the condition. Therefore, a single member can present a

petition to the Tribunal, regardless of the fact that he holds less then one-tenth of the company's share capital

16. The issued and paid up capital of MNC Limited is ` 5 crores consisting of 5,00,000 equity shares of ` 100 each. The said company has 500 members. A petition was submitted before the Tribunal signed by 80 members holding 10,000 equity shares of the company for the purpose of relief against oppression and mismanagement by the majority shareholders. Examining the provisions of the Companies Act, 2013, decide whether the said petition is maintainable. Also explain the impact on the maintainability of the above petition, if subsequently 40 members, who had signed the petition, withdrew their consent.

Answer: Right to apply for oppression and mismanagement: As per the provisions of Section 244 of the Companies Act, 2013, in the case of a company having share capital, members eligible to apply for oppression and mismanagement shall be lowest of the following:

100 members; or

1/10th of the total number of members; or

Members holding not less than 1/10th of the issued share capital of the company. The share holding pattern of MNC Limited is given as follows:

` 5,00,00,000 equity share capital held by 500 members

The petition alleging oppression and mismanagement has been made by some members as follows:

(i) No. of members making the petition – 80

(ii) Amount of share capital held by members making the petition – ` 10,00,000 The petition shall be valid if it has been made by the lowest of the following:

100 members; or

50 members (being 1/10th of 500); or

Members holding ` 50,00,000 share capital (being 1/10th of ` 5,00,00,000)

As it is evident, the petition made by 80 members meets the eligibility criteria specified under section 244 of the Companies Act, 2013 as it exceeds the minimum requirement of 50 members in this case. Therefore, the petition is maintainable.

The consent to be given by a shareholder is reckoned at the beginning of the proceedings. The withdrawal of consent by any shareholder during the course of proceedings shall not affect the maintainability of the petition [Rajamundhry Electric Corporation Vs. V. Nageswar Rao A.I.R.].

17. A group of shareholders consisting of 25 members decide to file a petition before the Tribunal for relief against oppression and mismanagement by the Board of Directors of M/s Fly By Night Operators Ltd. The company has a total of 300 members and the group of 25 members holds one–tenth of the total paid –up share capital accounting for one-fifteenth of the issued share capital. The main grievance of the group is the due to mismanagement by the board of directors, the company is incurring losses and the company has not declared any dividends even when profits were available in the past years for declaration of dividend. In the light of the provisions of the Companies Act, 2013, advise the group of shareholders regarding the success of (i) getting the petition admitted and (ii) obtaining relief from the Tribunal.

Answer: Section 244 of the Companies Act, 2013 provides the right to apply to the Tribunal for relief against oppression and mis-management. This right is available only when the petitioners hold the prescribed limit of shares as indicated below:

(i) In the case of company having a share capital, not less than 100 members of the Company or not less than one tenth of the total number of its members whichever is less or any member or members holding not less than one tenth of the issued share capital of the company, provided that the applicant(s) have paid all calls and other dues on the shares.

(ii) In the case of company not having share capital, not less than one-fifth of the total number of its members.

Since the group of shareholders do not number 100 or hold 1/10th of the issued share capital or constitute 1/10th of the total number of members, they have no right to approach the Tribunal for relief.

However, the Tribunal may, on an application made to it waive all or any of the requirements specified in (i) or (ii) so as to enable the members to apply under section 241.

As regards obtaining relief from Tribunal, continuous losses cannot, by itself, be regarded as oppression (Ashok Betelnut Co. P. Ltd. vs. M.K. Chandrakanth).

Similarly, failure to declare dividends or payment of low dividends also does not amount to oppression. (Thomas Veddon V.J. (v) Kuttanad Robber Co. Ltd).

Thus, the shareholders may not succeed in getting any relief from Tribunal.

18. A group of members of XYZ Limited has filed a petition before the Tribunal alleging various acts of oppression and mismanagement by the majority shareholders of the company. The Petitioner group holds 12% of the issued share capital of the company. During the pendancy of the petition, some of the petitioner group holding about 5% of the issued share capital of the company wish to disassociate themselves from the petition and they along with the other majority shareholders have submitted before the Tribunal that the petition may be dismissed on the ground of non- maintainability. Examine their contention having regard to the provisions of the Companies Act, 2013.

Answer:

The argument of the majority shareholders that the petition may be dismissed on the ground of non-maintability is not correct. The proceedings shall continue irrespective of withdrawl of consent by some petitioners. It has been held by the Supreme Court in Rajmundhry Electric Corporation vs. V. Nageswar Rao, AIR (1956) SC 213 that if some of the consenting members have subsequent to the presentation of the petition withdraw their consent, it would not affect the right of the applicant to proceed with the petition. Thus, the validity of the petition must be judged on the facts as they were at the time of presentation. Neither the right of the applicants to proceed with the petition nor the jurisdiction of Tribunal to dispose it of on its merits can be affected by events happening subsequent to the presentation of the petition.

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Chapter 7 – Winding Up

Multiple Choice Questions

1.MTP Mar 2019 QN no 18 and Study Material

When can a winding up order not be called a notice of discharge?

(a) when the business of the company is continued

(b) when the business of the company is closed since 2 years.

(c) On the discretion of the management

(d) Till the appointment of a provisional liquidator

Answer: Option A

2.MTP April 2019 Qn no 16

Who shall make an application to the Tribunal for constitution of a winding up committee to assist and monitor the progress of liquidation proceedings by the Company Liquidator in carrying out the function?

a) No application required

b) Company Liquidator

c) Management

d) Members

Answer: Option B

3.RTP May 2018 Qn no 7

Winding up proceedings has been commended by the Tribunal against Paramount Limited, a government company (Central Government is a member). Even after completion of one year from the date of commencement of winding up proceedings, it has not possible to conclude the same. The liquidator is of the opinion that the statement shall be filed with tribunal and registrar only.

(i) **Decide validity to the opinion made by the liquidator and penalty that can be imposed on the liquidator for contravention of the provision as per the Companies Act, 2013.**

(ii) **Discuss, if the Paramount Limited is a non-government company?**

Answer:

Section 348 of the Companies Act, 2013 states that, if the winding up of a company is not concluded within one year after its commencement then the Company Liquidator shall file a statement in such form containing such particulars as may be prescribed. Such statement shall be filled within two months of the expiry of such year and it shall be filled continuously thereafter until the winding up is concluded,

at intervals of not more than one year or at such shorter intervals as may be prescribed. The statement shall be duly audited, by a person qualified to act as auditor of the company and position of with respect to the proceedings in the liquidation.

The statement shall be filled with the tribunal in the case of a winding up by the Tribunal. A copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.

Where a statement relates to a Government company in liquidation, the Company Liquidator shall forward a copy thereof,

- to the Central Government, if that Government is a member of the Government company;
- to any State Government, if that Government is a member of the Government company; or
- to the Central Government and any State Government, if both the Governments are members of the Government company.

Paramount Limited is a Government Company

In the current scenario, we can understand that the Paramount Limited is a government company in which Central Government is a member and hence statement is also required to file to the Central Government along with the Tribunal and Registrar. So, the opinion by the Company Liquidator is not tenable in the eyes of the law and he is liable for penal action under the Act.

The company liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.

Paramount Limited is a Non-Government Company

In the current scenario, the Paramount Limited is a non-government company hence statement is only required to file with the Tribunal and Registrar only. So, the opinion by the Company Liquidator is tenable in the eyes of the law and he is not liable for any penal action under the Act.

March 2018 Qn no 5(b) 6 Marks:

4.Skyline Ltd. was ordered to be wound up compulsory on a petition filed on 10th February, 2018 before Tribunal. The official liquidator who has taken control for the assets and other records of the company has noticed that the Managing Director of the company has transferred certain properties belonging to the company to one of its creditor "Vansh (Pvt.) Ltd", in which his son was interested. This was causing huge monetary loss to the company. The sale took place on 15th September, 2017.

(i) **Examine what action the official liquidator can take in this matter having regard to the provisions of the Companies Act, 2013.**

Determine the rights and liabilities of fraudulently preferred persons by mortgage of charge of property to him to secure the company's debt.

Answer:

The official liquidator can invoke the provisions contained in Section 328 of the Companies Act, 2013 to recover the sale of assets of the company. According to Section 328, if the Tribunal is satisfied that there is a preference transfer of property, movable or immovable, or any delivery of goods, payment, execution made, taken or done by or against a company within six months before making winding up application, the Tribunal may order as it may think fit and may declare such transaction invalid and restore the position.

Since in the present case, the sale of immovable property took place on 15 th September, 2017 and the company went into liquidation on an application fil ed on 10th February, 2018 i.e., within 6 months of making winding up application and such transfer of property has resulted a loss to the company.

The official liquidator will be able to succeed in proving the case under Section 328 by way of fraudulent preference as the property was sold to a Vansh (Pvt.) company, a creditor in which the son of the ex-managing director was interested.

Hence, the transaction made will be regarded as invalid and restore the position of the company as if no transfer of immovable property has been made.

(ii) **Determination of rights and liabilities of fraudulently preferred persons:** According to section 331 of the Companies Act, 2013, where a company is being wound up and anything made, taken or done after the commencement of this Act is invalid under section 328 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then, without prejudice to any rights or liabilities arising, apart from this provision, the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as a surety for the debt, -

- to the extent of the mortgage or charge on the property, or
- the value of his interest, Whichever is less.

RTP Nov-18:

5.M/s Sagar Retail Mega Mart Ltd. applied for winding up on 1 st April, 2018 before the Honourable Tribunal by passing a special resolution as per the provision of section 271(1)(a) of the Companies Act, 2013 on account of fall in business and continued losses but not due to inability to pay debts. The company was in the business of ordinary retail trade of multiple branded goods. A few shareholders of the company have alleged before the Honourable Tribunal that the company had

failed to maintain proper books of accounts for over a period of more than three years immediately prior to the date of winding up application and the sole reason cited by them in support of their allegation is that no proper statements of all goods sold and purchased by the company have been kept as such every officer in default must be punished as per the provisions of the Companies Act, 2013. Mr. Ravi the CFO and officer in default do not refute the allegation of non-maintenance but is of the opinion that this act as per the provision of the Companies Act, 2013 is not punishable. Decide whether the opinion of the CFO is correct. Would your answer be different had the business of the company be wholesale trade instead of ordinary retail trade?

Answer:

Failure to maintain proper books of accounts [Section 338(1) of the Companies Act, 2013]

- where a company is being wound up, if it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up,
- every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable,
- be punishable with imprisonment for a term which shall be not less than one year but which may extend to three years and with fine which shall not be less than I lakh rupees but which may extend to three lakh rupees.

  Conditions when it shall be deemed that proper books of account have not been kept [Section 338(2) of the Act]: For the purposes of sub-Section (1), it shall be deemed that proper books of account have not been kept in the case of any company,—

- where the business of the company has involved dealings in goods, statements of the annual stock takings and, except in the case of goods sold by way of ordinary retail trade, of all goods sold and purchased, have not been kept.

In the instant case, no proper statements of all goods sold and purchased by the company engaged in ordinary retail trade is kept. It shall be deemed that proper books of account have been kept as ordinary retail trade is an exception under sub-Section (2). Thus, opinion of CFO is correct.

If the company is engaged in wholesale trade instead of ordinary retail trade, then it is deemed that proper statements of all goods sold and purchased by the company engaged in wholesale retail trade is not kept for more than 3 years period immediately prior to the date of winding up application. Hence, in this case, the CFO opinion will not hold good and will be punishable.

Oct 2018 Qn no 5(b) (ii) 2 Marks: ,May 2019 Qn no 5(b) 6 Marks:

6.LED Bulb Ltd., has made default in filing financial statements and annual returns for a continuous period of 4 financial years ending on 31st March, 2017. The Registrar of Companies having jurisdiction approached the Central Government to accord sanction to present a petition to Tribunal (NCLT) for the winding up of the company on the above ground under Section 272 of the Companies Act, 2013

Examine the validity of the RoC move, explaining the relevant provisions of the Companies Act, 2013. State the time limit for passing an order by the Tribunal under Section ·273 of the Companies Act, 2013?

Answer:

Validity of RoC's action

According to Section 271(d) of the Companies Act, 2013, a Company may, on a petition under Section 272, be wound up by the Tribunal, if the Company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years.

In the instant case, the move by RoC to present a petition to Tribunal for the winding up of LED Bulb Ltd. is not valid as the Company has made default in filing financial statements and annual returns for a continuous period of 4 financial years ending on 31st March, 2017.

Time limit for passing of an Order under section 273: An order under section 273 of the Act shall be made within ninety days from the date of presentation of the petition.

7.May 2019 Qn no 3(a) 8 Marks and Study Material

Info-tech Overtrading Ltd. was ordered to be compulsory wound up by an order dated 10th March, 2019 by the Tribunal. The official liquidator who has taken control of the assets and other records of the company has noticed that :

(i) **One of the contributory whose calls are pending to be paid is about to leave India for evading payment of calls and;**

(ii) **A person having books of accounts of the company his possession may abscond to avoid examination of books of accounts in respect of the affairs of the company.**

Apprehending such possibilities, Tribunal detained such contributory for next 6 month disallowing him to leave India as well as arrest & seized books of accounts from the person which may possibly abscond to avoid examination of the affairs of the company.

Referring to the provisions of Companies Act, 2013, answer the following in current scenario:

(i) **What is the validity of Tribunal's order for detention of contributory disallowing him to leave India?**

Is it correct from Tribunal's part to arrest and seize books of accounts from the person planning to abscond to avoid examination of books of accounts in respect of the affairs of the company?

Answer:

According to section 301 of the Companies Act, 2013, at any time either before or after passing a winding up order, if the Tribunal is satisfied that

- a contributory or
- a person having property, accounts or papers of the company in his possession

is about to leave India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company,

the Tribunal may cause—

(a) the contributory to be detained until such time as the Tribunal may order; and

(b) his books and papers and movable property to be seized and safely kept until such time as the Tribunal may order.

In the instant case, by taking into account the above provisions:

(i) The Tribunal's order for detention of contributory for next 6 months disallowing him to leave India, is valid.

(ii) It is correct from Tribunal's part to arrest and seize books of accounts from the person planning to abscond to avoid examination of books of accounts in respect of the affairs of the company.

Section 245(3)(ii) is fulfilled.

8.MTP Mar 2019 QN no 3(a)(i) 4 Marks

AMC Ltd. was ordered to be wound up compulsory by an order dated 10th March, 2019by the Tribunal. The official liquidator who has taken control for the assets and other records of the company has noticed the following:

The Managing Director of the company has sold certain properties belonging to the company to a private company in which his son was interested causing loss to the company to the extent of INR 50 lakhs. The sale took place on 15th October, 2018.

Examine what action the official liquidator can take in this matter, having regard to the provisions of the Companies Act, 2013 .

Answer:

(i) The official liquidator can invoke the provisions contained in Section 328 of the Companies Act, 2013 to recover the sale of assets of the company. According to Section 328, if the Tribunal is satisfied that there is a preference transfer of property, movable or immovable, or any delivery of goods, payment, execution made, taken or done by or against a company within six months before making winding up application, the Tribunal may order as it may think fit and may declare such transaction invalid and restore the position.

Since in the present case, the sale of immovable property took place on 15th October, 2018 and the company went into liquidation on 10th March, 2019 i.e., within 6 months before the winding up of the company and since the sale has resulted in a loss of INR 50 lakhs to the company.

The official liquidator will be able to succeed in proving the case under Section 328 by way of fraudulent preference as the property was sold to a private company in which the son of the ex-managing director was interested.

Hence, the transaction made will be regarded as invalid and restore the position of the company as if no transfer of immovable property has been made.

9.MTP Apr 2019 Qn no5(a) 8 Marks

Skyline Ltd. was ordered to be wound up compulsory on a petition filed on 10th February, 2018 before Tribunal. The official liquidator who has taken control for the assets and other records of the company has noticed that the Managing Director of the company has transferred certain properties belonging to the company to one of its creditor "Vansh (Pvt.) Ltd", in which his son was interested. This was causing huge monetary loss to the company. The sale took place on 15th September, 2017.

(i) **Examine what action the official liquidator can take in this matter having regard to the provisions of the Companies Act, 2013.**

(ii) **Determine the rights and liabilities of fraudulently preferred persons by mortgage of property**

to him to secure the company's debt.

Answer

(i)The official liquidator can invoke the provisions contained in Section 328 of the Companies Act, 2013 to recover the sale of assets of the company. According to Section 328, if the Tribunal is satisfied that there is a preference transfer of property, movable or immovable, or any delivery of goods, payment, execution made, taken or done by or against a company within six months before making winding up application, the Tribunal may order as it may think fit and may declare such transaction invalid and restore the position.

Since in the present case, the sale of immovable property took place on 15th September, 2017 and the company went into liquidation on an application filed on 10th February, 2018 i.e., within 6 months of making winding up application and such transfer of property has resulted a loss to the company.

The official liquidator will be able to succeed in proving the case under Section 328 by way of fraudulent preference as the property was sold to a Vansh (Pvt.) company, a creditor in which the son of the ex-managing director was interested.

Hence, the transaction made will be regarded as invalid and restore the position of the company as if no transfer of immovable property has been made.

(ii) Determination of rights and liabilities of fraudulently preferred persons: According to section 331 of the Companies Act, 2013, where a company is being wound up and anything made, taken or done after the commencement of this Act is invalid under section 328 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then, without prejudice to any rights or liabilities arising, apart from this provision, the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as a surety for the debt,-

- to the extent of the mortgage or charge on the property, or
- the value of interest, Whichever is less

10.RTP May 2019 Qn no 13

(ii) IJK Limited was wound up with effect from 15th March 2018 by an order of the Court. Mr. A, who ceased to be a member of the company from 1st June 2017, has received a notice from the liquidator that he should deposit a sum of ` 5000 as his contribution towards the liability on the shares previously held by him. In this context explain whether Mr. A can be called as a contributory, whether he can be made liable and whether there is any limitation on his liability.

Answer

Contributory: According to section 285 of the Companies Act, 2013, as soon as may be after the passing of a winding up order by the Tribunal, the Tribunal shall settle a list of contributories.

While settling the list of contributories, the Tribunal shall include every person, who is or has been a member, who shall be liable to contribute to the assets of the company an amount sufficient for payment of the debts and liabilities and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

Liability of the contributory: a person who has been a member shall not be liable to contribute if he has ceased to be a member for the preceding one year or more before the commencement of the winding up.

In the given case, M/s, IJK Ltd. was wound up on 15th March 2018. Whereas Mr. A ceased to be a member of the company from 1st June, 2017. So, according to the above provision, Mr. A will be a contributory and be liable to contribute as the time period of one year from the commencement of winding up has not elapsed. So Mr. A is liable to deposit ` 5000 (if any unpaid on the shares in respect of which he is liable as member [Section 285 (3) (d)]) as his contribution towards the liability on the shares previously held by him.

11.RTP Nov 2019 Qn no 11

Clarks Limited, has made default in filing financial statements and annual returns for a continuous period of 4 financial years ending on 31st March, 2019. The Registrar of Companies having jurisdiction approached the Central Government to accord sanction to present a petition to Tribunal (NCLT) for the winding up of the company as per the above ground under Section 272 of the Companies Act, 2013.

Examine the validity of the RoC move, explaining the relevant provisions of the Companies Act, 2013. State the time limit for passing an order by the Tribunal under Section 273 of the Companies Act, 2013 ?

Validity of RoC's action: According to Section 271(d) of the Companies Act, 2013, a Company may, on a petition under Section 272, be wound up by the Tribunal, if the Company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years.

In the instant case, the move by RoC to present a petition to Tribunal for the winding up of Clarks Limited is not valid as the Company has made default in filing financial statements and annual returns for a continuous period of 4 financial years ending on 31st March, 2019.

Time limit for passing of an Order under section 273: An order under section 273 of the Act shall be made within ninety days from the date of presentation of the petition.

12.Nov 2019 Qn no 5(a) 4 Marks

Due to an unprecedented flood, all the fixed assets of a Company were damaged extensively beyond renovation or repair. The cost of replacement of assets were huge and the sum insured on the fixed assets did not cover all the assets. Therefore, the operations of the Company were permanently discontinued. Meanwhile, based on a winding-up petition filed by the secured creditors, the High Court passed a winding-up order. The workers of the Company opposed to the winding-up petition and also filed an appeal against the winding-up order. The workers are not sure whether their appeal would be heard in the winding-up proceedings. Examine, under the provisions of the Companies Act, 2013, whether the appeal filed by the workers would succeed and their dues / interest will be protected in priority?

Answer

According to section 279 of the Companies Act, 2013, when a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose.

It is further provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.

However, the above provision shall not apply to any proceeding pending in appeal before the Supreme Court or a High Court.

According to section 325/326/327 of the Companies Act, 2013, in the winding up of a company under this Act, the workmen's dues shall be paid in priority to all other debts ranking pari passu with secured creditors.

As per the facts of the question, the High Court has already passed a winding up order of the company. Hence, the workmen can appeal against the winding up order but only with the leave of the Tribunal and subject to such terms as the Tribunal may impose. Further, the dues/ interest of the workmen will be protected in priority as workmen's dues shall be paid in priority to all other debts ranking pari passu with secured creditors.

Study Material

13. XYZ Limited is being would up by the tribunal. All the assets of the company have been charged to the company's bankers to whom the company owes ` 5 crores. The company owes following amounts to others:

- **Dues to workers – ` 1,25,00,000**
- **Taxes Payable to Government – ` 30,00,000**
- **Unsecured Creditors – ` 60,00,000**

You are required to compute with the reference to the provision of the Companies Act, 2013 the amount each kind of creditors is likely to get if the amount realized by the official liquidator from the secured assets and available for distribution among creditors is only ` 4,00,00,000/-

Answer

Section 326 of the Companies Act, 2013 is talks about the overriding preferential payments to be made from the amount realized from the assets to be distributed to various kind of creditors. According to the proviso given in the section 326 the security of every secured creditor shall be deemed to be subject to a pari passu change in favor of the workman to the extent of their portion.

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$$\text{Workman's Share to Secured Asset} = \frac{\text{Amount Realied} * \text{Workman's Dues}}{\text{Workman's Dues} + \text{Secured Loan}}$$

$$\text{Workman's Share to Secured Asset} = \frac{4,00,00,000 * 1,25,00,000}{1,25,00,000 + 5,00,00,000}$$

$$4,00,00,000 * \frac{1}{5}$$

Workman's Share to Secured Assets=80,00,000 Amount available to secured creditor is ` 400 Lakhs – 80 Lakhs = 320 Lakhs

Hence, no amount is available for payment of government dues and unsecured creditors.

14. When can an application be made to Tribunal for constitution of a winding up committee to assist and monitor the progress of liquidation proceedings by the Company Liquidator in carrying out the function?

(a) Within two weeks from the date of passing of winding up order

(b) Within three weeks from the date of passing of winding up order

(c) Within four weeks from the date of passing of winding up order

(d) None of the above.

Answer: b) Hint: Section 277 (4) of the companies Act, 2013, states that within three weeks from the date of passing of winding up order, the Company Liquidator shall make an application to the Tribunal for constitution of a winding up committee to assist and monitor the progress of liquidation proceedings by the Company Liquidator in carrying out the function and such winding up committee shall comprise of the following persons, namely:—

a) Official Liquidator attached to the Tribunal;

b) nominee of secured creditors; and

c) a professional nominated by the Tribunal

Chapter 9 –Companies Incorporated Outside India

1.RTP May 2018 Qn no 9

(i) As per provisions of the Companies Act, 2013, define the status of Hillways Ltd., a Company incorporated in London, which has a share transfer office at Mumbai?

(ii) LMP Paper Ltd. is a company registered in Thailand. Although, it has no place of business established in India, yet it is doing online business through telemarketing in India. Explain whether it will be treated as a Foreign Company under the Companies Act, 2013?

(iii) In case, a foreign company does not deliver its documents to the Registrar of Companies as required under section 380 of the Companies Act, 2013, state the penalties prescribed under the said Act, which can be levied.

Answer

(i) In terms of the definition of a foreign company under section 2 (42) of the Companies Act, 2013 a "foreign company" means any company or body corporate incorporated outside India which:

(a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) Conducts any business activity in India in any other manner.

According to section 386 of the Companies Act, 2013, for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), "Place of business" includes a share transfer or registration office.

From the above definition, the status of Hillways Ltd. will be that of a foreign company as it is incorporated outside India, has a place of business in India and it may be presumed that it carries on a business activity in India.

- As per Section 2(42) read with the *Companies (Registration of Foreign Companies) Rules, 2014* of the Companies Act, 2013, any company or body corporate incorporated outside India which has a place of business in India whether by itself or through an agent, physically or through electronic mode; and conducts any business activity in India in any other manner is a foreign company.

Further the above said rules states the meaning of "electronic mode". It means carrying out electronically based, whether main server is installed in India or not, including, but not limited to –

(a) business to business and business to consumer transactions, data interchange and other digital supply transactions;

(b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities in India or from citizens of India;

(c) financial settlements, web based marketing, advisory and transactional services, data base services and products, supply chain management;

(d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and

(e) all related data communication services whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

Looking to the above description, it can be said that being involved in business activity through telemarketing, LMP Paper Ltd., will be treated as foreign company.

- The Companies Act, 2013 lays down the governing provisions for foreign companies in Chapter XXII which is comprised of sections 379 to 393. The penalties for non- filing or for contravention of any provision for this chapter including for non-filing of documents with the Registrar as required by section 380 and other sections in this chapter are laid down in section 392 of the Act which provides that if a foreign company contravenes the provisions of this Chapter, **the foreign company**
- shall be punishable with a fine which shall not be less than ` 1,00,000 but which may extend to ` 3,00,000
- and in the case of a continuing offence, with an additional fine which may extend to ` 50,000 for every day after the first during which the contravention continues

every officer of the foreign company who is in default shall be punishable

- with imprisonment for a term which may extend to six months or
- with fine which shall not be less than ` 25,000
- or with both.

2.March 2018 Qn no 6(b) 2 Marks:

X, a foreign company, with a place of business in India, ceases to carry on business in India. State the legal position of such foreign company under the Companies Act, 2013.

Answer:

According to section 376 of the Companies Act, 2013, where any body corporate incorporated outside India which has been carrying on business in India, ceases to carry on business in India, it may be wound up as an unregistered company under part II of chapter XXI of the Companies Act, 2013, notwithstanding that the body corporate has been dissolved or otherwise ceased to exist as such under or by virtue of the laws of the country under which it is incorporated.

3.May 2018 Qn no 6(b) 2 Marks:

Qinghai Huading Industrial Company Ltd., incorporated in China established a place of business at Mumbai. The Charter / Documents constituting the Company is in Mandarian Chinese (Chinese local language). It is required inter alia to file a certified translation of above documents with the Registrar of Companies in India. Who can authenticate the translated charter/ documents as per the provisions of the Companies Act, 2013 and Rules made there under governing foreign companies in case such translation is made at Mumbai?

Answer:

According to Rule 10 of the *Companies (Registration of Foreign Companies) Rules, 2014,*

(i) All the documents required to be filed with the Registrar by the foreign companies shall be in English language and where any such document is not in English language, there shall be attached a translation thereof in English language duly certified to be correct in the manner given in these rules.

(ii) Where such translation is made within India, it shall be authenticated by-

(a) an advocate, attorney or pleader entitled to appear before any High Court; or

(b) an affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.

In the instant case, Qinghai Huading Industrial company Ltd. can translate the related documents within India and they shall be authenticated by the persons mentioned under the above Rules.

4.Aug 2018 Qn no 6(b) 2 Marks:

X Inc, a foreign company, registered in UK and carrying on Trading Activity, with Principal Place of Business in Chennai. Since the company did not obtain registration or make arrangement to file Return, registrar having jurisdiction, intends to serve show cause notice on the Foreign Company. As Standing Counsel for the department, advise the registrar on valid service of notice

Answer:

According to section 383 of the Companies Act, 2013, any process, notice, or other document required to be served on a foreign company shall be deemed to be

sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar under section 380 of the Companies Act, 2013, and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode. Hence, the registrar may serve the show cause notice by following the above provisions.

5.Nov 2018 Qn no 3(b) 8 Marks:

In the light of the provisions of the Companies Act, 2013 explain whether the following Companies can be considered as a 'Foreign Company':

(i) **A Company which has no place of business established in India, yet, is doing online business through telemarketing in India.**

(ii) **A Company which is incorporated outside India employs agents in India but has no place of business in India.**

A Company incorporated outside India having shareholders who are all Indian citizens.

Answer:

Foreign Company [Section 2(42) of the Companies Act, 2013]: "Foreign company" means any company or body corporate incorporated outside India which-

- has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- conducts any business activity in India in any other manner.

According to Rule 2 (c) of the *Companies (Registration of Foreign Companies) Rules, 2014,* **"electronic mode"** means carrying out electronically based, whether main server is installed in India or not, including, but not limited to -

(a) business to business and business to consumer transactions, data interchange and other digital supply transactions;

(b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;

(c) financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;

(d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and

(e) all related data communication services,

whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

In the light of the said provisions of the Companies Act, 2013, as enumerated above:

(i) A company which has no place of business in India but is doing online business through telemarketing in India, will be considered as a 'Foreign Company'.

(ii) A company incorporated outside India which has a place of business in India whether by itself or through an agent, physically or through electronic mode, will be considered as foreign company. Thus, a company incorporated outside India which does not have a place of business in India, will not be considered a 'Foreign Company'

(iii) A company incorporated outside India having shareholders who are all Indian
citizens shall be a 'Foreign Company'

(*It is presumed that the company in question is incorporated outside India, so that provisions of section 2(42) of the Companies Act, 2013 can be applied on it.)

6.Nov 2018 Qn no 6(b) 4 Marks:

Ronnie Coleman Ltd., a foreign Company failed to deliver some documents to the Registrar of Companies as required under Section 380 of the Companies Act, 2013. State the provisions of penalty prescribed under the Act, which can be levied on Ronnie Coleman Ltd. for its failure to deliver the documents.

Answer:

The Companies Act, 2013 lays down the governing provisions for foreign companies in Chapter XXII which is comprised of sections 379 to 393. The penalties for non filing or for contravention of any provision for this chapter including for non filing of documents with the Registrar as required by section 380 and other sections in this chapter are laid down in section 392 of the Act which provides that if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with a fine which shall not be less than ` 1,00,000 but which may extend to ` 3,00,000 and in the case of a continuing offence, with an additional fine which may extend to ` 50,000 for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than ` 25,000 but which may extend to ` 5,00,000, or with both.

7.RTP Nov-18:

Examine and state whether the following Companies can be considered as 'Foreign Company' under the Companies Act, 2013:

(i) **A company which is incorporated outside India employs agents in India but has no place of business in India.**

(ii) **A company incorporated outside India having shareholders who are all Indian citizens.**

(iii) **A company incorporated in India but all the shares are held by foreigners.**

(iv) **A company which has no place of business established in India, yet, is doing online business through telemarketing in India.**

Answer:

As per Section 2(42) of the Companies Act, 2013, a foreign company means any company or body corporate incorporated outside India which-

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

A company incorporated outside India and have not established a place of business in India, is not deemed to be a Foreign Company. Thus establishing a place of business is an essential ingredient in the definition. In the given case, the company has not established a place of business in India though employs agents in India. It will not be deemed to be a foreign company.

(i) A company incorporated outside India, will not be deemed to be a Foreign Company even though all the shareholders are Indian citizens, unless it has a place of business in India.

(ii) A company incorporated In India but having all foreign shareholders will be deemed to be an Indian Company as it is not incorporated outside India though it has a place of business in India.

(iii) According to the *Companies (Registration of Foreign Companies) Rules, 2014*, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to:

(a) Business to business and business to consumer transactions, data inter-change and other digital supply transactions

(b) Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in India or from citizens of India

(c) Financial settlements, web-based marketing, advisory and transactional services, data based services and products and supply chain management,

(d) Online services such as telemarketing, telecommuting, telelmedicine, education and information research.

(e) All related data communication services whether conducted by e-mail, mobile devices, social media, cloud computing, data management, voice or data transmission or otherwise.

Therefore, looking to the above description, a company which has no place of business established in India, yet doing online business through telemarketing in India will be treated as a foreign company.

8.MTP Mar 2019 QN no 5(a) 4 Marks

(i) As per provisions of the Companies Act, 2013, what is the status of XYZ Ltd., a Company incorporated in London, U.K., which has a share transfer office at Mumbai?

(ii) ABC Ltd., a foreign company having its Indian principal place of business at Kolkata, West Bengal is required to deliver various documents to Registrar of Companies under the provisions of the Companies Act, 2013. You are required to state, where the said company should deliver such documents.

Answer

In terms of the definition of a foreign company under section 2 (42) of the Companies Act, 2013 a "foreign company" means any company or body corporate incorporated outside India which:

(a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) Conducts any business activity in India in any other manner

According to section 386 of the Companies Act, 2013, for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), "Place of business" includes a share transfer or registration office.

From the above definition, the status of XYZ Ltd. will be that of a foreign company as it is incorporated outside India, has a place of business in India and it may be presumed that it carries on a business activity in India.

9.MTP Apr 2019 Qn no 3(a) 8 Marks

Examine the given situations in the light of the Companies Act, 2013 as to the legal position of the existence of the companies incorporated outside India:

(i) **Status of XYZ Ltd., a Company incorporated in London, U.K., which has a share transfer office at Mumbai.**

RST Ltd. is a company registered in Thailand. It has no place of business established in India, yet doing online business through telemarketing in India.

Answer:

In terms of the definition of a foreign company under section 2 (42) of the Companies Act, 2013 a "foreign company" means any company or body corporate incorporated outside India which:

(a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) Conducts any business activity in India in any other manner

According to section 386 of the Companies Act, 2013, for the purposes of the Companies incorporated outside India, "Place of business" includes a share transfer or registration office.

(i) From the above definition, the status of XYZ Ltd. will be that of a foreign company as it is incorporated outside India, has a place of business in India and so may be presumed that it carries on a business activity in India.

(ii) The term "online business "can be related to the term "online mode" of conduct of business. This is to be read with the section 2(42) of the Companies Act, 2013, and with the Companies (Registration of Foreign Companies) Rules, 2014. "Electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to–

(a) business to business and business to consumer transactions, data interchange and other digital supply transactions;

(b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities in India or from citizens of India;

(c) financial settlements, web based marketing, advisory and transactional services, data base services and products, supply chain management;

(d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and

(e) all related data communication services whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

Since, RST Ltd. is a company registered in Thailand with no place of business established in India, however doing online business through telemarketing in India. Looking to the above description as to conduct of business through electronic mode, it can be said that being involved in business activity through telemarketing, RST Ltd., will be treated as foreign company.

10.RTP May 2019 Qn no 15

DEJY Company Limited incorporated in Singapore desires to establish a place of business at Mumbai. You being a practising Chartered Accountant havebeen appointed by the company as a liaison officer, for compliance of legal formalities on behalf of the company. Examining the provisions of the Companies Act, 2013, state the documents you are required to furnish on behalf of the company, on the establishment of a place of business at Mumbai.

Answer

Under section 380(1) of the Companies Act, 2013 every foreign company shall, within 30 days of the establishment of place of business in India, deliver to the Registrar for registration of the following documents:

(a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company. If the instruments are not in the English language, a certified translation thereof in the English language;

(b) the full address of the registered or principal office of the company;

(c) a list of the directors and secretary of the company containing such particulars as may be prescribed;

In relation to the nature of particulars to be provided as above, the *Companies (Registration of Foreign Companies) Rules, 2014*, provide that the list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely:

(1) personal name and surname in full;

(2) any former name or names and surname or surnames in full;

(3) father's name or mother's name and spouse's name;

(4) date of birth;

(5) residential address;

(6) nationality;

(7) if the present nationality is not the nationality of origin, his nationality of origin;

(8) passport Number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)

(9) income-tax permanent account number (PAN), if applicable;

(10) occupation, if any;

(11) whether directorship in any other Indian company, (Director Identification Number(DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);

(12) other directorship or directorships held by him;

(13) Membership Number (for Secretary only); and

(14) e-mail ID.

(d) the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;

(e) the full address of the office of the company in India which is deemed to be its principal place of business in India;

(f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;

(g) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and

(h) any other information as may be prescribed.

11.Nov 2019 Qn no 3(A) 8 Marks

In the light of the provisions of the Companies Act, 2013, examine whether the following Companies can be considered as a 'Foreign Company':

(i) M/s Red Stone Limited is a Company registered in Singapore. The Board of Directors meets and executes business decisions at their Board Meeting held in India.

(ii) M/s Blue Star Public Company Limited registered in Thailand has authorized Mr. 'Y' in India to find and enter contracts with them on behalf of the company.

(iii) M/s Xex Limited Liability Company registered in Dubai has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India.

Answer

According to section 2(42) of the Companies Act, 2013, "Foreign company" means any company or body corporate incorporated outside India which-

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

According to the *Companies (Registration of Foreign Companies) Rules, 2014,* **"electronic mode"** means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-

(a) business to business and business to consumer transactions, data

interchange and other digital supply transactions;

(b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;

(c) financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;

(d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and

(e) all related data communication services,

whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

(i) In the given situation, M/s Red Stone Limited is registered in Singapore. However, it does not have a place of business in India whether by itself or through an agent, physically or through electronic mode; and does not conduct any business activity in India in any other manner. Mere holding of board meetings and executing business decisions in India cannot be termed as conducting business activity in India. Hence, M/s Red Stone Limited is not a foreign company as per the Companies Act, 2013.

(ii) In the given situation, M/s Blue Star is registered in Thailand. It has authorised Mr. Y in India to find customers and enter into contract on behalf of the company. Thus, it can be said that M/s Blue Star Limited has both place of business in India through an agent, physically or through electronic mode; and is conducting business activity in India. Hence, M/s Blue Star Limited is a foreign company as per the Companies Act, 2013.

(iii) In the given situation, M/s Xex Limited Liability Company is registered in Dubai and has installed its main server in Dubai for maintaining office automation software by Cloud Computing for its client in India. Thus, it can be said that M/s Xex Limited Liability Company has a place of business in India through electronic mode and is conducting business activity in India. Hence, M/s Xex Limited Liability Company is a foreign company as per the Companies Act, 2013.

12.MTP Nov 2019 Qn no 5(a)(ii) 2 Marks

As per provisions of the Companies Act, 2013, what is the status of XYZ Ltd., a Company incorporated in London, U.K., which has a share transfer office at Mumbai?

Answer

In terms of the definition of a foreign company under section 2 (42) of the Companies Act, 2013 a "foreign company" means any company or body corporate incorporated outside India which:

(a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) Conducts any business activity in India in any other manner

According to section 386 of the Companies Act, 2013, for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), "Place of business" includes a share transfer or registration office.

From the above definition, the status of XYZ Ltd. will be that of a foreign company as it is incorporated outside India, has a place of business in India and it may be presumed that it carries on a business activity in India.

13.MTP Nov 2019 Qn no 5(a)(iii) 3 Marks

ABC Ltd., a foreign company having its Indian principal place of business at Kolkata, West Bengal is required to deliver various documents to Registrar of Companies under the provisions of the Companies Act, 2013. Advise, ABC Ltd. as to submission of desired documents to ROC.

Answer

The Companies Act, 2013 vide section 380 provides that every foreign company is required to deliver to the Registrar for registration, within 30 days of the establishment of office in India, documents which have been specified therein. According to *the Companies (Registration of Foreign Companies) Rules, 2014*, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

Study Material

14. Examine with reference to the provisions of the Companies Act, 2013 whether the following companies can be treated as foreign companies:

(i) **A company incorporated outside India having a share registration office at Mumbai.**

(ii) **Indian citizens incorporated a company in Singapore for the purpose of carrying on business there.**

Answer

Section 2(42) of the Companies Act, 2013 defines a "foreign company" as any company or body corporate incorporated outside India which:

(a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) Conducts any business activity in India in any other manner.

According to section 386 of the Companies Act, 2013, for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), expression "Place of business" includes a share transfer or registration office.

Accordingly, to qualify as 'foreign company' a company must have the following features:

(a) it must be incorporated outside India; and

(b) it should have a place of business in India.

(c) That place of business may be either in its own name or through an agent or may even be through the electronic mode; and

(d) It must conduct a business activity of any nature in India.

(i) Therefore, a company incorporated outside India having a share registration office at Mumbai will be treated as a foreign company provided it conducts any business activity in India.

(ii) In the case of a company incorporated in Singapore for the purpose of carrying on business in Singapore will not fall within the definition of a foreign company. Its incorporation by Indian citizen is immaterial. In order to be a foreign company it has to have a place of business in India and must conduct a business activity in India.

15. Videshi Ltd., a foreign company established with a principal place of business at Kolkata, West Bengal. The company delivered various documents to Registrar of Companies. State the number of days and place where the said company shall deliver such documents:

(a) **Within 15 days to the Central Government**

(b) **Within 15 days to the Registrar having jurisdiction over New Delhi**

(c) **Within 30 days to the Registrar having jurisdiction over West Bengal**

(d) **Within 30 days to the Registrar having jurisdiction over New Delhi**

Answer: d) **Hint:** The Companies Act, 2013 vide section 380 requires every foreign company to deliver to the Registrar for registration, within 30 days of the establishment of office in India, documents which have been specified therein. According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

16.Aster Limited, a foreign company with a place of business in India was established to conduct the business online as to data interchange and other digital supply transactions. The said company failed to deliver within the prescribed time period, some desired documents to the Registrar of Companies in compliance to the Companies Act, 2013.

State the penalty cast on Aster Limited for the cause of its failure.

a) **Aster Ltd. punishable with fine upto ` 3,00,000 + additional fine upto ` 50,000 in case of continuing offence.**

b) Aster Ltd. punishable with fine extending upto ` 25,000 + additional fine upto` 50,000 in case of continuing offence.

c) Aster Ltd. punishable with fine extending upto ` 5,00,000 + additional fine upto` 50,000 in case of continuing offence.

d) **Aster Ltd. punishable with fine levied ` 1,00,000 to ` 3,00,000 + additional fine upto` 50,000 in case of continuing offence**

Answer: d) Hint: As per section 392 of the Companies Act, 2013, if a foreign company fails to deliver documents to the Registrar of Companies as required under section 380 of the Companies Act, 2013, the foreign company shall be punishable with a fine which shall be not less than ` 1,00,000 but which may extend to ` 3,00,000 and in the case of a continuing offence, with an additional fine which may extend to ` 50,000 for every day after the first during which the contravention continues.

17.Radix Ltd. is a company registered in Thailand. Although, it has no place of business established in India, yet it is doing online business through remote delivery of healthcare services in India. State the incorrect statement as to the nature of the Radix Ltd. in the light of the Companies Act, 2013-

a) It is not a foreign company as it has no place of business established in India.

b) It is a foreign company being involved in business activity through telemedicine.

c) It is a foreign company as its doing business through electronic mode.

d) It is a foreign company as it conducts business activity in India

Answer: a) **Hint:** According to section 2(42) of the Companies Act, 2013, "foreign company" means any company or body corporate incorporated outside India which –

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

According to the Companies (Registration of Foreign Companies) Rules, 2014, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to –

(a) business to business and business to consumer transactions, data interchange and other digital supply transactions;

(b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities in India or from citizens of India;

(c) financial settlements, web based marketing, advisory and

transactional services, data base services and products, supply chain management;

(d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and

all related data communication services whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

Looking to the above description, it can be said that being involved in business activity through telemedicine, Radix Ltd., will be treated as foreign company

18.

(i) **As per provisions of the Companies Act, 2013, what is the status of XYZ Ltd., a company incorporated in London, U.K., which has a share transfer office at Mumbai?**

(ii) **ABC Ltd., a foreign company having its Indian principal place of business at Kolkata, West Bengal is required to deliver various documents to Registrar of Companies under the provisions of the Companies Act, 2013. You are required to state, where the said company should deliver such documents.**

(iii) **In case, a foreign company does not deliver its documents to the Registrar of Companies as required under section 380 of the Companies Act, 2013, state the penalty prescribed under the said Act, which can be levied.**

Answer

(i) In terms of the definition of a foreign company under section 2 (42) of the Companies Act, 2013 a "foreign company" means any company or body corporate incorporated outside India which:

(a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) Conducts any business activity in India in any other manner

According to section 386 of the Companies Act, 2013, for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), "Place of business" includes a share transfer or registration office.

From the above definition, the status of XYZ Ltd. will be that of a foreign company as it is incorporated outside India, has a place of business in India and it may be presumed that it carries on a business activity in India.

(ii) The Companies Act, 2013 vide section 380 requires every foreign company is required to deliver to the Registrar for registration, within 30 days of the establishment of office in India, documents which have been specified therein. According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

(iii) The Companies Act, 2013 lays down the governing provisions for foreign companies in Chapter XXII which is comprised of sections 379 to 393. The penalties for non filing or for contravention of any provision for this chapter including for non filing of documents with the Registrar as required by section 380 and other sections in this chapter are laid down in section 392 of the Act which provides that if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with a fine which shall not be less than ` 1,00,000 but which may extend to ` 3,00,000 and in the case of a continuing offence, with an additional fine which may extend to ` 50,000 for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than ` 25,000 but which may extend to ` 5,00,000, or with both.

19.DEJY as Company Limited incorporated in Singapore desires to establish a place of business at Mumbai. You being a practicing Chartered Accountant have been appointed by the company as a liaison officer, for compliance of legal formalities on behalf of the company. Examining the provisions of the Companies Act, 2013, state the documents you are required to furnish on behalf of the company, on the establishment of a place of business at Mumbai.

Answer

Under section 380(1) of the Companies Act, 2013 every foreign company shall, within 30 days of the establishment of place of business in India, deliver to the Registrar for registration the following documents:

(a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company. If the instruments are not in the English language, a certified translation thereof in the English language;

(b) the full address of the registered or principal office of the company;

(c) a list of the directors and secretary of the company containing such particulars as may be prescribed;

In relation to the nature of particulars to be provided as above, the Companies (Registration of Foreign Companies) Rules, 2014, provide that the list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely:

(1) personal name and surname in full;

(2) any former name or names and surname or surnames in full;

(3) father's name or mother's name and spouse's name;

(4) date of birth;

(5) residential address;

(6) nationality;

(7) if the present nationality is not the nationality of origin, his nationality of origin;

(8) passport Number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)

(9) income-tax permanent account number (PAN), if applicable;

(10) occupation, if any;

(11) whether directorship in any other Indian company, (Director Identification Number (DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);

(12) other directorship or directorships held by him;

(13) Membership Number (for Secretary only); and

(14) e-mail ID.

d)the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company

e)the full address of the office of the company in India which is deemed to be its principal place of business in India;

f)particulars of opening and closing of a place of business in India on earlier occasion or occasions;

g)declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and

h)any other information as may be prescribed.

According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

20.ABC Limited, a foreign company failed to deliver some desired documents to the Registrar of Companies as required under Section 380 of the Companies Act, 2013. State the provisions of penalty prescribed under the said Act, which can be levied on ABC Limited for its failure.

Answer

If a foreign company fails to deliver documents to the Registrar of Companies as required under section 380 of the Companies Act, 2013, the foreign company shall be punishable with a fine which shall be not less than ` 1,00,000 but which may extend to ` 3,00,000 and in the case of a continuing offence, with an additional fine which may extend to ` 50,000 for every day after the first during which the contravention continues. Also, every officer of the foreign company who is in default shall be punishable with an imprisonment for a term which may extend to six months or with a fine which shall not be less than ` 25,000 but which may extend to ` 5,00,000 or with both. The penalty is provided in section 392 and thus ABC Ltd. is liable for the contravention of section 380 of the Act.

21.Robertson Ltd. is a company registered in Thailand. Although, it has no place of business established in India, yet it is doing online business through telemarketing in India. Whether it will be treated as a Foreign Company under the Companies Act, 2013? Explain.

Answer

According to section 2(42) of the Companies Act, 2013, "foreign company" means any company or body corporate incorporated outside India which –

(c) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(d) conducts any business activity in India in any other manner.

According to the Companies (Registration of Foreign Companies) Rules, 2014, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to–

(a) business to business and business to consumer transactions, data interchange and other digital supply transactions;

(b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities in India or from citizens of India;

(c) financial settlements, web based marketing, advisory and transactional services, data base services and products, supply chain management

(d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and

(e) all related data communication services whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

Looking to the above description, it can be said that being involved in business activity through telemarketing, Robertson Ltd., will be treated as foreign company

22.Galilio Ltd. is a foreign company in Germany and it established a place of business in Mumbai. Explain the relevant provisions of the Companies Act, 2013 and rules made thereunder relating to preparation and filing of financial statements, as also the documents to be attached alongwith the financial statements by the foreign company.

Answer

Preparation and filing of financial statements by a foreign company:

According to section 381 of the Companies Act, 2013:

(i) Every foreign company shall, in every calendar year,—

(a) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having attached or annexed thereto such documents as may be prescribed, and

(b) deliver a copy of those documents to the Registrar.

According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall prepare financial statement of its Indian business operations in accordance with Schedule III or as near thereto as possible for each financial year including:

(1) documents that are required to be annexed should be in accordance with Chapter IX i.e. Accounts of Companies.

(2) The documents relating to copies of latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the applicable laws there.

(ii) The Central Government is empowered to direct that, in the case of any foreign company or class of foreign companies, the requirements of clause (a) of section 381(1) shall not apply, or shall apply subject to such exceptions and modifications as may be specified in notification in that behalf.

(iii) If any of the specified documents are not in the English language, a certified translation thereof in the English language shall be annexed. [Section 381 (2)]

(iv) Every foreign company shall send to the Registrar along with the documents required to be delivered to him, a copy of a list in the prescribed form, of all

places of business established by the company in India as at the date with reference to which the balance sheet referred to in section 381(1) is made.

According to the Companies (Registration of Foreign Companies) Rules, 2014, every foreign company shall file with the Registrar, along with the financial statement, in

Form FC-3 with such fee as provided under Companies (Registration Offices and Fees) Rules, 2014 a list of all the places of business established by the foreign company in India as on the date of balance sheet.

According to the Companies (Registration of Foreign Companies) Rules, 2014, if any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, if it does not have other place of business in India.

(v) According to the Companies (Registration of Foreign Companies) Rules, 2014,

(a) Further, every foreign company shall, along with the financial statement required to be filed with the Registrar, attach thereto the following documents; namely:-

(1) Statement of related party transaction

(2) Statement of repatriation of profits

(3) Statement of transfer of funds (including dividends, if any)

The above statements shall include such other particulars as are prescribed in the Companies (Registration of Foreign Companies) Rules, 2014.

(b) All these documents shall be delivered to the Registrar within a period of 6 months of the close of the financial year of the foreign company to which the documents relate.

Chapter 10 – Miscellaneous Provisions

Multiple Choice Questions

MTP Mar 2019 QN no 5

1.Aakaar Solar Energy Private Limited was allowed the status of a 'dormant company' after a certificate to this effect was issued on 1st July 2018 by the Registrar of Companies, Delhi and Haryana. Mention the latest date after which the Registrar is empowered to initiate the process of striking off the name of the company if Aakaar Solar Energy continues to remain as a dormant company.

(a) After 30th June, 2023.

(b) After 30th June, 2019.

(c) After 30th June, 2020.

(d) After 30th June, 2021.

Answer: Option A

MTP Mar 2019 QN no 8

2.Nanny Marcons Private Limited was incorporated on 9th June, 2017. For the financial year 2017-2018, it did not file its financial statements and annual returns. For the time being the company desires to be treated as 'inactive company' since it does not intend to carry on any business permitted by its Memorandum. As to when ROC can issue certificate of status of dormant company to 'Nanny Marcons' on the basis of non-submission of financial statements if the company makes an application to the Registrar in this respect.

a)After non-submission of financial statements for the two financial years i.e. 2018-19 and 2019-20.

b) After non-submission of financial statements for the next financial year i.e. 2018-19.

c) After non-submission of financial statements for the three financial years i.e. 2018-19, 2019-20 and 2020-21.

d) After non-submission of financial statements for the four financial years i.e. 2018-19, 2019-20, 2020-21 and 2021-22.

Answer: Option B

MTP Mar 2019 QN no 19

3.In case a Valuer becomes interested in any property, stock etc of the company, he may be appointed as Registered Valuer of the company after a cooling off period of:

(a) 3 years

(b) 5 years

(c) 1 year

(d) He will never be appointed as Registered Valuer of the company

Answer: Option A

MTP Mar 2019 Qn no 20

4.Any person who is aggrieved by the order of Appellate Tribunal may approach to the Supreme Court on any question of law within:-

(a) 30 Days

(b) 45 Days

(c) 60 Days

(d) 90 Days

Answer: Option C

MTP Apr 2019 Qn no 10

5.Mr. X, director of BRT Ltd. entered into an arrangement with his friend and acquired asset on the name of the BRT Ltd. Prior approval for such arrangement was required by a resolution of the company in general meeting. The notice for approval of the resolution by the company included the particulars of the arrangement along with the value of the assets duly calculated by a registered valuer. Later the Board of company discovered the loss arising out of incorrect statement in the report made the valuer. State the liability of the valuer in the given situation-

a) valuer can claim immunity stating that company is not bound to accept his opinion being an expert.

b) the valuer shall be punishable with fine only for the incorrect statement given in the report

c) valuer is liable to be convicted for the incorrect statement given in the report made with an intent to defraud the company or its members .

d) valuer cannot be held liable for damages to the company as the company have seek the prior approval of company in general meeting.

Answer Option C

6.MTP Apr 2019

Mr. Raman, is appointed as valuer in April, 2018 in ABC Ltd. He undertook the valuation of the assets of the company in 2018. In case, Mr. Raman becomes interested in any property, stock etc. of the company, he may not be eligible to undertake valuation in such property of the company till:

(a) 2019

(b) 2020

(c) 2021

(d) He will never be appointed as Registered Valuer of the company.

Answer Option C

7.MTP April 2019 QN no 15

Where the Registrar has reasonable cause to believe, he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send relevant details within a period of ---------days from the date of the notice.

a) 15

b) 30

c) 45

d) 21

Answer:Option B

8.MTP Apr 2019 Qn no 17

What shall not be the duties of a Registered Valuer?

a) to make an impartial, true and fair valuation of any assets which may be required to be valued

b) to exercise due diligence while performing the functions as valuer

c) to undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets.

d) to make the valuation in accordance with such rules as may be prescribed

Answer: Option C

9.MTP Apr 2019 QN no 20

Mr. Rufftuff was appointed as a Managing Director in the government company, Constant Limited. He was of 70 years with good experience in the field of finance. He was appointed for 6 years .State the correct statement as to term of appointment of Mr. Rufftuff in the said company:

a) **He cannot be appointed at all**

b) **He can be appointed by passing special resolution for the period not exceeding 5 years**

c) **Central government may appoint on application of Board to him for the period of 5 years**

d) **He can be appointed by passing special resolution, or where no such special resolution is passed, appointed by the Central Government on an application made by the Board, for the period exceeding 5 years.**

Answer: Option D

10.March 2018 Qn no 3(b) 8 Marks:, RTP May 2020 Qn no 10

Eminence Ltd. after passing special resolution filed an application to the registrar for removal of the name of company from the register of companies. On the complaint of certain members, Registrar came to know that already an application is pending before the Tribunal for the sanctioning of a compromise or arrangement proposal. The application was filed by the Eminence Ltd. two months before the filing of this application to the Registrar.

Determine the given situations in the lights of the given facts as per the Companies Act, 2013:

(i) **Legality of filing an application by Eminence Ltd. before the registrar.**

(ii) **Consequences if Eminence Ltd. files an application in the above given situation.**

In case registrar notifies eminence Ltd as dissolved under section 248 in compliances to the required provisions, what remedy will be available to the aggrieved party?

Answer:

According to the Section 248(2) of the Companies Act, 2013, a company may, after extinguishing all its liabilities, by a special resolution, or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner.

Further Section 249 provides restrictions on making application under section 248 .

An application under section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company—

(a) has changed its name or shifted its registered office from one State to another;

(b) has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;

(c) has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;

(d) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or

(e) is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.

Violation of above conditions on filing of application: If a company files an application in violation of restriction given above, it shall be punishable with fine which may extend to one lakh rupees.

Rights of registrar on non-compliance of conditions by the company: An application filed under above circumstances, shall be withdrawn by the company or rejected by the Registrar as soon as conditions are brought to his notice.

Aggrieved person to file an appeal against the order of registrar: As per section 252(1),any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies. However, a reasonable opportunity is given to the company and all the persons concerned.

According to the above provisions, following are the answers:

(i) As per the restrictions marked in the Section 249(d) stating that an application under section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded.

As per the facts application to the registrar for removal of the name of company from the register of companies, was filed by the Eminence Ltd. within three months to the filing of an application to the Tribunal for approval of compromise or arrangement proposal. Therefore, filing of such an application by Eminence Ltd is not valid.

(i) If a company files an application in above situation, it shall be punishable with fine which may extend to one lakh rupees. An application so filed, shall be withdrawn by the company or rejected by the Registrar as soon as conditions are brought to his notice.

(ii) According to the provision given in section 252(1), a person aggrieved by an order of the Registrar, notifying Eminence Ltd. as dissolved under section 248, may:

- file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar, and
- if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the Eminence Ltd. in the register of companies.
- A reasonable opportunity is given to the Eminence Ltd. and all the persons concerned.

11.May 2018 Qn no 3(b) 8 Marks:

Kojol Research Development Ltd. was registered to innovate unique business idea emerging from research and development in a new area. It is a future project and the Company has no significant accounting transactions and business activities. Therefore the company made an application to RoC for obtaining the status of a Dormant Company. The application is under. process. In the meantime, the Company without extinguishing all its liabilities filed an application to RoC for removing the name of the Company, after passing a special resolution giving effect to this.

In the light of the provisions of the Companies Act, 2013, analyse the following:

1.Whether the application is tenable under the Act?

2. What are the restrictions imposed under the Act for making application by a Company to remove the name of the Company from the register of RoC?

3. What are the penal consequences III case of violation of restrictions?

Answer:

(a) According to Section 248 (1) of the Companies Act, 2013, where the Registrar has reasonable cause to believe that—

(a) a Company has failed to commence its business within one year of its incorporation, or;

(b) the subscribers to the memorandum have not paid the subscription which they have undertaken to pay within the period of 180 Days from the date of incorporation of a company and a declaration under sub section (1) of section 11 to this effect has not been filed within 180 days of its incorporation.

(c) a Company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant Company under section 455,

-he shall send a notice to the Company and all the Directors of the Company, of his intention to remove the name of the Company from the register of Companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

According to Section 248 (2) of the Companies Act, 2013, a Company may, after extinguishing all its liabilities, by-

- a special resolution, or
- consent of seventy-five per cent. members in terms of paid-up share capital,

-file an application in the prescribed manner to the Registrar for removing the name of the Company from the register of Companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner:

Whether the application is tenable under the Act?

In the light of the above provisions, since the Company has applied for the status of dormant Company and also without extinguishing its liabilities applied for the removal of the name of the Company from Register of members, such an application shall not be tenable.

Restrictions

According to Section 249(1) of the Companies Act, 2013, An application under Section 248 of the Companies Act, 2013, on behalf of a Company shall not be made if, at any time in the previous three months, the Company—

(a) has changed its name or shifted its registered office from one State to another;

(b) has made a disposal for value of property or rights held by it, immediately before ceases of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;

(c) has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application

under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;

(d) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or

(e) is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.

Penal Consequences

According to section 249(2) of the Companies Act, 2013, if a Company files an application in violation of restriction as given in sub-section (1) as given above, it shall be punishable with fine which may extend to one lakh rupees.

12.May 2018 Qn no 2(c) 2 Marks:

All offences under the Companies Act, 2013 are non-cognizable except offences of fraud covered under Section 447 of the Act. Explain the validity of the statement.

Answer:

Offences to be Non-cognizable: As per Section 439 (1) of the Companies Act, 2013, every offence under the Companies Act, 2013, except the offences referred to in section 212(6), shall be deemed to be non-cognizable under the Code of Criminal Procedure.

As per Section 212(6), offence covered under Section 447 of this Act shall be cognizable.

The given statement in the question is valid.

* The offences covered under Section 7(5) & (6), Section 34, Section 36, sub- section 38(1), Section 46(5), Section 56(7), Section 66(10), Section 140(5), Section 206(4), Section 213, Section 229, Section 251(1), Section 339 (3) and Section 448 attract the punishment for fraud provided in section 447.

13.Aug 2019 Qn no 3(b) 8 Marks:

Rudraksh Ltd. related to manufacturing of tyres works, was incorporated in January 2017. Due to certain cause, it failed to commence its business for 1 year. In April, 2018, Rudraksh Ltd. filed a application to the tribunal for the merger of the company with the Shri Narayan Ltd.

In between, in August 2018, Rudraksh Ltd. after extinguishing all its liabilities in compliance, filed an application to the Registrar for the removal of its name from the register of companies.

Shri Narayan Ltd, came to know of the fact of their filing of an application for removal of names. It took the plea that section 248 w.r.t. filing of application for removal of names shall not be applicable on the Rudraksh Ltd., due to pendency of an application of a proposed merger scheme.
Determine as per the given facts, whether the objection made by the Shri Narayan Ltd. against the filing of an application for removal of name by Rudraksh Ltd. is tenable.

Answer:

As per section 248 of the Companies Act, 2013, the name of the companies can be removed from the register of companies either by registrar or through an application of the company by itself on the ground as mentioned here-

(a) a company has failed to commence its business within one year of its incorporation, or;

(b) the subscribers to the memorandum have not paid the subscription which they have undertaken to pay within the period of 180 Days from the date of incorporation of a company and a declaration under sub section (1) of section 11 to this effect has not been filed within 180 days of its incorporation.

(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455,

Further section 249 of the Companies Act, 2013 marks certain restrictions on the filing of an application under section 248. Accordingly, an application under section 248 on behalf of a company shall not be made if, at any time in the previous three months, if the company

(a) has changed its name or shifted its registered office from one State to another;

(b) has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;

(c) has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;

(d) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or

(e) is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.

As per the given fact, failure of commencement of business by Rudraksh Ltd. within one year of incorporation was a reasonable ground for the filing of an application for the removal of its name from the register of companies. However, section 249 puts a restriction on the application of section 148 on the basis of grounds given in the said section. According to the stated ground, that if the company has made an application to the Tribunal at any time in the previous three months from an application filed under section 248, for the sanctioning of a compromise or arrangement scheme and the matter has not been finally concluded, there in such case, that respective company cannot file application.

Here in the given stance, Rudraksh Ltd. filed a application to the tribunal in April, 2018 for the proposed merger scheme of the company with the Shri Narayan Ltd. Whereas, Rudraksh Ltd. after extinguishing all its liabilities in compliance, filed an application in August, 2018 to the Registrar for the removal of its name from the register of companies. Filing of an application under section 248 is after the period of three months from the date of filing of application for the sanction of proposal of Merger. So objection raised by Shri Narayanan Ltd. is not tenable and Rudraksh Ltd. can file an application for removal of its name from register of companies.

14.May 2019 Qn no 5(a) 8 Marks:

Gulmohar Ltd. is a company registered in India for last 5 years. Since last 2 financial years, it has not been carrying on any business or operations and has not filed financial statements and annual returns saying that it has not made any significant accounting transaction during the last two financial years. Considering the current situation, Directors of the Company is contemplating to apply to Registrar of Companies to obtain status of dormant or inactive company. Advise them on :

(i) **Whether Gulmohar Ltd. is eligible to apply to Registrar of Companies to obtain dormant status for the company?**

(ii) **Will your answer be different if Gulmohar Ltd is continuing payment of fees to Registrar of Companies and payment of rentals for its office and accounting records for last two financials years?**

(iii) **Is special resolution in general meeting a pre-requisite to make an application to Registrar of Companies for obtaining the status of dormant company?**

What will be your answer if it is found after making an application of dormant company to Registrar of Companies that an investigation is pending against the company which was ordered 6 months ago?

Answer:

According to section 455 of the Companies Act, 2013, an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company. Here, "*inactive company*" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.

Gulmohar Ltd., since from last two years is not carrying on business or operations and has not filed financial statements and annual returns saying it has not made any significant accounting transaction during the last two financial years. Thus, it falls within the definition of inactive company as stated above and hence is eligible to apply to Registrar of Companies to obtain the status of Dormant company.

(i) According to Explanation to section 455, *"significant accounting transaction"* means any transaction other than—

(1) payment of fees by a company to the Registrar;

(2) payments made by it to fulfill the requirements of this Act or any other law;

(3) allotment of shares to fulfill the requirements of this Act; and

(4) payments for maintenance of its office and records.

Thus, Gulmohar Ltd. is still eligible to apply to the Registrar of Companies to obtain the status of Dormant company even if it has continued 'payment of fees to Registrar of Companies and payment of rentals for its office and accounting records' for last two years, as these transactions have been kept outside the purview of significant accounting transactions.

(ii) According to the Rule 3 of the *Companies (Miscellaneous) Rules, 2014,* a company may make an application in prescribed form to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455 after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least $3/4^{th}$ shareholders (in value).

Thus, special resolution is a pre- requisite to make an application to Registrar of Companies for obtaining the status of dormant company.

(iii) According to the Rule 3 of the *Companies (Miscellaneous) Rules, 2014*, a company shall be eligible to apply under this rule only, if no inspection, inquiry or investigation has been ordered or taken up or carried out against the company.

According to section 455(6), the Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of section 455.

In the given case, Gulmohar Ltd. was not eligible to apply for the status of a dormant company as an investigation was pending against the company which was ordered 6 months ago. But since, it has already made an application and then it came to the light about the pending investigation against the company, the Registrar shall not register it as a dormant company and if already registered as a dormant company, strike off the name of a dormant company from the register of dormant companies as the company has contravened the necessary requirements.

15.Oct 2018 Qn no 3(b) 8 Marks:, RTP Nov 2018

JKL Research Development Limited is a registered Company. The company has a unique business idea emerging from research and development in a new area. However, it is a future project and the company has no significant accounting transactions and business activities at present. The company desires to obtain the status of a 'Dormant Company'. Advise the company regarding the provisions of the Companies Act, 2013 in this regard and the procedure to be followed in this regard.

Answer:

The provisions related to the Dormant companies is covered under section 455 of the Companies Act, 2013. According to provisions -

1. a company is formed and registered under this Act for the purpose of a future project or to hold an asset or intellectual property and has no significant accounting transaction.
2. Such company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.
3. The Registrar shall allow the status of a dormant company to the applicant and issue a certificate after considering application.
4. The Registrar shall maintain a register of dormant companies in such form as may be prescribed.

In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Register shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.
A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed. However, the Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.

Thus, JKL Research Development Limited may follow the above procedure to obtain the status of a 'Dormant Company'.

16.RTP Nov-18:

XYZ Ltd. had filed certain documents with Registrar of Companies (RoC). The said documents were authenticated by the RoC and kept on record. In a suit against the company the RoC produced the said documents in the court of law. XYZ Ltd. intends to raise objection on the said documents on the ground that the documents need to be authenticated with further proof or production of the original document as evidence. Advice XYZ Ltd. as per the provisions of the Companies Act, 2013.

Answer:

Admissibility of certain documents as evidence:

Section 397 of the Companies Act, 2013 provides for admissibility of certain documents as evidence. According to the provisions of that section, any document reproducing or derived from returns and documents filed by a company with the Registrar on paper or in electronic form or stored on any electronic data storage device or computer readable media by the Registrar, and authenticated by the Registrar or any other officer empowered by the Central Government in such manner as may be prescribed, shall be deemed to be a document for the purpose of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder without further proof of production of the original as evidence of any contents of the original of or any fact stated therein of which direct evidence is admissible.

On the ground stated above, XYZ Ltd. cannot validly raise any objection on the documents already filed by it with the Registrar.

17.RTP May 2019 Qn no 10

The Board of Directors of APCO Limited a listed company for carrying out the valuation of the immovable properties standing in the name of the company as required under the provisions of the Companies Act, 2013 proposes to appoint Mr. Mehta, an individual as the valuer. Referring to the provisions of the *Companies Act, 2013 read with the Companies (Registered Valuers and Valuation) Rules, 2017*, the Audit Committee is of the opinion that the Board of Directors does not have the right to appoint the valuer. Decide.

Answer

Valuation by Registered Valuers (Section 247): According to the provisions of section 247 of the Companies Act, 2013 read with the *Companies (Registered Valuers and Valuation) Rules, 2017*, where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.

Hence, in the given instance, proposal for appointment of Mr. Mehta as the valuer by the Board of directors of APCO Ltd. is against the said provision. In fact, valuer shall be appointed by the audit committee or in its absence by the Board of Directors of that company.

18.Nov 2019 Qn no 5(b) 4 Marks

M/s KIL Limited, a listed company, proposed to acquire a plant for consideration other than cash from Mr. KK, a director. The Managing Director of the Company identified Mr. JK a registered valuer under the provisions of the Companies Act, 2013 for the purpose of valuation of the plant. Mr. KK acquired the plant 48 months back from a partnership firm in which the spouse of Mr. JK is a partner. The Managing Director of the Company issued an order appointing Mr. JK as a registered valuer. Examine and decide whether the decision of appointment and the mode of appointment is valid under the provisions of the Companies Act, 2013?

Answer

1. **Restriction on acquiring assets for consideration other than cash:** According to Section 192 (1) of the Companies Act, 2013, no company shall enter into an arrangement by which-

   (a) a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or

   (b) the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected.

2. **Relaxation of restriction**: The above restriction shall be relaxed i.e. the company may enter into an arrangement involving non-cash transactions, if prior approval for such arrangement is accorded by a resolution of the company in general meeting.

3. **Contents of notice issued for approval of resolution**: The notice for approval of the resolution in general meeting issued by the company shall include the particulars of the arrangement. It shall also include the value of the assets involved in such arrangement duly calculated by a registered valuer.

4. As per section 247(2) of the Companies Act, 2013, the valuer shall not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during a period of 3 years prior to his appointment as valuer or 3 years after the valuation of assets was conducted by him.

As per the facts of the question and the provisions of the Act, M/s KIL Limited acquired plant from consideration other than cash from Mr. KK, a director. The Act has restricted such a non- cash transaction from a director. The company can enter into such a transaction only if it obtains prior approval for the same in general meeting. It is also required that notice for such meeting shall also include the value of the assets involved in such arrangement duly calculated by a registered valuer.

As per further facts of the question, the Managing director of the company identified Mr. JK to be the registered valuer. Mr. KK acquired the plant 48 months (i.e. 4 years) back from a partnership firm in which the spouse of Mr. JK is a partner.

In the light of the facts of the question and provision of law, since more than 3 years (here 4 years) has passed when Mr. KK acquired the asset from a partnership firm in which the spouse of Mr. JK is a partner, Mr. JK can be validly appointed as a registered valuer.

However, according to section 247(1) of the Companies Act, 2013, where a valuation is required to be made in respect of any property, it shall be valued by a person having such qualification and experience, registered as a valuer and being a member of an organisation recognised, in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.

In view of above, the mode of appointment of Mr. JK is not valid as he is appointed by the Managing Director of the company.

19.(i) Central Government and Government of Maharashtra together hold 40% of the paid-up share capital of MN Limited. A government company also holds 20% of the paid-up share capital in MN Limited.

(ii) PQ Limited is a subsidiary but not a wholly owned subsidiary of a government company.

Examine with reference to the provisions of the Companies Act, 2013 whether MN Limited and PQ Limited can be considered as Government Company.

Answer

According to section 2(45) of the Companies Act, 2013, "Government company" means any company in which not less than fifty-one per cent of the paid-up share capital is held 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, and includes a company which is a subsidiary company of such a Government company.

(i) The Central Government and Government of Maharashtra together hold 40% of the paid-up share capital of MN Limited. A government company also holds 20% of the paid-up share capital in MN Limited.

In this case, MN Limited is not a Government company because the holding of the Central Government and Government of Maharashtra is 40% which is less than the 51% prescribed under the definition of Government Company. The holding of the government company in MN Limited of 20% cannot be taken into account while counting the prescribed limit of 51%.

(ii) PQ Limited is a subsidiary but not a wholly owned subsidiary of a government company

In this case, PQ Limited is a government company as the definition of Government Company clearly specifies that a Government Company includes a company which is a

subsidiary company of a Government company. Whether the subsidiary should be a wholly owned subsidiary or not is not clearly mentioned under the definition of the Government company under section 2(45).

20. Mr. Raman, is appointed as valuer in April, 2018 in ABC Ltd. He undertook the valuation of the assets of the company in 2018. In case Mr. Raman becomes interested in any property, stock etc of the company, he may be not be eligible to undertake valuation in such property of the company till:

(a) 2019

(b) 2020

(c) 2021

(d) He will never be appointed as Registered Valuer of ABC Ltd.

Answer: c) **Hint:** As per section 247(2) of the Companies Act, 2013, the valuer appointed under sub-section (1) shall,— not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him.

21.Aakaar Solar Energy Private Limited was allowed the status of a 'dormant company' after a certificate to this effect was issued on 1st July 2018 by the Registrar of Companies, Delhi and Haryana. Mention the latest date after which the Registrar is empowered to initiate the process of striking off the name of the company if Aakaar Solar Energy continues to remain as a dormant company.

(a) After 30th June, 2023.

(b) After 30th June, 2019.

(c) After 30th June, 2020.

(d) After 30th June, 2021.

Answer: a) **Hint:** Refer Proviso to Rule 8 (1) of the Companies (Miscellaneous) Rules, 2014 which states that the Registrar shall initiate the process of striking off the name of the company if such company remains as a dormant company for a period of consecutive five years.

22.Nanny Marcons Private Limited was incorporated on 9th June, 2017. For the financial year 2017-2018, it did not file its financial statements and annual returns. For the time being the company desires to be treated as 'inactive company' since it does not intend to carry on any business permitted by its Memorandum. As to when ROC can issue certificate of status of dormant company to 'Nanny Marcons' on the basis of non-submission of financial statements if the company makes an application to the Registrar in this respect.

a) **After non-submission of financial statements for the two financial years i.e. 2018-19 and 2019-20.**

b) **After non-submission of financial statements for the next financial year i.e. 2018-19.**

c) **After non-submission of financial statements for the three financial years i.e. 2018- 19, 2019-20 and 2020-21.**

d) **After non-submission of financial statements for the four financial years i.e. 2018-19, 2019-20, 2020-21 and 2021-22.**

Answer: b) **Hint:** Refer Explanation (i) to Section 455 (1) which states that an 'inactive company' means a company which has not filed financial statements and annual returns during the last two financial years.

23. Explain the meaning of 'Fraud' in relation to the affairs of a company and the punishment provided for the same in Section 447 of the Companies Act, 2013.

Answer:

As per the explanation given to section 447 of the Companies Act, 2013, 'Fraud' in relation to affairs of a company or anybody corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.

"Wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled

"Wrongful loss" means, the loss by unlawful means of property to which the person losing is legally entitled.

Punishment:

(i) Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one per cent of the turnover of the company, whichever is lower, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.

(ii) Where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

However, where the fraud involves an amount less than ten lakh rupees or one per cent of the turnover of the company, whichever is lower, and does not involve public interest, any

person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both.

24. JKL Research Development Limited is a registered Public Limited Company. The company has a unique business idea emerging from research and development in a new area. However, it is a future project and the company has no significant accounting transactions and business activities at present. The company desires to obtain the status of a 'Dormant Company'. Advise the company regarding the provisions of the Companies Act, 2013 in this regard and the procedure to be followed in this regard.

Answer

The provisions related to the Dormant companies is covered under section 455 of the Companies Act, 2013. According to provisions-

1. a company is formed and registered under this Act for the purpose of a future project or to hold an asset or intellectual property and has no significant accounting transaction.
2. Such company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.
3. The Registrar shall allow the status of a dormant company to the applicant and issue a certificate after consideration of the application.
4. The Registrar shall maintain a register of dormant companies in such form as may be prescribed.

In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Register shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed. However, the Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.

Thus, JKL Research Development Limited may follow the above procedure to obtain the status of a 'Dormant Company'.

Chapter 11 –Compounding of offences, Adjudication, Special Courts

Multiple Choice Questions

1.Who is empowered to designate court of session as special courts for trial of offence of money laundering?

(a) **Central government in consultation with the Chief Justice of Supreme Court**

(b) **High court in consultation with the Chief Justice of Supreme Court**

(c) **Central government in consultation with the Chief Justice of Session Court**

(d) **Central government in consultation with the Chief Justice of High Court**

Answer: Option D

Descriptive Questions

2.March 2018 Qn no 6(c)(ii) 4 Marks:

Mr. A is a judicial magistrate in a lower court. He was appointed to hold the office of the special court for the speedy disposal of the pending cases under the Act. Decide in the light of the Companies Act, 2013, whether the appointment of Mr. A is tenable.

Answer:

Appointment of judge: A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working. A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge.

Since in the given case, Mr. A, a judicial magistrate of a lower court was appointed to hold the office of the special court for the speedy disposal of the pending cases under the Act. As per the above provision, person shall be qualified for appointment as a judge of a Special Court if he, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge. Here Mr. A. was not complying with the eligibility criteria, so his appointment as a judge of special court is not tenable.

3.March 2018 Qn no 2(c) 2 Marks:

Excel Ltd. committed an offence under the Companies Act, 2013. The offences falls within the jurisdiction of a special court of Bundi district in which the registered office of Excel Ltd was situated. However, in that Bundi district, there were two special courts one in X place and other in Y place. Identify the jurisdiction of the special court for trial of an offences committed by Excel Ltd.

Answer:

All offences which are punishable in this Act with imprisonment of 2 years or more, shall be triable only by the special court established for the area in which the registered office of the company in relation to which the offence is committed. According to section 436 of the Companies Act, 2013 where there are more special courts than one for such area, by such one of them as may be specified in this behalf by the high court concerned.

Accordingly, in the given case, there are more than one special court in such area where registered office of Excel Ltd. is situated. The jurisdiction for trail in special court will be specified by High Court of the State (i.e. Rajasthan).

4.Aug 2018 Qn no 2(c) 2 Marks:

Describe the Power of special court on trial of an offence where it appears to the Special Court that the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be passed.

Answer:

When at the commencement of, or in the course of, a summary trial, it appears to the Special Court that –

- the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be passed, or that it is, for any other reason, undesirable to try the case summarily,
- the Special Court shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or rehear the case in accordance with the procedure for the regular trial.

5.Oct 2018 Qn no 2(c) 2 Marks:

What are the powers of the Central Government under the Companies Act, 2013 regarding Appeal against acquittal?

Answer:

Appeal against acquittal: According to section 444 of the Companies Act, 2013, the Central Government may, in any case arising under this Act, direct –

(i) any company prosecutor, or

(ii) authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any court, other than a High Court.

Appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

6.MTP Mar 2019 Qn no 5(a) (II) 4 Marks

Mr. Truth, a director of Horizan Private Limited, is duly authorized by the Board of directors to prepare and file returns, report or other documents to the Registrar of Companies on behalf of the company. Though he filed all the required documents to Registrar in time, however, subsequently it was found that the filed documents were false and inaccurate in respect to material particulars (knowing it to be false) submitted to the Registrar. State the penal provision under the Companies Act, 2013?

Answer

According to section 448 of the Companies Act, 2013, if in any return, report, certificate, financial/statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made there under, any person makes a statement,

(a) which is false in any material particulars, knowing it to be false; or

(b) which omits any material fact, knowing it to be material, he shall be liable under section 447.

In the present case, Mr. Truth, a director of Horizan Private Limited filed returns, report or
other documents to Registrar in time, however, subsequently it was found that the filed documents were false and inaccurate in respect to material particulars (knowing it to be false) submitted to the Registrar.

Hence, Mr. Truth shall be liable under section 447 for false statements.

Penal Provisions: As per Section 447, any person who is found to be guilty under this section shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to 3 times the amount involved in the fraud, provided that, where the fraud involves public interest, the term of imprisonment shall not be less than 3 years.

Hence Mr. Truth, a director of Horizan Private Limited shall be punishable with imprisonment and fine prescribed as aforesaid.

7.RTP Nov-18:

What is the object of constituting Panel for Mediation and Conciliation under the Companies Act, 2013? Who can file application for mediation and conciliation?

Answer:

Under section 442 of the Companies Act, 2013, it is provided that the Central Government shall maintain a panel of experts for mediation between the parties during pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under the Act. In common parlance, mediation means intervention of some third party in a dispute with the intention to resolve the dispute. Similarly, conciliation means the powers of adjusting or settling disputes in a friendly manner through extra judicial means. The object behind the panel is to dispose the matter pending before the Government / Tribunal as mentioned above.

Filing of application: Application for mediation and conciliation can be made by:

(a) any parties to the proceedings (It shall be accompanied with such fees and in such form as may be prescribed)

(b) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending any, suo moto refer any matter pertaining to such proceeding to such number of experts as it may deem fit.

8.MTP Mar 2019 QN no 3(a)(ii) 4 Marks ,RTP May 2020 Question no 20

In the annual general meeting of XYZ Ltd., while discussing on the matter of retirement and reappointment of director Mr. X, allegations of fraud and financial irregularities were marked against him by some members. This resulted into chaos in the meeting. The situation was normal only after the Chairman declared about initiating an inquiry against

Answer

Section 439 of the Companies Act, 2013 provides that offences under the Act shall be non- cognizable. As per this section:

1. Every offence under this Act except the offences referred to in sub section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.
2. No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder, member of the company, or of a person authorized by the Central Government in that behalf.

Thus, in the given situation, the court shall not initiate any suo moto action against the director Mr. X without receiving any complaint in writing of the Registrar of Companies,

a shareholder of the company or of a person authorized by the Central Government in this behalf.

9.May 2019 Qn no 2(c) 2 Marks:

What are the powers of the Central Government under the Companies Act, 2013 regarding appeal against acquittal?

Answer:

Power of the Central Government regarding Appeal against Acquittal [Section 444 of the Companies Act, 2013]

The Central Government may, in any case arising under this Act, direct -

- any company prosecutor or
- authorise any other person either by name or by virtue of his office,

to present an appeal from an order of acquittal passed by any court, other than a High Court, and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

Study Material

10. Central Government for providing of speedy trial of offences under the Companies Act, 2013, shall establish/ designate such numbers of special courts in an area-

(a) **Only 1**

(b) **Not more than 2**

(c) **More than 2**

(d) **As many as may be necessary**

Answer: d) **Hint:** Section 435 of the Companies Act, 2013

11.Which of the following courts shall be deemed to be a special court for the prevailing of the provisions of the Code of Criminal Procedure to the proceedings before a Special Court -

(1) **Court of Session**

(2) **Metropolitan Magistrate**

(3) **Judicial Magistrate of the First Class**

(4) **Judicial Magistrate of the Second Class Choose the correct options-**

(a) 1, 2 & 4

(b) 2, 3 & 4

(c) 1, 2, & 3

(d) 1, 3, & 4

Answer: c) **Hint:** Section 438 of the Companies Act, 2013

12.Which factors among the below given are taken into consideration while deciding the quantum of fine/ punishment levied under this Act:

(1) failure in filing of any documents

(2) size of the Company

(3) injury to employees of the company

(4) nature of business carried on by the company

(a) 1 & 2 only

(b) 2 & 4 only

(c) 1 & 4 only

Answer: b) **Hint:** section 446A of the Companies Act, 2013

13.Mr. Rudra, an employee of the company filed a complaint against the company for the illegal issue and transfer of securities before the special court. State the correct basis for rejection of the said complaint:

(a) This is a non-cognizable offence, so out of the jurisdiction of the special court.

(b) The court is barred to entertain such complaint as is out of the jurisdiction of the special court.

(c) Employee is not a competent person to file a complaint against the company for an offence relating to issue and transfer of securities

(d) Compliant can be filed by the Registrar, a shareholder or a member of the company, or of a person authorised by the Central Government in respect to the same.

Answer: c) Hint: As per section 439(3) of the Companies Act, 2013, no court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder or a member of the company, or of a person authorised by the Central Government in that behalf.

Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India.

Provided further that nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

14. **Which offences are deemed to be Non- cognizable under the Companies Act, 2013? Enumerate the relevant provisions.**

Answer: Offences to be non-cognizable: According to section 439 of the Companies Act, 2013:

(i) Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub-section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.

No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder or a member of the company, or of a person authorised by the Central Government in that behalf.

Whereas in case of a government companies, court shall take cognizance of an offence under this Act which is alleged to have been committed by any company or any officer thereof on the complaint in writing of a person authorized by the Central Government in that behalf. [Vide Notification G.S.R. 463(E) dated 5th June 2015]

(ii) The court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India.

(iii) Nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

(iv) Where the complainant is the Registrar or a person authorised by the Central Government, the presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.

(v) The above provisions shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX or in any other provision of this Act relating to winding up of companies.

(vi) The liquidator of a company shall not be deemed to be an officer of the company.

15. In the annual general meeting of XYZ Ltd., while discussing on the matter of retirement and reappointment of director Mr. X, allegations of fraud and financial irregularities were levelled against him by some members. This resulted into chaos in the meeting. The situation was normal only after the Chairman declared about initiating an inquiry against the director Mr. X, however, could not be re-appointed in the meeting. The matter was published in the newspapers next day. On the basis of such news, whether the court can take cognizance of the matter and take action against the director on its own?

Justify your answer with reference to the provisions of the Companies Act, 2013.

Answer:

Section 439 of the Companies Act, 2013 provides that offences under the Act shall be non- cognizable. As per this section:

1. Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.
2. No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder or a member of the company, or of a person authorized by the Central Government in that behalf.

Thus, in the given situation, the court shall not initiate any suo moto action against the director Mr. X without receiving any complaint in writing of the Registrar of Companies, a shareholder of the company or of a person authorized by the Central Government in this behalf.

16. What are provisions related to constitution and working of the Mediation and Conciliation Panel as per Section 442 of the Companies Act, 2013?

Answer:

Mediation and Conciliation Panel: In common parlance, Mediation means intervention of some third party in a dispute with the intention to resolve the dispute.

Conciliation means the process of adjusting or settling disputes in a friendly manner through extra judicial means. This new provision introduced by the Companies Act, 2013 has come into force with effect from 1st April, 2014 vide notification dated 26th of March, 2014. Section 442 of the Companies Act, 2013 deals with the constitution and functioning of the mediation and conciliation panel in order to dispose the matter.

Section 442 lays the following law with respect to the constitution and working of the Mediation and Conciliation Panel:

(1) **Central Government to maintain the Panel of Mediators:** The Central Government shall maintain a panel of experts to be known as Mediation and conciliation panel for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act.

Hence, it is important that the case should be pending before the Central Government or the Tribunal or the Appellate Tribunal under this Act.

(2) **Panel consisting of experts:** The panel shall consist of such number of experts having such qualification as may be prescribed.

(3) **Filing of application:** Application for mediation and conciliation can be made by:

(i) any parties to the proceedings. (It shall be accompanied with such fees and in such form as may be prescribed.)

(ii) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, suo motu refer any matter pertaining to such proceeding to such number of experts as it may deem fit.

(4) **Appointment of expert/s from panel:** The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may appoint one or more experts from the Panel as may be deemed fit.

(5) Fees, terms and conditions of the experts: The fee and other terms and conditions of experts of the Mediation and Conciliation Panel shall be such as may be prescribed.

(6) **Procedure for the disposal of matter**: In order to dispose the matter, the Mediation and Conciliation Panel shall follow such procedure as may be prescribed.

(7) **Period for the disposal of matter:** The Mediation and Conciliation Panel shall dispose of the matter referred to it within a period of three months from the date of such reference and forward its recommendations to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

(8) **Filing of objection on the recommendation of the panel**: Any party aggreived by the recommendation of the Mediation and Conciliation Panel may file objections to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

17. What are the powers of the Central Government under the Companies Act, 2013 regarding:

(i) **To appoint company prosecutors**

(ii) **To Appeal against acquittal**

Answer

(i) Power of Central Government to appoint company prosecutors: This section 443 of the Companies Act, 2013 has come into force with effect from 12th September, 2013. This section lays down the provisions seeking to provide that the Central Government may appoint company prosecutors with the same powers as given under the Cr. PC on Public Prosecutors.

Appointment of company prosecutors: The Central Government may appoint (generally, or for any case, or in any case, or for any specified class of cases in any local area) one or more persons, as company prosecutors for the conduct of prosecutions arising out of this Act; and

Powers and Privileges: The persons so appointed as company prosecutors shall have all the powers and privileges conferred on Public Prosecutors appointed under section 24 of the Cr. PC.

Appeal against acquittal: According to section 444 of the Companies Act, 2013, the Central Government may, in any case arising under this Act, direct –

any company prosecutor, or

authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any court, other than a High Court.

Appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

18. What is the object of Constituting Panel for Mediation and Conciliation under the Companies Act, 2013? Who can file application for mediation and conciliation?

Answer

Under section 442 of the Companies Act, 2013, it is provided that the Central Government shall maintain a panel of experts for mediation between the parties during pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under the Act. In common parlance, mediation means intervention of some third party in a dispute with the intention to resolve the dispute. Similarly, conciliation means the powers of adjusting or settling disputes in a friendly manner through extra judicial means. The object behind the panel is to dispose the matter pending before the Government / Tribunal as mentioned above.

Filing of application: Application for mediation and conciliation can be made by:

(A) any parties to the proceedings (It shall be accompanied with such fees and in such form as may be prescribed)

(B) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, suo moto refer any matter pertaining to such proceeding to such number of experts as it may deem fit.

19. Mr. Joseph, a member of Armaments Ltd., is aggrieved due to failure of the company to make payment of dividend declared in the AGM held in August, 2015. He makes a complaint, in writing, before the court of competent jurisdiction within the prescribed period of limitation, but the court refused to take cognizance of the alleged offence. Explain the legal position in this regard under the Companies Act, 2013.

Also state the offences under the Companies Act, 2013 which are cognizable and which are non- cognizable.

Answer

Cognizance of offence: A court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof only on the written complaint of -

(a) The Registrar,

(b) A shareholder of the company

(c) A member of the company, or

(d) Of a person authorised by the Central Government in that behalf

Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India.

In the present case, Mr. Joseph, a member of Armaments Ltd. is aggrieved due to failure of the company to make payment of dividend declared in the AGM held in August 2015. He makes a complaint, in writing, before the court of competent jurisdiction within the prescribed period of limitation, but the court refused to take cognizance of the alleged offence.

Here, the Court shall take cognizance of the offence relating to non payment of dividend as the shareholders have made a complaint in writing before the competent jurisdiction.

Cognizable and non-cognizable offences: Overriding the provisions given under the Code of Criminal Procedure, 1973, every offence under the Companies Act, 2013 except the offences referred to in section 212(6) of the Companies Act, 2013, which deals with the investigation into affairs of company by serious fraud investigation office, shall be deemed to be non-cognizable within the meaning of the said Code.

Therefore, the offences as covered under section 212(6) shall now be deemed to be cognizable where police officer may arrest person without warrant and are non-bailable. The Companies Act, 2013 establishes the offence covered under section

212(6) as a public wrong which has to be prevented and controlled. This non-bailable nature of the offences deter the offender and the others from committing further and similar offences.

20. Before imposing penalty, the adjudicating authority issued a show cause notice to the company and its officers on 15th July, 2020 to represent before the adjudicating authority. The notice was served on them on 31st July 2020. State the time period within which the company and its officers who were called upon may be present before the Adjudicating authority.

ANSWER:

Issue of written notice by an adjudicating officer: Rule 3 of the Companies (Adjudication of Penalties) Rules, 2014 read with section 454 of the Companies Act, 2013, states that before adjudging penalty, the adjudicating officer shall issue a written notice in the specified manner-

- to the company and
- to officer of the company who is in default or
- any other person, as the case may be

to show cause, within such period as may be specified in the notice (not being less than fifteen days and more than thirty days from the date of service thereon), why the penalty should not be imposed on it or him.

Accordingly, the company and its officers shall be presented before the Adjudicating Authority on or before 30th August 2020 (being not more than 30 days from the date of service of notice thereon).

21.RTP Nov 2020

Integrated Case scenario 1

DEF Limited is an unlisted public company, incorporated under the provisions of the Companies Act, 2013 having its registered office in the state of Rajasthan.

The Registrar after the inspection of the books of account or an inquiry under section 206 and other books and papers of DEF Limited under section 207, submitted a report in writing to the Central Government including a recommendation that further investigation into the affairs o f the company was necessary, giving his reasons in support.

The Central Government was of the opinion, that it was necessary to investigate into the affairs of the company by the Serious Fraud Investigation Office (SFIO).

The director, SFIO appointed an investigating officer who called on the directors of the company and arrested the directors of the company. The directors demanded the reasons for such arrest which were informed to them.

The directors of the company were produced before the jurisdictional Judicial Magistrate who released them on bail though the prosecution opposed the application of bail in the court.

On completion of the investigation of the director, SFIO submitted the investigation report to the Central Government. The Central Government, after examination of the report, directed the SFIO to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company.

A charge sheet was presented against the accused directors of the company before the Special Court and after the completion of the trial, the court convicted the directors and sentenced them with imprisonment for a term of six months and a fine of Rupees Two Thousand each.

Given the above situation, your opinion is sought on the following matters:

[Questions 1-5]

2. If the Central Government is of the opinion to order the investigation into affairs of a company on receipt of a report of the Registrar under section 208 of the Companies Act, state the correct statement as to the initiation of order of the investigation into affairs of a company-

   (a) It cannot order investigation by inspectors under the provisions of section 210 of the Companies Act.

   (b) It can order investigation by inspectors under the provisions of section 210 of the Companies Act.

   (c) It cannot order investigation by SFIO under the provisions of section 212 of the Companies Act.

   (d) It can order investigation by inspectors under section 210 or by SFIO under section 212 of the companies Act.

Answer: d)

3. Is Director, SFIO a competent authority to arrest the directors of DEF Limited, an unlisted public company?

   (a) Yes, Director, SFIO is competent authority to arrest the directors of the unlisted public company.

   (b) Yes, Director, SFIO is competent authority subject to approval of Central Government.

   (c) No, Director, SFIO cannot arrest the directors of the unlisted public company.

   (d) Yes, Director, SFIO is competent authority subject to approval of special court to arrest the directors of the unlisted public company.

Answer: a)

4. Is it the duty of the director, SFIO to inform the arrestee the grounds of arrest?

   (a) Yes, it is the duty of the director, SFIO to inform the grounds of arrest and as well as right of arrestee to know the grounds of his arrest.

   (b) No, it is not necessary to inform the grounds of arrest.

   (c) No, the ground of arrest may be informed, if asked for.

   (d) No, it is prerogative of the authority to arrest the accused, there is no need to inform the grounds of arrest.

Answer: a)

5. Within how much time are the arrested directors of DEF Limited required to be produced before jurisdictional judicial magistrate by the director, SFIO after arrest?

   (a) Within 24 hours of such arrest.

   (b) Within 48 hours of such arrest.

   (c) Within 72 hours of such arrest.

   (d) Within 80 hours of such arrest.

Answer: a)

6. When do the directors of DEF Limited vacate the office of director in the company?

   (a) On the date when the directors were arrested by the SFIO.

   (b) On the date when the charge sheet was submitted in the court by the SFIO.

   (c) On the date when the directors were arrested and produced before jurisdictional Judicial Magistrate.

   (d) On the date when the directors were convicted by the Special Court.

Answer: d)

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Chapter 12 –National Company Law tribunal and Appellate Tribunal

RTP May 2018 QN no 11

1.Identify the powers of the Central Government under the Companies Act,2013 regarding:

(a) To appoint company prosecutor

(b) To Appeal against acquittal

Answer:

(a) Power of Central Government to appoint company prosecutors: This section lays down the provisions seeking to provide that the Central Government may appoint company prosecutors with the same powers as given under the Cr. PC on Public Prosecutors.

- **Appointment of company prosecutors:** The Central Government may appoint (generally, or for any case, or in any case, or for any specified class of cases in any local area) one or more persons, as company prosecutors for the conduct of prosecutions arising out of this Act; and
- **Powers and Privileges:** The persons so appointed as company prosecutors shall have all the powers and privileges conferred on Public Prosecutors appointed under section 24 of the Cr. PC.

(b) Appeal against acquittal: According to section 444 of the Companies Act, 2013, the Central Government may, in any case arising under this Act, direct –

(1) any company prosecutor, or

(2) authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any court, other than a High Court.

Appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the Appellate Court.

2.Aug 2018 Qn no 6(c) 8 Marks:

A petitioner presented an application before the tribunal in July, 2017 and order was passed and made available to parties in September, 2017. Aggrieved party filed an appeal before NCLAT in November, 2017. The appeal was pending before NCLAT for 6 months.

Examine in the light of the Companies Act, 2013, the following issues –

(i) **Whether the filling of an appeal before the NCLAT is in order.**

(ii) **Time period latest by which the NCLAT should dispose off the said appeal.**

Answer:

According to sections 421 of the Companies Act, 2013, any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal within a period of forty -five days from the date on which a copy of the order of the Tribunal is made available to the person. However extension of further 45 days may be granted as per proviso to section 421(3).

Whereas section 422 of the Companies Act, 2013, states that every application or petition presented before the Tribunal and every appeal filed before the Appellate Tribunal shall be dealt with and disposed of by it as expeditiously as possible and every endeavour shall be made by the Tribunal or the Appellate Tribunal, as the case may be, for the disposal of such application or petition or appeal within 3 months from the date of its presentation before the Tribunal or the filing of the appeal before the Appellate Tribunal.

Where any application or petition or appeal is not disposed of within the period specified above, the Tribunal or, as the case may be, the Appellate Tribunal, shall record the reasons for not disposing of the application or petition or the appeal, as the case may be, within the period so specified; and the President or the Chairperson, as the case may be, may, after taking into account the reasons so recorded, extend the period referred to above, by such period not exceeding ninety days as he may consider necessary.

Accordingly, as per the provisions, following are the answer:

(i) Filing of an appeal before NCLAT is in order as per section 421. As per the given facts, appeal is made within 45 days from the date on which a copy of the order of the Tribunal is made available to the person.

(ii) As per section 422, appeal preferred before the NCLAT, shall be disposed within 3 months from the date of its presentation before the Appellate Tribunal. Where any application or petition or appeal is not disposed of within the period specified above, the Appellate Tribunal, shall record the reasons for the same; and the President or the Chairperson, may, after taking into account the reasons so recorded, extend the period referred to above, by such period not exceeding ninety days as he may consider necessary. So accordingly appeals should be disposed off by the NCLAT latest by May 2018.

3.Nov 2018 Qn no 6(c) 8 Marks:

Aggrieved by an Order of NCLT dated 05.05.2018, passed without the consent of the parties, Madhruk Ltd. decided to file an appeal before NCLAT. Meanwhile, the employees and officers of the Company went on a strike from 10.05.2018 demanding higher pay and allowances and as a result of which, the operational and management activities were badly affected. The strike was called-off on 15.06.2018. Thereafter, the appeal was filed on 25.06.2018 before NCLAT with a prayer for condoning the delay in filing the appeal. A single judicial member of NCLT

started the hearing. With reference to the provisions of the Companies Act, 2013, examine the following:

(i) Whether the appeal is admissible?

(ii) Maximum period allowed for condonation

Is the appeal transferable to a Bench consisting of two members?

Answer:

(1) Appeal from Orders of Tribunal [Section 421 of the Companies Act, 2013]

(2) **Appeal to AT:** Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal (AT).

(3) **When order made by consent of parties:** No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

(4) **Period for filing of appeal:** Every appeal under sub-section (1) (i.e. appeal to AT against order of Tribunal) shall be filed within a period of 45 days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed.

However, the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding 45, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

In the instant case,

(i) The appeal is admissible as the order of NCLT was passed without the consent of the parties.

The maximum period allowed for condonation is 45 days if the AT is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period. In the instant case, the appeal filed on 25.06.2018 before NCLAT is tenable.

(ii) As per second proviso to section 419(3) if at any stage of the hearing of any such case or matter, it appears to the Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the President, or, as the case may be, referred to him for transfer, to such Bench as the President may deem fit.

Study Material

4. Any person who is aggrieved by the order of Appellate Tribunal may approach to the Supreme Court on any question of law within:-

(a) 30 Days

(b) 45 Days

(c) 60 Days

(d) 90 days

Answer: c) Hint: As per section 423 of the Companies Act, 2013, any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order.

5.What is the procedure to file an appeal from orders of the Tribunal under the Companies Act, 2013?

Answer: *Appeal from Orders of Tribunal [Section 421]*

(1) **Appeal to AT:** Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal (AT).

(2) When order made by consent of parties: No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

(3) Period for filing of appeal: Every appeal under sub-section (1) (i.e. appeal to AT against order of Tribunal) shall be filed within a period of 45 days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding 45, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

6. On an application filed before Tribunal from one of the shareholder of Company, Tribunal (NCLT) passed order on 20th December 2019 without the consent of parties. Mr. Rama, one of the party to the proceeding whose family condition was not good so didn't take much interest in order of tribunal but after few days due to aggrieved by the order, he filed an appeal before Appellate Tribunal (NCLAT) on 15th March 2020 showing sufficient cause of delay for not filling appeal up to 45 days from the date of order. The Appellate Tribunal has passed an order dated 30th April 2020, Mr.Rama was not satisfied and made application to Supreme Court on 30th September 2020 against the order of the Appellate Tribunal.

Considering the given situation, examine whether Appeal filed before the Supreme Court is admissible after showing cause of delay.

ANSWER:

According to Section 423 of the Companies Act, 2013, any person aggrieved by an order of the Appellate Tribunal may prefer an appeal to the Supreme Court on any question of law arising out of Appellate Tribunal's order.

Every appeal shall be filed within a period of 60 days from the date on which a copy of the order of the Appellate Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed.

Supreme Court may entertain an appeal even after the expiry of the said period of 60 days from the date aforesaid, but within a further period not exceeding 60 Days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal

within period. In above case, since Mr. Rama even aggrieved by order of Appellate Tribunal filed application before Supreme Court on 30th September 2020. But as Supreme Court can entertain appeal only upto 60 days + 60 Days (Extension if sufficient cause). Since this appeal was filed beyond 120 days by Mr. Rama, so, appeal filed before the Supreme Court is not admissible.

7.RTP Nov'2020 Q no 18

On an application filed from shareholder of Company, Tribunal (NCLT) passed an order on 20th December, 2019 without the consent of parties. Mr. Rama whose family's condition was not good so didn't take much interest in order of tribunal but after few days due to aggrieved by an order, he filled an appeal before Appellate Tribunal (NCLAT) on 15th March, 2020 showing sufficient cause of delay for not filling appeal up to 45 days from the date of order. Even after receiving order from Appellate Tribunal dated 30th April, 2020, Mr. Rama was not satisfied and desires to make application to Supreme Court on 30th October, 2020.

Considering the given situation, examine whether Appeal to be filed before the Supreme Court will be admissible?

Answer

According to Section 423 of the Companies Act, 2013, any person aggrieved by an order of the Appellate Tribunal may prefer an appeal to the Supreme Court.

Every appeal shall be filed within a period of 60 days from the date on which a copy of the order of the Appellate Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed.

Supreme Court may entertain an appeal even after the expiry of the said period of 60 days from the date aforesaid, but within a further period not exceeding 60 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within period.

In above case, since Mr. Rama even aggrieved by an order of Appellate Tribunal desires to fill an application before Supreme Court on 30th October 2020. But as Supreme Court can entertain appeal only upto 60 days + 60 Days (Extension if sufficient cause). Since this appeal was to be filled beyond 120 days by Mr. Rama, so, appeal to be filed before the Supreme Court will not be admissible.

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Chapter 13- Corporate Secretarial Practice – Drafting of Notices, Resolutions, Minutes and Reports.

1.RTP May 2018 Qn no 12

(i) Mr. Shukla is working as General Manager (Finance and Accounts) in Target Limited. The Board of directors of the said company propose to entrust him with the duty of ensuring compliance with the provisions of the Companies Act, 2013 so that the books of accounts, balance sheet, statement of profit and loss and the cash flow statements can be prepared and maintained in accordance with law. Prepare a Board Resolution for the said purpose considering the above facts.

(ii) Mr. N is appointed as an additional Director by the Board of Directors of MNR Company Limited at its meeting held on 1st October, 2017 for a period as permitted by law. The Articles of Association has conferred the power to appoint the additional director on the Board of Directors of MNR Company Limited. Prepare a Board resolution for the said purpose in the light of the given facts.

Answer

(i) **Board Resolution**

Resolution passed at the meeting of Board of Directors of Target Limited held at its registered office situated at …… on ……(date) at ……(Time).

"Resolved that pursuant to section 128(6) and 129 of the Companies Act, 2013, Mr. Shukla, who is already the General Manager (Finance and Accounts) of the company, be and is hereby entrusted with additional duties of ensuring compliance with the provisions of the Companies Act, 2013 so that the books of accounts, balance sheet, statement of profit and loss and the cash flow statements are maintained in accordance with the provisions of law."

"Further Resolved that the said Mr. Shukla be and is hereby entrusted with the authority to do such acts things or deeds as may be necessary or expedient for the purpose of discharging his above referred duties."

Sd/

Board of Directors Target Limited

(ii) Board Resolution for Appoinment of Additional Director

"Resolved that pursuant to the Articles of Association of the company and section 161(1) of the Companies Act, 2013, Mr. N is appointed as an Additional Director of the MNR Company Limited with effect from 1st October, 2017 to hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

Resolved further that Mr. N will enjoy the same powers and rights as other directors. Resolved further that Mr_____ Secretary of MNR Company Limited be and is hereby authorised to electronically file necessary returns with the Registrar of Companies and to do all other necessary things required under the Act."

2.Draft a resolution proposed to be passed at a General Meeting of M/s. Red Rooster Limited a public company giving consent to the Board of Directors for borrowing upto a specified amount in excess of the limits laid down under section 180(1)(c) of the Companies Act, 2013 and also state the borrowings, which are to be excluded from the said limits.

Answer:

Draft of ordinary **resolution under Section 180(1)(c) of the Companies Act, 2013**

"Resolved that the company hereby consents to the Board of Directors borrowing monies not exceeding `…… (Rupees) in excess of the aggregate
of the *paid-up capital of the company, its free reserves and securities Premium, that is to say reserves not set apart for any specific purpose, as provided in Section 180(1)(c) of the Companies. Act, 2013, and in addition to any temporary loans obtained from the company's bankers in the ordinary course of business".

Borrowings

Section 180(1)(c) does not apply to the borrowing by a company by way of temporary loans obtained from the company's bankers in the ordinary course of business. Therefore, in calculating the limits stipulated in this provision, temporary loans obtained from the company's bankers in the ordinary course of business shall be excluded.

The expression 'temporary loans' means loans repayable on demand or within six months from the date of the loan such as short term cash credit arrangements, the discounting of bills and the issue of other short terms loans of a seasonal character, but does not include loans raised for the purpose of financing expenditure of capital nature [Explanation to Section 180 (1)(c)].

Through the enforcement of the Companies (Amendment) Act, 2017 w.e.f 9th February, 2018, in section 180 in sub-section (1), in clause (c), for the words "paid-up share capital and free reserves" the word "paid-up share capital, free reserves and securities premium" is substituted.

3.MTP Apr 2019 QN no 6(a) 8 Marks

MNC Ltd., a company, whose paid up capital was Rs. 4.00 Crores, has issued right shares in the ratio of 1:1. The said company is listed with Mumbai Stock Exchange. Whether the company is required to appoint any Audit Committee and if yes, draft a suitable Board Resolution to appoint an Audit committee covering the aspects as provided in the Companies Act, 2013.

Answer

Under section 177(1) of the Companies Act, 2013 the Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee. Therefore, MNC Ltd being a listed company will be bound to c onstitute an audit committee under the Act.

Further under section 177(2) the Audit Committee shall consist of a minimum of three directors with independent directors forming a majority.

Further, the majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand the financial statement.

The draft Board Resolution for the constitution of an Audit Committee may be as follows:

"Resolved that pursuant to the provision contained in section 177 of the Companies Act 2013 and the applicable clause of Listing Agreement with the Mumbai Stock Exchange, an Audit Committee of the Company be and is hereby constituted with effect from the conclusion of this meeting, with members as under:

1. Mr. A -- An Independent Director.
2. Mr. B -- An Independent Director
3. Mr. C – An Independent Director
4. Mr. D -- An Independent Director
5. Mr. FE -- Financial Executive
6. Mr. MD -- Managing Director

Further resolved that the Chairman of the Committee, who shall be an Independent Director, be elected by the committee members from amongst themselves.

Further resolved that the quorum for a meeting of the Audit Committee shall be the chairman of the Audit Committee and 2 other members (other than the Managing Director),.

Further resolved that the terms of reference of the Audit Committee shall be in accordance with the provisions of section 177(4) of the Companies Act, 2013.

Further resolved that the Audit committee shall conduct discussions with the auditors periodically about internal control system, the scope of audit including the observations of the auditors.

Further resolved that the Audit Committee shall review the quarterly and annual financial statements and submit the same to the Board with its recommendations, if any.

Further resolved that the recommendations made by the Audit Committee on any matter relating to financial management including the audit report shall be binding on the Board. However, where such recommendations are not accepted by the Board, the reasons for the same shall be recorded in the minutes of the Board meeting and communicated to the shareholders.

Further resolved that the Company Secretary of the Company shall be the Secretary to the Audit Committee.

Further resolved that the Chairman of the Audit Committee shall attend the annual general meeting of the Company to provide any clarifications on matters relating to audit as may be required by the members of the company.

Further resolved that the Board's Report/Annual Report to the members of the Company shall include the particulars of the constitution of the Audit Committee and the details of the non acceptance of any recommendations of the Audit Committee with reasons therefor."

4.RTP May 2019 Qn no 12

Board of Directors of the ABC Ltd., a listed company, in their meeting passed the resolution for an appointment of Company Secretary and the Compliance Officer for the guidance to the Board with regards to their duties, responsibilities and powers and the conduct of the affairs of the company. Draft the Resolution for an appointment of Mr. Nirman as Company Secretary and Compliance Officer of the company.

Answer

To consider the appointment of Mr. Nirman as Company Secretary and Compliance Officer of ABC Ltd.:

"RESOLVED THAT pursuant to the provisions of section 203 of the Companies Act, 2013 read with Rule 8 of the *Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014*, approval of the Board be and is hereby given to appoint Mr. Nirman as Whole Time Company Secretary of ABC listed company, with effect from 11th January 2019, to perform the duties which shall be performed by a Company Secretary under the Companies Act, 2013 and other duties as assigned to him by the Board from time to time.

"RESOLVED FURTHER that Mr. Nirman be and is hereby appointed as Compliance Officer of the company as per the Regulation 6 of the *SEBI (LODR) Regulations, 2015* with effect from 11th January 2019.

5.RTP Nov 2019 Qn no 9

Draft a Specimen Board Resolution passed in the meeting of the Board of Directors of a recently incorporated BLM Limited for obtaining Goods and Service Tax (GST) Registration in the GST System Portal.

Answer

Resolution passed at the meeting of Board of Directors of BLM Limited held at its registered office situated ---------- on ----------, 2019 at A.M.

RESOLVED THAT the Board do hereby appoint Mr. ---------- Director of the company
as Authorized Signatory for enrolment of the Company on the Goods and Service Tax (GST) System Portal and to sign (physically or digitally as and when required) and submit various documents electronically and/or physically and to make applications, communications, representations, modifications or alterations and to give explanations on behalf of the Company before the Central GST and/or the concerned State GST authorities as and when required.

FURTHER RESOLVED THAT Mr. _____, Director of the company be and is hereby authorized to represent the Company and to take necessary actions on all issues related to goods and service tax including but not limited to presenting documents/records etc. on behalf of the Company representing for registration of the Company and also to make any alterations, additions, corrections, to the documents, papers, forms, etc., filed with tax authorities and to provide explanations as and when required.

FURTHER RESOLVED THAT Mr. ----------, Director of the company be and is hereby authorized on behalf of the company to sign the returns, documents, letters, correspondences etc. physically/digitally and to represent on behalf of the company, for assessments, appeals or otherwise before the goods and service tax authorities as and when required.

6.Nov 2019 Qn no 5(a)(i) 3 Marks

Excel Ltd. committed an offence under the Companies Act, 2013. The offences falls within the jurisdiction of a special court of Bundi district in which the registered office of Excel Ltd was situated. However in that Bundi district, there were two special courts one in X place and other in Y place. Identify the jurisdiction of the special court for trial of an offences committed by Excel Ltd.

Answer

All offences which are punishable in this Act with imprisonment of 2 years or more, shall be triable only by the special court established for the area in which the registered office of the company in relation to which the offence is committed.

According to section 436 where there are more special courts than one for such area, by such one of them as may be specified in this behalf by the high court concerned.

Accordingly, in the given case, there are more than one special court in Bundi district where registered office of Excel Ltd. is situated. The jurisdiction for trail in special court will be specified by H.C of the State (i.e. Rajasthan).

7.RTP May 2020 Question no 11

Draft a Board Resolution of disclosure of interest by Mr. J, director of ABC Ltd. in a proposed contract to be entered into with M/s APL & Co. in which, such director is a partner.

Answer

Board Resolution of disclosure of Interest U/s 184

Resolved that pursuant to section 184(1) of the Companies Act, 2013 read with Rule 9(1) of the *Companies (Meetings of Board and its powers) Rules, 2014* , and other applicable provisions of the Companies Act, 2013, the general notice of disclosure of interest or concern in Form MBP-1 received from Mr. J, Director of the company, as placed before the meeting, be and hereby noted and taken on record by the Board.

Resolved further that Mr. J, Director of the company, and Mr ---------Company Secretary
of the company be and hereby severally authorised to make necessary entries in the register maintained for the purpose.

Further resolved that Mr----------Company secretary and Mr. J director of the company, be and are severally authorised to affix his/ her DSC and file e-form MGT-14 with the Registrar of Companies.

8.Draft a resolution proposed to be passed at a General Meeting of a Public Company giving consent to the Board of Directors for borrowing upto a specified amount in excess of the limits laid down under Section 180(1)(c) of the Companies Act, 2013.

Answer:

Draft of special resolution under Section 180 (1) (c) of the Companies Act, 2013

"Resolved that the company hereby accords the consent of members to the Board of Directors for borrowing money together with the monies already borrowed by the company for an aggregate sum not exceeding `……(Rupees……..) in excess of the aggregate of the paid-up capital of the company, its free reserves and securities premium, that is to say reserves apart from temporary loans taken by the company from its bankers in the ordinary course of business, as provided in Section 180(1)(c) of the Companies Act, 2013.

Resolved further that the powers given as above shall be exercised by the Board of Directors at a duly convened meeting of the Board and not by passing resolution by circulation".

9. Answer the following:

(i) **Board of Directors of DBM Limited held a board meeting on 2nd May, 2018 at its registered office. You are required to state the salient points to be taken into account while drafting the minutes of the said board meeting.**

(ii) **Draft a board resolution for appointment of Mr. Paul as the managing director for 5 years with effect from 1st June, 2019 of DBM Limited passed in the above stated board meeting**

Answer: (i) While drafting the minutes of a board meeting following salient points should be kept in mind:

(a) the minutes may be drafted in a tabular form or they may be drafted in the form of a series of paragraphs, numbered consecutively and with relevant headings.

(b) the place, date and time of the meeting should be stated.

(c) The chairman of the meeting must be mentioned. The general phrase used in the Minutes is "Mr.---, chairman of the meeting took the chair and called the meeting to order".

(d) the minutes should clearly mention the attendance and the constitution of the meeting, i.e., persons present and the capacity in which present, e.g. name of the person chairing the meeting, names of the directors and secretary, identifying them as director or secretary, names of persons in attendance like auditor, internal auditor etc. The minutes should also contain the subject of leave of absence granted, if any, to any of the board members.

(e) The adoption of the Minutes of the previous Board Meeting must be the first item on the Agenda by the directors giving their approval and the Chairman signing the Minutes as proof of approval of the Minutes.

(f) Conduct of the business at the meeting should be recorded in the chronological sequence as per the Agenda.

(g) In respect of each item of business the names of the directors dissenting or not concurring with any resolution passed at the board meeting should be mentioned

(h) Reference about interested directors abstaining from voting is also required to be stated in the minutes.

(i) Chairman's signature and date of verification of minutes as correct.

(ii) Resolution passed at the meeting of board of directors of DBM Limited held at its registered office situated at …… on 2nd May, 2019 at A.M.

"RESOLVED that subject to the approval by the shareholders in a general meeting and pursuant to the provisions of the applicable provisions of the Companies Act, 2013, Mr. Paul be and is hereby appointed as the Managing Director of the Company with effect from 1st June, 2019 for a period of five years on a remuneration approved by the Remuneration Committee as enumerated below:

(j) Salary: ` per month

(k) Perquisites, Benefits and Facilities …….

RESOLVED FURTHER that Mr. Paul, so long as he functions as the Managing Director of the Company shall not be entitled to any sitting fee for attending the meeting of the board of directors or any committee thereof and that he shall not be liable to retire by rotation.

RESOLVED FURTHER that the Secretary of the company be and is hereby directed and authorized to file necessary returns with the Registrar of Companies and to do all other necessary things required under the provisions of the Companies Act, 2013."

10. Morbani Woods Limited decide to appoint Mr. Wahid as its Managing Director for a period of 5 years with effect from 1st May, 2019. Mr. Wahid fulfils all the conditions as specified under Schedule V to the Companies Act, 2013.

The terms of appointment are as under:

(i) **Salary ` 1 lakh per month;**

(ii) **Commission, as may be decided by the Board of Directors of the company;**

(iii) **Perquisites, Free Housing Medical reimbursement upto ` 10,000 per month, Leave Travel concession for the family,**
Club membership fee,

Personal Accident Insurance ` 10 lakh,

Gratuity, and Provident Fund as per Company's policy.

You being the Secretary of the said Company, are required to draft a resolution to give effect to the above, assuming that Mr. Wahid is already the Managing Director in a public limited company

Answer

Resolution passed at the meeting of board of directors of Morbani Woods Limited held at its registered office situated at …… on ……..(day) at…… A.M

"Resolved that consent of all the directors present at the meeting be and is hereby accorded to the appointment of Mr. Wahid, who is already the Managing Director of another public limited company, and fulfils the conditions as specified in Schedule V of the Companies Act, 2013, as the Managing Director of the company for a period of 5 years effective from 1st May, 2019 subject to approval by a resolution of shareholders in a general meeting and that Mr. Wahid may be paid remuneration as follows:

(i) Salary of ` 1 Lakh per month

(ii) Commission

(iii) Perquisites: Free Housing, Medical reimbursement upto ` 10,000, Leave Travel Concession for the family, Club membership fee, Personal Accident Insurance of 10 Lakhs, Gratuity, Provident Fund etc.

Resolved further that in the event of loss or inadequacy of profits, the salary payable to him shall be subject to the limits specified in Schedule V.

Resolved further that the Secretary of the company be and is hereby authorize to prepare and file with the Registrar of Companies necessary forms and returns in respect of the above appointment."

Sd/-

Board of Directors

Morbani Woods Limited

11. The members of XYZ Limited decided to pass a resolution for appointing Mr. Smith as an Independent director of the company. Draft a specimen resolution to be passed at the said meeting.

Answer

Resolution passed at the meeting of XYZ Limited held at its registered office situated at _____ on _____ (day) at_____ A.M.

"RESOLVED that pursuant to the provisions of Sections 149, 150, 152 and any other applicable provisions of the Companies Act, 2013 and the rules made thereunder (including any statutory modification(s) or re-enactment thereof for the time being in force) read with Schedule IV to the Companies Act, 2013, Mr. Smith (holding DIN -------), Director of the Company who retires by rotation at the Annual General Meeting and in respect of whom the Company has received a notice in writing from a member proposing his candidature for the office of Director, be and is hereby appointed as an Independent Director of the Company to hold office for five consecutive years for a term up to , 20---."

12. Mr. N is appointed as an additional Director by the Board of Directors of MNR Company Limited at its meeting held on 1st October, 2018 for a period as permitted by law.

Draft a resolution and state the body which appoints N.

Answer

Appointment of Additional Director: Resolution (Section 161 of the Companies Act, 2013)

According to section 161(1) of the Companies Act, 2013, the articles of a company may confer on its Board of Directors the power to appoint any person as an additional director at any time.

Board Resolution

Resolution passed at the meeting of the board of directors of MNR Company Limited held at its registered office situated at _____ on _____ (day) at_____AM.

"Resolved that pursuant to the Articles of Association of the company and section 161(1) of the Companies Act, 2013, Mr. N is appointed as an Additional Director of the MNR Company Limited with effect from 1st October, 2018 to hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

Resolved further that Mr. N will enjoy the same powers and rights as other directors.

Resolved further that Mr _____ Secretary of MNR Company Limited be and is hereby authorised to electronically file necessary returns with the Registrar of Companies and to do all other necessary things required under the Act."

Assumption: As the question is silent about the Articles of Association, it is assumed that Articles of Association has conferred the power to appoint the additional director on the Board of Directors of MNR Company Limited

13. The Board of Directors of RPS Limited decides to pass a resolution by circulation for allotment of 1,000 equity shares to Mr. A. Draft a specimen Board Resolution to be passed by circulation for this purpose.

Answer

RPS Limited

_____(Place)

To

Mr X (Director)

(Address in India Only)

Dear Sir,

The following resolution which is intended to be passed as a resolution by circulation as provided in Section 175 of the Companies Act, 2013 is circulated herewith as per the provisions of the said section.

If only you are Not Interested in the resolution, you may please indicate by appending your signature in the space provided beneath the resolution appearing herein below as a separate perforated slip, if you are in favour or against the said resolution. The perforated slip may please be returned if and when signed within seven days of this letter.

However, it need not be returned if you are interested in the resolution.

Yours Faithfully

(Secretary)

RPS Limited

Resolution by circulation passed by directors as per circulation effected ……20……

Resolved that 1,000 equity shares in the company be and hereby allotted to Mr. A. 202, Kher Gali, Sher Mark, Ludhiana, Punjab from whom full amount has been received.

It is further resolved that necessary return of allotment be filed in the office of the ROC under the signature of Mr. Y, a Director.

For/Against

Signature

14. Elaborate the provisions of the Companies Act, 2013 regarding Notice of Board Meeting. Draft a notice for the first meeting of the Board of Directors of India Timber Ltd.

Answer

Notice of Board Meeting:

Notice of Board Meeting is required pursuant to Section 173(3) of the Companies Act, 2013. According to this section, a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

Further, a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting.

In case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

The Companies (Meetings of Board and its Powers) Rules, 2014, further provides that the notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.

On receiving such a notice, a director intending to participate through video conferencing or audio visual means shall communicate his intention to the Chairperson or the company secretary of the company. He shall give prior intimation to the effect sufficiently in advance so that the company is able to make suitable arrangements in this behalf.

If the director does not give any intimation of his intention to participate that he wants to participate through the electronic mode, it shall be assumed that the director shall attend the meeting in person.

As per section 173(4) of the Companies Act, 2013, every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of ` 25,000.

Draft Notiice

India Timber Limited

Address ……..

Date …….

To

Mr……..

Address……..(Each Director to be addressed individually)

Dear Sir,

Notice is hereby given that first meeting of the Board of Directors will be held at the registered office of the company at…….(address)……..(place) on…..(day), the.....(date) at… AM/PM.

You are requested to make it convenient to attend the meeting. An option is also available to you to participate in the Board Meeting through video conferencing or audio visual means. Kindly communicate your preference in this regard.

A copy of the agenda of the meeting is enclosed for your perusal

Yours Faithfully

For India Timber Limited

(Secretary)

15. R Ltd. wants to constitute an Audit Committee. Draft a board resolution covering the following matters [compliance with Companies Act, 2013 to be ensured].

(1) **Member of the Audit Committee**

(2) **Chairman of the Audit Committee**

(3) **Any 2 functions of the said Committee**

Answer

Audit Committee – Board's Resolution:

"Resolved that pursuant to Section 177 of the Companies Act, 2013 an Audit Committee consisting of the following Directors be and is hereby constituted.

1. Mr ----Independent Director
2. Mr ----Independent Director
3. Mr ----Independent Director
4. Mr ----Independent Director
5. Mr ----Managing Director.
6. Mr ----Chief Financial Officer"

"Further resolved that the Chairman of the Audit Committee shall be elected by its members from amongst themselves and shall be an independent director'.

"Further resolved that the quorum for a meeting of the Audit committee shall be three directors (other than the Managing Director), out of which at least two must be independent directors".

"Resolved further that the Audit Committee shall perform all the functions as laid down in section 177(4) of the Companies Act, 2013 including but not limited to:

a. make the recommendation for appointment, remuneration and terms of appointment of the auditors of the company;

b. review and monitor the independence and performance of auditors of the company and the effectiveness of the audit process".

Further resolved that the Audit Committee shall review the quarterly and annual financial statements and submit the same to the Board with its recommendations if any".

16. (i) 17th Board meeting of Jai Entertainment Ltd. was held at its registered office situated at B- 17, Industrial Area, Suncity. While discussing the matter of appointment of Mr. Kaabil as Managing Director of the company, certain defamatory remarks were made by Mr. X, one of the directors. The draft minutes submitted by the Company Secretary also incorporated the indecent remarks of Mr. X. The chairman wants to remove those undesirable remarks from the minutes. Can he do so?

(ii) Draft the minutes of above referred meeting containing the matter regarding appointment of Managing Director in addition to the usual items.

Answer

The minutes of a meeting are a written record of the business transacted; decisions and resolutions arrived at the meeting.

Section 118 of the Companies Act, 2013, deals with Minutes of Proceedings of General Meeting, Meetings of Board of Directors and Other Meetings and Resolutions Passed by Postal Ballot. The section provides certain exemptions to matters from inclusion in the minutes.

Exemptions from inclusion in minutes of the meeting: There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting, -

(a) is or could reasonably be regarded as defamatory of any person; or

(b) is irrelevant or immaterial to the proceedings; or

(c) is detrimental to the interests of the company.

Absolute discretion of chairman: The Chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds as specified above.

Hence, the Chairman can exercise his discretion of not including the undesirable remarks from the minute of the 17th Board meeting of Jai Entertainment Ltd.

(ii) Draft Minutes

Minutes of 17th meeting of the Board of Directors of Jai Entertainment Limited held on _____ the _____ 2018, at B-17, Industrial Area, Suncity

Present :

1 Chairman

2 Director

3 Director

In attendance Secretary

Item No. 1 : Leave of Absence

Leave of absence was granted to _____ Director.

Item No. 2 : Confirmation of minutes of the 16th Board meeting :

The minutes of the 16th meeting of the Board of Directors held on _____ were considered and confirmed.

Item No. 3: Appointment of Managing Director:

The Board noted the appointment of Mr. Kaabil, director of the company as the Managing Director of the company. In this connection, the following resolutions were passed:

"Resolved that Mr. Kaabil who fulfils the conditions specified in Parts I and II of Schedule V to the Companies Act, 2013, be and is here by appointed as the Managing Director of the company for a period of five years effective from _____ and that he may be paid remuneration by way of salary, commission and perquisites in accordance with Part II of Schedule V to the Act.

Resolved further that the Secretary of the Company be and is hereby directed to file the necessary returns with the registrar of Companies and to do all acts and things as may be necessary in this connection."

Item No. 4: Next Board Meeting:

The next meeting of the Board will be held on _____ the _____ 20 at the registered office of the company. The meeting ended with a vote of thanks to the chair.

17. RTP NOV'20

Integrated Case Scenario 2

Hansraj Power Distribution Ltd. (HPDL) was incorporated in the year 2008. The annual turnover of the company is two crore rupees. Mr. Raj Purohit, a Director of the company was appointed by company four years back. Mr. Raj Purohit is eligible for retirement by rotation at this AGM. The AGM is schedule to be held on 22nd August, 2020. He is also working as a director in Max International Limited and Trinity Infrastructure Limited. Trinity Infrastructure Limited did not file its financial statements for the last three years with the Registrar of Companies. Trinity Infrastructure Limited also defaulted in paying interest on loans taken from a Public Financial Institution in the last two years. The Board of HPDL has decided to propose Mr. Raj's name for re-appointment. Mr. Raj gave his consent for the same.

Application to the Tribunal for Compromise & Arrangement was submitted along with all the documents. The Tribunal fixed the time and place of the meeting and appointed a Chairperson for the meeting.

A meeting of members of the company was held as per the orders of the Court to consider a scheme of compromise and arrangement. Notice of the meeting was sent to all 1000 members. Notice of the meeting was also sent to all the creditors or class of creditors and to the debenture-holders of the company, individually at the address registered with the company which will be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees.

In total, the 1000 members of the company holds in aggregate 10,00,000 equity shares. The meeting was attended by 800 members holding 7,00,000 shares. Out of which 460 members holding 4,70,000 shares voted in favour of the scheme; 190 members holding 1,25,000 shares voted against the scheme. The remaining 150 members holding 1,05,000 shares abstained from voting. All the members voted for the scheme either in person or through proxies.

As prescribed under this Act, a notice along with all the documents was also sent to the Central Government, the Income-Tax Authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, and the Competition Commission of India. The Securities and Exchange Board made objection to scheme of arrangements after 45 days of receiving all the documents.

According to the last audit financial report, the outstanding debt on the company is ` 50 lakh rupees. The creditors of the company is as follows:

X-One financial Company	200,000 rupees	4%
Mr. Mohan Shah	1,250,000 rupees	25%
Radhey Finance Company	200,000 rupees	4%
Soham Company	700,000 rupees	14%
Onex National bank	1,000,000 rupees	20%
DXY National bank	1,650,000 rupees	33%

So from the above mentioned Creditors' list, X-One financial Company raised its objection in the Tribunal, to the aforementioned scheme. The creditor file the petition in the Tribunal.

The Chairperson of the meeting submitted the report to the Tribunal within the time fixed by the Tribunal. After hearing the creditors, the Tribunal finally approve the scheme of compromise and arrangement between the company and its members. The order of the Tribunal is binding on the company, all its members and creditors.

Answer the following questions in the light of the given information:

1. With reference to the provisions of the Companies Act, 2013, which value of the requisite majority will be considered to approve the scheme?

   (a) 3/4th of the total value of shares held by 650 members.

   (b) 3/4th of the total value of shares held by 800 members.

   (c) 3/4th of the total value of shares held by 1000 members.

   (d) 3/4th majority of 1000 shares holders present and voting.

Answer: a)

2. According to the provision of the Companies Act, 2013, X-One financial company objected to the compromise held on the scheme in between the company and its shareholders? According to their respective percentage in debt owed to the company, choose the correct option?

   (a) X-One Finance Company can raise the objection as aggregate loan amount needs to be more than 2% of debt.

   (b) X-One Finance Company jointly with Radhey Finance company can raise the objection as the aggregate amount needs to be not less than 5%.

   (c) Only X-One Finance Company along with Soham Finance company can jointly raise the objection as the aggregate amounts needs not to be less

than 15%.

(d) Only X-One Finance Company jointly with Soham Finance company and Radhey Finance company can raise the objection the aggregate amounts needs not to be less than 20 %.

Answer: b)

3. Evaluate the representation made by SEBI, after 45 days of receiving the notice and all the documents, is tenable or not?

(a) Not tenable. It is required to be made within 10 days

(b) Not tenable. It is required to be made within 15 days.

(c) Not tenable. It is required to be made within 30 days.

(d) Not tenable. It is required to be made within 45 days.

Answer: c)

4. While finally approving the scheme of compromise and arrangements between the company and its members, which of the below mentioned certificate is necessary to be filed with the Tribunal?

(a) Certificate from the Central Government

(b) Certificate from the Registrar.

(c) Certificate from the audit and accounts committee of the company

(d) Certificate from the company's auditor.

Answer: d)

5. According to the above mentioned facts under the directorship of Mr. Raj Purohit, Trinity Infrastructure Limited, defaulted in filing statements and paying the interest due on the loans. How the default of Trinity Infrastructure Limited going to affect the directorship of Mr. Raj Purohit, in all the three companies?

(a) Mr. Raj has to immediately vacate his office as a director in all the three companies.

(b) Mr. Raj needs to vacate his office as a director in (HPDL).

(c) Mr. Raj needs to vacate his office as a director only in (HPDL) and in Max International Limited.

(d) Mr. Raj need not resign in any of the company, as the default makes him only ineligible for re-appointment

Answer: c)

Section B Securities Law

Chapter 1 –The Securities Contract (Regulation) Act,1956 and the securities contract (regulation) rules,1957

1.Multiple Choice Questions

Ram and Shyam, two brothers, are professionally qualified Chartered Accountants. They are engaged in working as recovery agents for different types of loans and advances given by banks to different customers. Theywere also involved in arrangement of short terms funds for their client's. Their business was doing well and they were making a good amount of money. While dealing with banks they came to know about Asset Reconstruction Companies (ARC'S). Both the brothers wanted to expand their business, so they decided to register themselves as an ARC. From the following tick the option; which is irrelevant in respect of their ARC business---

(e) The net owned fund of their ARC should not be less than One hundred lacs rupees.

(f) The net owned fund of their ARC should not be less than One hundred crore rupees

(g) After registering as an ARC they will no longer be eligible to continue their business of arranging short term funds for their clients.

(h) They will be required to raise funds only from qualified buyers.

Answer: Option a

2.MTP Mar 2019 QN no 14

Which of the contracts in derivative are not legal and is invalid:

a) Contracts which are traded on a recognised stock exchange

b) Contracts which are Settled on the clearing house of the recognised stock exchange in accordance with the rules and bye-laws of such stock exchange;

c) Contracts which are recognized as per the notification issued by the Central Government

d) Contracts which are between such parties and on such terms as the CG may, by notification in the Official Gazette, specify.

Answer: Option C

3.MTP Apr 2019 Qn no 18

Reserve Bank of India may check the condition that the asset reconstruction company has not incurred any loss in the preceding financial years.

a) 1

b) 2

c) 3

d) 8

Answer : Option C

Descriptive Questions

4.RTP May 2018 Qn no 13

(i) A company Cookies Private Limited has two shareholders, Mr. Rock and Mr. Salt. Mr. Rock decides to sell his part of shares in Cookies Private Limited to another company, Crispy Private Limited for a specified monetary consideration. State how should Mr. Rock proceed to document the transaction so as to make it legally binding on both the parties under the Securities Contract (Regulation) Act, 1956?

(ii) Mr. Vivaan is having 400 shares of Travel Everywhere Limited and the current price of these shares in the market is ` 100. Vivaan's goal is to sell these shares in 6 months' time. However, he is worried that the price of these shares could fall considerably, by then. At the same time, Vivaan doesn't want to sell off these shares today, as he conjectured that the share price might appreciate in the near future. Determine how should Mr. Vivaan protect his security and reduce the risk of loss on the share price under the Securities Contract (Regulation) Act, 1956?

Answer

(i) As per the stated facts, Mr. Rock decides to sell his part of the share in other company. So, such an understanding of transfer of the shares of Cookies Private Limited held by Mr. Rock to Crispy Private Limited shall be recorded in Share Purchase Agreement (SPA), which is a legally binding contract, and lists down all the terms and conditions which are relevant to the sale of shares, such as –

- the exact description of shares, i.e. the number of shares, price per share, premium amount, if any;
- the conditions that must be satisfied before the sale takes place;
- the date on which the sale will be completed;
- the manner in which the transfer will be made;
- any indemnities or protections available to the parties;

- the representations and warranties made by either party; and
- the conditions upon which the agreement will terminate.

(ii) In this case, Mr. Vivaan may opt for 'Option' derivative contract, which is an agreement to buy or sell a set of assets at a specified time in the future for a specified amount. However, it is not obligatory for him to hold the terms of the agreement, since he has an 'option' to exercise the contract. For example, if the current market price of the share is ` 100 and he buy an option to sell the shares to Mr. X at ` 200 after three-month, so Vivaan bought a put option.

Now, if after three months, the current price of the shares is ` 210, Mr. Vivaan may opt not to sell the shares to Mr. X and instead sell them in the market, thus making a profit of ` 110. Had the market price of the shares after three months would have been ` 90, Mr. Vivaan would have obliged the option contract and sold those shares to Mr. X, thus making a profit, even though the current market price was below the contracted price. Thus, here, the shares of Travel Everywhere Limited is the underlying asset and the option contract is a form of derivative.

5.May 2018 Qn no 4(b) 6 Marks:

The Delhi Stock Exchange Ltd. was granted recognition by Securities Exchange Board of India. SEBI received complaint alleging that the said Stock Exchange is indulging in fraudulent activities. SEBI is of the opinion that the recognition granted should be withdrawn in the interest of trade and public. State the provisions to withdraw the recognition under the Securities Contracts (Regulation) Act, 1956. Examine the val idity of the contracts entered by the Stock Exchange prior to such withdrawal order.

Answer:

Withdrawal of Recognition

Section 5(1) of the Securities Contracts (Regulation) Act, 1956, states that if the Central Government/ SEBI is of the opinion that the recognition granted to a stock exchange under the provisions of this Act, should, in the interest of the trade or in the public interest, be withdrawn.

The Central Government or SEBI may serve on the governing body of the stock exchange, a written notice that the Central Government is considering the withdrawal of the recognition for the reasons stated in the notice and after giving an opportunity to the governing body to be heard in the matter.

The Central Government may withdraw by notification in the Official Gazette, the recognition granted to the stock exchange.

Contract entered prior to such withdrawal: No such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Central Government may, after consultation with the stock exchange, make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contracts outstanding

on that date.

As per the proviso to section 5(1), all the contracts entered by the Stock Exchange prior to such withdrawal order shall be valid.

6.March 2018 Qn no 1(b) 6 Marks:

Ms. Ashmita D'Souza recently graduated from National Law School, Bangalore and made her parents proud. While working on one of her assignments, she got really interested in knowing about the securities and gained expertise in the day-to-day working of financial markets. Meanwhile, her father got a wonderful opportunity at work to move to Germany and the whole family is very excited to make the move and settle there. Ashmita, along with her family applied for residence there and also gained the citizenship of Germany. She got married to a German, named Vincent, and they both came to India to start a career. After working with Ashmita on a couple of assignments, Vincent got interested to become a member of the Chennai Stock Exchange. Discuss, whether Vincent or Ashmita can become a member of the stock exchange, stating the provisions of Securities Contract Regulations in India.

Answer:

Rule 8 of the *Securities Contract (Regulations) Rules, 1957* details the qualifications for becoming the member of a recognised stock exchange. In this regard, Rule 8(3) prescribes that the persons that can be admitted as the members of the recognised stock exchange and mentions that no person who is a member at the time of application for recognition or subsequently admitted as a member if he ceases to be a citizen of India. Thus, Ashmita cannot become the member of the Chennai Stock Exchange since she ceased to be a citizen of India, as she has gained the citizenship of Germany.

In view of the facts, it is clear that Vincent is not a citizen of India. Therefore, as per Rule 8(1) of the Securities Contracts (Regulations) Rules, 1957, he cannot be elected as the member of the recognised stock exchange since he is not a citizen of India. However, the governing body of the Chennai Stock Exchange may take the prior approval of SEBI, in case they are interested in electing Vincent as a member of the stock exchange.

7.May 2018 Qn no 3(c) 3 Marks:

Explain the meaning of the term "Demutualization" used under the Securities Contracts (Regulation) Act, 1956.

Answer:

Meaning of "Demutualisation"

According to Section 2(ab) of the Securities Contracts (Regulation) Act, 1956, "Demutualisation" means the segregation of ownership and management from the trading rights of the members of a recognised stock exchange in accordance with a scheme approved by the Securities and Exchange Board of India.

In simple words, it is a term used to describe the transition from mutual association of exchange members operating on a not-for-profit basis to a limited liability, for-profit company, accountable to shareholders. Essentially, demutualisation separates ownership (and voting right) from the right of access to trading.

8.May 2018 Qn no 1(b) 6 Marks:

Securities of Herbal Products Limited were listed in Madras Stock Exchange, which is a recognized stock exchange. The company has incurred losses during the preceding three consecutive years and it has also negative net worth. On having such information, Madras Stock Exchange decided to delist the securities of the company.

Decide the validity of the decision and explain the provisions of Securities Contract (Regulation) Act, 1956 along with the grounds made under the Securities Contract (Regulation) Rules regarding delisting of securities.

Answer:

Delisting of Securities [Section 21A of the Securities Contract (Regulation) Act, 1956]

A Recognised Stock Exchange may delist the securities, after recording the reasons therefore from any Recognised Stock Exchange on any of the ground or grounds as may be prescribed under this Act. The Securities of a Company shall not be delisted unless the Company concerned has been given a reasonable opportunity of being heard. A listed company or an aggrieved investor may file an appeal before the Securities

Appellate Tribunal against the decision of the Recognised Stock Exchange within fifteen days from the date of the decision of the recognised stock exchange delisting the securities.

The alleged grounds have been detailed in Rule 21 of the Securities Contract (Regulation) Rules, 1957 which are stated as follows:

(i) the Company has incurred losses during the preceding 3 consecutive years and it has negative net-worth;

(ii) trading in securities of the Company has remained suspended for a period of more than 6 months;

the securities of the Company have remained infrequently traded during the preceding 3 years;

(iii) the Company or any of its promoters or any of its director has been convicted for failure to comply with any of the provisions of the Act or SEBI Act, 1992, or Depositories Act, 1996 or rules, regulations, agreements made thereunder, as the case may be and awarded a penalty of not less than one crore rupees or imprisonment of not less than 3 years;

(iv) the addresses of the Company or any of its promoter or any of its directors, are not known or false addresses have been furnished or the Company has changed its Registered Office in contravention of the provisions of Companies Act 1956 / 2013; or

(v) shareholding of the Company held by the public has come below the minimum level applicable to the Company as per the listing agreement under the Act and the Company has failed to raise public holding to the required level within the time specified by the recognised stock exchange.

In the instant case, the decision of the Madras Stock Exchange to delist the securities of Herbal Products Limited is valid because the Company has incurred losses during the preceding three consecutive years and it has also negative net worth.

9.Aug 2018 Qn no 1(b) 6 Marks:

Mr. G applied to be appointed as a member in the place of his brother Mr. Kumar, who was financial analyst (who met with an accident) in Bombay stock exchange. Governing body of the Stock exchange finds him to be eligible as member, considering him a close relative of Mr. Kumar. Rather experience and knowledge of Mr. G was not in alliance with the required skill for the conduct of business in securities.

Determine the following issues in the above given situation with the reference to the provisions of the SCRA, 1956-

(i) Validity as to the appointment of the Mr. G in the Stock exchange.

(ii) Where the working of the governing body of the stock exchange is unethical. The Central Government served a written notice for the supersession of the governing body.

Answer:

Rule 8 of the Securities Contract (Regulation) Rules, 1957 deals with the qualification for membership of a recognised stock exchange when one can be admitted as the members of the recognised stock exchange.

According to the Rule 8(2), no person eligible for admission as a member under Rule 8(1) shall be admitted as a member unless he succeeds to the established business of

a deceased or retiring member who is his father, uncle, brother or any other person who is, in the opinion of the governing body, a close relative.

Provided that the rules of the stock exchange may authorise the governing body to waive compliance with any of the foregoing conditions if the person seeking admission is in respect of means, position, integrity, knowledge and experience of business in securities, considered by the governing body to be otherwise qualified for membership.

Since in the given case, though Mr. G was brother of Mr. Kumar, but was not eligible due to lack of his experience and knowledge in the business of securities.

(ii) According to the provisions of section 11 of the Securities Contracts (Regulation) Act, 1956, where the Central Government is of opinion that the governing body of any recognized stock exchange should be superseded, the Central Government may serve on the governing body a written notice that the Central Government is considering the supersession of the governing body for the reasons specified in the notice. After giving an opportunity to the governing body of such Stock Exchange to be heard in the matter, the Central Government may, by notification in the Official Gazette, declare the governing body of such Stock Exchange to be superseded.

The Central Government may appoint any person or persons to exercise and perform all the powers and duties of the governing body.

10.Aug 2018 Qn no 4(b) 6 Marks:

Param Ltd. is holding 35% of the paid up equity capital of Bombay Stock Exchange. The company appoints Veer Ltd. as its proxy who is not a member of the Bombay Stock Exchange, to attend and vote at the meeting of the stock exchange.

Advise, in the given situation whether the Bombay Stock Exchange can restrict the appointment of Veer Ltd. as proxy for Param Ltd. and further restrict, the voting rights of Param Ltd. in the Bombay Stock Exchange.

Answer:

Section 7(A) of the Securities (Contracts) Regulation Act, 1956 provides that a recognised stock exchange is empowered to amend rules to provide for all or any of the following matters:

(a) Restriction of voting right to members only.

(b) Regulation of voting rights by specifying that each member is entitled to one vote only irrespective of number of shares held.

(c) Restriction on right of members to appoint proxy.

(d) Such incidental, consequential and supplementary matters as may be necessary to give effect to any of the matters specified in clauses (a), (b), and (c).

As such Bombay Stock Exchange can restrict the appointment of Veer Ltd., as proxy, if rules of the exchange so provide. If it is not so provided, rules may be amended and after getting approval of the Central Government regarding amendment, it can restrict appointment of proxies.

Bombay Stock Exchange can also restrict the voting rights of Param Ltd. if rules of the exchange so provide. If it is not so provided, rules maybe amended and after getting approval of Central Government regarding amendment, it can restrict the voting rights of Param Ltd.

11.Oct 2018 Qn no 3(c) 3 Marks:

SEBI has asked Jaipur Stock Exchange to furnish their books of accounts and audited financial statements for the period 1st April 2015 to 31st March 2018 within 30 days of the receipt of the communication by the stock exchange. The communication was received by the company on 30th April 2018 and no documents were furnished to SEBI in reply to the notice till 15 th May 2018. Can the stock exchange be penalised for this inaction?

Answer:

As per section 23A(a) of the Securities Contract (Regulation) Act, 1956, if any person fails to furnish any information, document, books, returns or report to a recognised stock exchange within the time specified in the listing agreement or conditions or bye-laws of the stock exchange or who furnishes false incorrect or incomplete information, document , books return or report, he shall be punishable with a fine of at least one lakh rupees which may extend to one lakh rupees per day during which such failure continues, subject to a maximum of one crore rupees. Thus, Jaipur Stock Exchange shall be liable to the afore-mentioned penalty under section 23A(a) of the Act.

12.May 2019 Qn no 4(a)(ii) 4 Marks:

(i)What are the factors to be considered by the Adjudicating Officer while adjudging the quantum of penalty under Sec. 23I of the Securities Contract (Regulation) Act, 1956?

(ii) Define the term "Derivative" as appearing in the Securities Contract (Regulation) Act, 1956.

Answer:

(i)Factors to be taken into account by Adjudicating Officer [Section 23J of Securities Contract (Regulation) Act, 1956]

While adjudging the quantum of penalty under section 23-I, the adjudicating officer shall have due regard to the following factors –

(a) The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) The amount of loss caused to an investor or group of investors as a result of the default;

(c) The repetitive nature of the default.

The power of the Adjudicating Officer to adjudge the quantum of penalty levied under sections 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section.

(ii)According to section 2(ac) of the Securities Contract (Regulation) Act, 1956, Derivative includes –

i. a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for difference or any other form of security;

ii. a contract which derives its value from the prices, or index of prices, of underlying securities.

iii. Commodity derivatives;

iv. Such other instruments as may be declared by the Central Government to be derivatives.

13.Nov 2018 Qn no 3(c) 3 Marks:

Aggrieved by the Order of Securities Appellate Tribunal (SAT), MNO Ltd. decided to prefer an appeal with the Supreme Court. Identify the provisions governing further appeal on the Order by the Company under the provision of Securities Contracts (Regulation) Act, 1956. Also state whether any question of fact arising out of the Order of SAT can be challenged in the appeal?

Answer:

According to section 22F of the Securities Contracts (Regulation) Act, 1956, any person aggrieved by any decision or order of the Securities Appellate Tribunal (SAT) may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order. However, the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

From the perusal of the section, it is evident that any question of fact arising out of the Order of SAT cannot be challenged in the appeal.

14.RTP Nov-18:

In public interest, HEM Stock Exchange Limited was issued an order by the Stock Exchange Board of India to produce certain information and explanation relating to its operation in writing. The management of the stock exchange were reluctant to part with such information with SEBI and approached you to seek your advice in the following matters:

(a) **Duty of HEM Stock Exchange Limited to furnish periodic returns to SEBI;**

(b) **Power of SEBI to ask for the information asked as stated above, over and above the periodic returns;**

(c) **Period for which the Stock Exchange is required to maintain the books of accounts which may be inspected by SEBI.**

(d) **Duty of the Stock Exchange and the persons dealing with the stock exchange with regard to the information sought for by SEBI.**

Advise them referring to the relevant provisions of the Securities Contracts (Regulation) Act, 1956.

Answer:

The question can be answered with reference to Section 6 of the Securities Contract (Regulations) Act, 1956 which empowers the Central Government to call for information. Accordingly:

(a) **Duty of HEM Stock Exchange Limited to furnish periodic returns to SEBI:** Every recognized stock exchange should furnish periodical returns to SEBI in the prescribed format. These Returns contain information on current affairs of the Exchange including volume and value of transactions, short deliveries, important decisions taken by Board etc. [Section 6(1) of the Securities Contracts (Regulation) Act, 1956].

(b) **Power of SEBI to ask for the information asked as stated above, over and above the periodic returns:** SEBI may by order in writing call for information or explanation relating to affairs of an Exchange or its member. [Section 6(3)(a) of the Act]

(c) **Period for which the Stock Exchange is required to maintain the books of accounts which may be inspected by SEBI:** Every Stock Exchange has to maintain books of accounts for a period of 5 years and these books may be inspected by SEBI at any point of time. [Section 6(2) of the Act]

(d) **Duty of the Stock Exchange and the persons dealing with the stock exchange with regard to the information sought for by SEBI:** Every Director, Manager, Secretary or officer of the Exchange; every member of such stock exchange; if the member of the stock exchange is a firm, every partner, manager, secretary or other officer of the firm and every

other person or body of persons who has had dealings in the course of business with any of the persons mentioned above whether directly or indirectly, is bound to provide information to Enquiry officer or SEBI representative who are looking into the affairs of the Exchange. [Section 6(4) of the Act].

15.Nov 2018 Qn no 1(b) 6 Marks:

Primex Securities (P) Ltd. is a Company involved in stock broking and is registered with SEBI. The said broking Company failed to:

- **Redress the grievances of the investors within the stipulated time.**
- **Segregate securities or money of clients and used the same for self use or for any other clients.**

The Securities and Exchange Board of India issued an Order against the said Company for committing the above offences. The Managing Director of the Company seeks your advice and the following under the provisions of the Securities Contract (Regulation) Act, 1956.

(v) **What is the penalty for the above offences?**

(vi) **Whether the offence committed by the stock broking company is compoundable? If so, by whom?**

Whether this offence can be compounded after institution of proceedings against the stock broking Company?

Answer:

The Managing Director of Primex Securities (P) Ltd. is advised that:

(i) (a) Broking company fails to redress the grievances of the investors within the stipulated time [Section 23C of the Securities Contract (Regulation) Act, 1956]: Fine of at least INR 1,00,000 but may extend to INR 1,00,000 per day during which such failure continues, subject to a maximum of INR 1 crore.

(b) Broking company fails to segregate securities or money of client and used the same for self-use or for any other clients [Section 23D of the Securities Contract (Regulation) Act, 1956: Penalty of at least INR 1,00,000 but it may extend to INR 1 crore.

(ii) **Composition of certain offences (Section 23N):** Any offence punishable under this Act, not being an offence punishable 'with imprisonment' only, or 'with imprisonment and also with fine' may either before or after the institution of any proceeding, be compounded by SAT or a court before which such proceedings are pending.

Hence, the offence committed bythe stock broking companyis compoundable by SAT or a Court.

(iii) Yes, this offence can be compounded after institution of proceedings against the stock broking companybut onlyby SAT or a Court before which suchproceedings are pending.

16.MTP Mar 2019 Qn no 4(a) 8 Marks

Mr. Z (Member of SEBI) due to his severe accident was in financial debt availed for his treatment. He was deranged and was in mental stress. This effected on the performance of his duties in a responsible manner. A group of complainants have alleged that Mr. Z is not normal in his behaviour and rendering of his services in office may be detrimental to the public interest and so should be removed from his office. Advise in the given situation, the tenability of maintenance of complaint against Mr. Z.

Answer:

Removal of Member of the SEBI (Section 6 of the Securities and Exchange Board of India Act, 1992)

According to section 6 of the Securities and Exchange Board of India Act, 1992, the Central Government shall have the power to remove a member appointed to the Board, if he:

(i) is, or at any time has been adjudicated as insolvent;

(ii) is of unsound mind and stands so declared by a competent court;

(iii) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude.

(iv) has, in the opinion of the Central Government so abused his position as to render his continuance in office detrimental to the public interest.

Before removing a member, he will be given a reasonable opportunity of being heard in the matter.

In the present case, a group of complainants have alleged that Mr. Z, is not normal in his behavior, and in rendering of his services in office. He was in a mental distress due financial debt owed for his treatment. This all may be unfavorable to the public interest and so should be removed from his office.

Here, above complainants may approach the Central Government for removal of Mr. Z, a member of the SEBI and if the Central Government is of the opinion that Mr. Z is not competent and was suffering from the mental and physical stress effecting as to rendering of his services/duties in a office as a member of the Board. The Central Government may remove Mr. Z from his office after giving him a reasonable opportunity of being heard in the matter only when Mr. Z is so declared of unsound mind by a competent court.

Since, in the given case the incompetency of Mr. Z is not so declared by the court, so complaint for removal of Mr. Z is not tenable.

17.MTP Apr 2019 Qn no 4(b) 4 Marks

SEBI has asked Jaipur Stock Exchange to furnish their books of accounts and audited financial statements for the period 1st April 2016 to 31st March 2018 within 30 days of the receipt of the communication by the stock exchange. The communication was received by the company on 30th April 2018 and no documents were furnished to SEBI in reply to the notice till 15th May 2018. Can the stock exchange be penalised for this inaction?

Answer

As per section 23A(a) of the Securities Contract (Regulation) Act, 1956, if any person fails to furnish any information, document, books, returns or report to a recognised stock exchange within the time specified in the listing agreement or conditions or bye-laws of the stock exchange, he shall punishable with a fine of at least one lakh rupees which may extend to one lakh rupees per day during which such failure continues, subject to a maximum of one crore rupees. Thus, Jaipur Stock Exchange shall be liable to the afore-mentioned penalty under section 23A(a) of the Act for its failure to submit the required documents to SEBI.

18.RTP Nov 2019 Qn no 18

Referring to the provisions of the Securities Contracts (Regulation) Act, 1956 state how a recognized stock exchange may delist the securities and how an appeal may be filed by an aggrieved investor against the decision of stock exchange for delisting of securities.

Answer

According to section 21A of the Securities Contracts (Regulation) Act, 1956 the delisting of securities may take place in the following manner:-

(1) A recognized stock exchange may delist the securities, after recording the reasons therefore, from any recognized stock exchange on any of the ground/s as may be prescribed under this Act.

Provided that the securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard,

(2) A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognized stock exchange delisting

(3) the securities within fifteen days from the date of the decision of the recognized stock exchange delisting the securities and the Provisions of section 22B to 22E of this Act, shall apply as far as may be, to such appeals.

(4) Provided that the Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding one month.

19.Nov 2019 Qn no 4(a) 4 Marks

X' Stock Exchange Limited was granted recognition by Securities and Exchange Board of India (SEBI). The stock brokers of the Stock Exchange did not pay much heed to the concept of governance and focused on increasing their wealth and snubbed the protection of investors. Their activities were against the interest of the trade and general public.

(i) **Examine whether the Central Government / SEBI has the power to withdraw the recognition granted to 'X' Stock Exchange Limited under the provisions of Securit ies Contracts (Regulations) Act, 1956?**

(ii) **Whether a person can be a member of an unrecognized Stock Exchange for the purpose of performing any contracts in Securities?**

Answer

Section 5(1) of the Securities Contracts (Regulations) Act, 1956 states that if the Central Government/ SEBI is of the opinion that the recognition granted to a stock exchange under the provisions of this Act, should, in the interest of the trade or in the public interest, be withdrawn, the Central Government or SEBI may serve on the governing body of the stock exchange, a written notice that the Central Government or SEBI is considering the withdrawal of the recognition for the reasons sta ted in the notice and after giving an opportunity to the governing body to be heard in the matter, the Central Government/SEBI may withdraw the recognition granted to the stock exchange.

Thus, Central Government/ SEBI can withdraw the recognition of 'X' Stock Exchange Limited on the grounds that their activities were against the interest of the trade and general public.

(ii) As per section 19 of the Securities Contracts (Regulations) Act, 1956, no person shall organise or assist in organising or be a member of any stock exchange (other than a recognised stock exchange) for the purpose of assisting in, entering into or performing any contracts in securities, except with the approval of Central Government or SEBI.

Hence, no person can be a member of an unrecognised Stock exchange for the purpose of performing any contracts in Securities, except with the approval of Central Government or SEBI.

20.MTP Nov 2019 Qn no 4 (a) (ii) 4 Marks

Mr. Vijay is having 400 shares of Travel Everywhere Limited and the current price of these shares in the market is Rs. 100. Vijay's goal is to sell these shares in 6 months' time. However, he is worried that the price of these shares could fall considerably, by then. At the sam e time, Vijay doesn't want to sell off these shares today, as he conjectured that the share price might appreciate in the near future. Determine how should Mr. Vijay protect his security and reduce the risk of loss on the share price under the Securities Contract (Regulation) Act, 1956?

Answer

In this case, Mr. Vijay may opt for 'Option' derivative contract, which is an agreement to buy or sell a set of assets at a specified time in the future for a specified amount. However, it is not obligatory for him to hold the terms of the agreement, since he has an 'option' to exercise the contract. For example, if the current market price of the share is Rs. 100 and he buy an option to sell the shares to Mr. X at Rs. 200 after three-month, so Vijay bought a put option.

Now, if after three months, the current price of the shares is Rs. 210, Mr. Vijay may opt not to sell the shares to Mr. X and instead sell them in the market, thus making a profit of Rs. 110. Had the market price of the shares after three months would have been Rs. 90, Mr. Vijay would have obliged the option contract and sold those shares to Mr. X, thus making a profit, even though the current market price was below the contracted price. Thus, here, the shares of Travel Everywhere Limited is the underlying asset and the option contract is a form of derivative.

21.RTP May 2020 Question no 18

PQR Ltd. is holding 30% of the paid up equity capital of Cochin Stock Exchange. The company appoints MNL Ltd. as its proxy who is not a member of the Cochin Stock Exchange, to attend and vote at the meeting of the stock exchange. Examine whether the Cochin Stock Exchange can restrict the appointment of MNL Ltd. as proxy for PQR L td. and further restrict, the voting rights of PQR Ltd. in the Cochin Stock Exchange.

Answer

Section 7(A) of the Securities (Contracts) Regulation Act, 1956 provides that a recognised stock exchange is empowered to amend rules to provide for all or any of the following matters:

(a) Restriction of voting right to members only.

(b) Regulation of voting rights by specifying that each member is entitled to

one vote only irrespective of number of shares held.

(c) Restriction on right of members to appoint proxy.

(d) such incidental, consequential and supplementary matters as may be necessary to give effect to any of the matters specified in clauses (*a*), (*b*) and (*c*).

As such Cochin Stock Exchange can restrict the appointment of MNL Ltd., as proxy, if rules of the exchange so provide. If it is not so provided, rules may be amended and after getting approval of the Central Government regarding amendment, it can restrict appointment of proxies.

Cochin Stock Exchange can also restrict the voting rights of PQR Ltd. if rules of the exchange so provide. If it is not so provided, rules maybe amended and after getting approval of Central Government regarding amendment, it can restrict the voting rights of PQR Ltd. on appointment of proxies.

22. **A company Cookies Private Limited has two shareholders, Mr. Rock and Mr. Salt. Mr. Rock decides to sell his part of shares in Cookies Private Limited to another company, Crispy Private Limited for a specified monetary consideration. How should Mr. Rock proceed to document the transaction so as to make it legally binding on both the parties?**

Answer

Such an understanding of transfer of the shares of Mr. Rock to Crispy Private Limited shall be recorded in SPA, which is a legally binding contract, and lists down all the terms and conditions which are relevant to the sale of shares, such as –

- the exact description of shares, i.e. the number of shares, price per share, premium amount, if any;
- the conditions that must be satisfied before the sale takes place;
- the date on which the sale will be completed;
- the manner in which the transfer will be made;
- any indemnities or protections available to the parties;
- the representations and warranties made by either party; and
- the conditions upon which the agreement will terminate.

Another document that is executed when a contract for shares and securities takes place, is the Share Holder Agreement ('SHA'), which basically is a supplementary document to SPA. However, this document is not necessary in all the cases. The agreement lists down the right and obligations of each shareholder on different matters like, the manner in which the shareholders can exit the company; the procedure for transfer of shares, the procedure of winding-up of the company in case of liquidation, the procedure to resolve a disparity between the shareholders, the day-to-day

operations of the company and the corresponding rights of the shareholders, and the composition of board of directors.

23. Mr. Vivaan is having 400 shares of M/s Travel Everywhere Limited and the current price of these shares in the market is INR 100. Vivaan's goal is to sell these shares in 6 months' time. However, he is worried that the price of these shares could fall considerably, by then. At the same time, Vivaan doesn't want to sell off these shares today, as he conjectured that the share price might appreciate in the near future. How should Mr. Vivaan protect his security and reduce the risk of loss on the share price?

Answer

In this case, Vivaan may opt for 'Option' derivative contract, which is an agreement to buy or sell a set of assets at a specified time in the future for a specified amount. However, it is not obligatory for him to hold the terms of the agreement, since he has an 'option' to exercise the contract. For example, if the current market price of the share is INR 100 and he buy an option to sell the shares to Mr. Rosesh at INR 200 after three-month, so Vivaan bought a put option.

Now, if after three months, the current price of the shares is INR 210, Mr. Vivaan may opt not to sell the shares to Mr. Rosesh and instead sell them in the market, thus making a profit of INR 110. Had the market price of the shares after three months would have been INR 90, Mr. Vivaan would have obliged the option contract and sold those shares to Rosesh, thus making a profit, even though the current market price was below the contracted price. Thus, here, the shares of Travel Everywhere is the underlying asset and the option contract is a form of derivative.

24. P Ltd. was holding 35% of the paid up equity capital of X Stock Exchange. The company appoints M Ltd. as its proxy who is not a member of the X Stock Exchange, to attend and vote at the meeting of the stock exchange. State the correct statement as to the appointment of M Ltd. as a proxy for P Ltd. and on the voting rights of P Ltd. in the X Stock Exchange:

(a) X Stock Exchange can restrict the appointment of M Ltd., as proxy, and voting rights of P Ltd. in the Stock Exchange.

(b) Central Government can restrict appointment of proxies and voting rights of P Ltd. in the X Stock Exchange.

(c) Both (a) & (b)

(d) X Stock Exchange can also restrict the voting rights of P Ltd. if rules of the exchange so provides. Otherwise can restrict the voting rights of P Ltd. & appointment of proxies through amendment in rules.

Answer: d) Hint: Section 7(A) of the Securities (Contracts) Regulation Act, 1956 provides that a recognised stock exchange is empowered to amend rules to provide for all or any of the following matters:

(i) Restriction of voting right to members only.

(ii) Regulation of voting rights by specifying that each member is entitled to one vote only irrespective of number of shares held.

(iii) Restriction on right of members to appoint proxy.

As such X Stock Exchange can restrict the appointment of M Ltd., as proxy, if rules of the exchange so provide. If it is not so provided, rules may be amended and after getting approval of the Central Government regarding amendment, it can restrict appointment of proxies.

X Stock Exchange can also restrict the voting rights of P Ltd. if rules of the exchange so provide. If it is not so provided, rules maybe amended and after getting approval of Central Government regarding amendment, it can restrict the voting rights of P Ltd. and appointment of proxies.

25. Which of the contracts in derivative are not legal:

(a) Contracts which are traded on a recognised stock exchange

(b) Contracts which are Settled on the clearing house of the recognised stock exchange in accordance with the rules and bye-laws of such stock exchange;

(c) Contracts which are recognized as per the notification issued by the Central Government

(d) Contracts which are between such parties and on such terms as the CG may, by notification in the Official Gazette, specify.

Answer: c) **Hint:** Contracts in Derivatives (Section 18A of SCRA, 1956)

26. SEBI ordered DSE, to produce their books of accounts and audited financial statements for the period 1st April 2016 to 31st March 2018 within 30 days of the receipt of the communication by the stock exchange. The communication was received by the company on 30th April 2018 and no documents were furnished to SEBI in reply to the notice till 15th May 2018. State the consequences of not supplying the said documents to SEBI:

a) Period of submission of said documents may be condoned on reasonable grounds.

b) Show cause notice may be served why DSE not be penalized for not submitting of the documents within the time limit.

c) DSE shall be punishable with a fine.

d) DSE shall be punishable with fine and imprisonment

Answer: c) **Hint:** As per section 23A(a) of the Securities Contract (Regulation) Act, 1956, if any person fails to furnish any information, document, books, returns or report to a recognised stock exchange within the time specified in the listing agreement or conditions or bye-laws of the stock exchange, he shall punishable with a fine of at least one lakh rupees which may extend to one lakh rupees per day during which such failure continues, subject to a maximum of one crore rupees. Thus, DSE shall be liable to the afore-mentioned penalty under section 23A(a) of the Act.

27. **Ms. Ashmita D'Souza recently graduated from National Law School, Bangalore and made her parents proud. While working on one of her assignments, she got really interested in knowing about the securities and gained expertise in the day-to-day working of financial markets. Meanwhile, her father got a wonderful opportunity at work to move to Germany and the whole family is very excited to make the move and settle there. Ashmita, along with her family applied for residence there and also gained the citizenship of Germany. She got married to a German, named Vincent, and they both came to India to start a career. After working with Ashmita on a couple of assignments, Vincent got interested to become a member of the Madras Stock Exchange, Chennai. Discuss, whether Vincent or Ashmita can become a member of the stock exchange, stating the provisions of Securities Contract Regulations in India.**

Answer: Rule 8 of the Securities Contract (Regulations) Rules, 1957 details the qualifications for becoming the member of a recognised stock exchange. In this regard, Rule 8(3) prescribes the persons that can be admitted as the members of the recognised stock exchange and mentions that no person who is a member at the time of application for recognition or subsequently admitted as a member if he ceases to be a citizen of India. Thus, Ashmita cannot become the member of the Chennai Stock Exchange since she ceased to be a citizen of India, as she has gained the citizenship of Germany.

In view of the facts given in the case study above, it is clear that Vincent is not a citizen of India. Therefore, as per Rule 8(1) of the Securities Contracts (Regulations) Rules, 2014, he cannot be elected as the member of the recognised stock exchange since he is not a citizen of India. However, the governing body of the Chennai Stock Exchange may take the prior approval of SEBI, in case they are interested in electing Vincent as a member of the stock exchange.

28. Shitiza has recently started her articleship with a reputed CA firm. Her first assignment involves understanding the working of stock exchange and the transactions related thereto. Since she is a part of your team, your manager has assigned you with the responsibility to make sure that Shubhangi is aware of the basic terms relating to securities market. In view of the Securities Contract (Regulation) Act, 1956, brief your teammate about the following terms -

a. **Option in securities**

b. **Spot delivery contracts**

c. **Ready delivery contract**

d. **Derivative**

Answer:

1. **Option in securities:** As per section 2(d) of the Securities Contract (Regulation) Act, 1956, option means a contract for the purchase or sale of a right to buy or sell, or a right to buy and sell, securities in future, and includes a teji, a mandi, a teji mandi, a galli, a put, a call or a put and a call in securities. Options are contracts, through which a seller giver the buyer, a right, but not the obligation, to buy or sell a specified number of shares at a pre-determined price, within a set time period. These contracts are essentially derivatives, since they derive their value from an underlying security on which the option is based. With options, one can tailor his position according to his own situation and stock market outlook.

(b) **Spot delivery contracts**: Section 2(i) of the Securities Contract (Regulations) Act, 1956 describe spot delivery contracts to mean a contract which provides for –

(i) Actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(ii) Transfer of securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository."

(c) **Ready delivery contract:** Section 2(ea) of the Securities Contract (Regulation) Act, 1956 state the meaning of ready delivery contracts to mean a contract which provides for the delivery of goods and the payment of a price therefor, either immediately, or within such period not exceeding eleven days after the date of the contract and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in respect of any goods, the period under such contract not being capable of extension by the mutual consent of the parties thereto or otherwise:

Provided that where any such contract is performed either wholly or in part:

(i) By realisation of any sum of money being the difference between the contract rate and the settlement rate or clearing rate or the rate of any offsetting contract; or

(ii) By any other means whatsoever, and as a result of which the actual tendering of the goods covered by the contract or payment of the full price therefor is dispensed with, then such contract shall not be deemed to be a ready delivery contract.

Ready Delivery Contracts are also known as 'cash trading' or 'cash transactions' which are either settled on the same date or within a short period, upto eleven days. Under this, most of the sale and purchase transactions which the contracting parties is settled by paying for the goods immediately and the delivery of the goods take place instantly.

(d) **Derivative:** As per Section 2(ac) of the Securities Contract (Regulation) Act, 1956, derivatives include –

(i) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for difference or any other form if security;

(ii) a contract which derives its value from the prices, or index of prices, of underlying securities.

(iii) Commodity derivatives;

(iv) Such other instruments as may be declared by the Central Government to be derivatives"

29. Upon complaints been received by SEBI, regarding the listed securities of Blue Rock Limited at the Guwahati Stock Exchange, SEBI has passed an order to delist the securities of the company from the said stock exchange. Blue Rock Limited is aggrieved by the order of the SEBI. Advise the company on the further step that the company can take against the order of SEBI to delist the securities.

Answer: As per the facts of the case given in the question above, the aggrieved company, i.e. Blue Rock Limited may appeal to the Securities Appellate Tribunal ('SAT') against the decision of SEBI within 45 days of date from which the order has been passed, unless further extension has been granted by SAT on reasonable grounds.

As per Section 23L, the Tribunal shall give an opportunity of being heard to the respondent and may pass the order confirming, modifying or setting aside the decision of SEBI.

SAT shall also send a copy of its order to every party to appeal and to the concerned adjudicating officer. Also, the company, Blue Rock Limited should be assured that a speedy decision shall be taken, since the Tribunal is required to dispose of every 6 months from the date of receipt of appeal.

30. What is the right of any person to receive the income from collective investment scheme?

Answer: Section 27A of the Securities Contract (Regulation) Act, 1956 sets out that It shall be lawful for the holder of any securities, being units or other instruments issued by the collective investment scheme, whose name appears on the books of the collective investment scheme.

issuing the said security to receive and retain any income in respect of units or other instruments issued by the collective investment scheme declared by the collective investment scheme in respect thereof for any year, notwithstanding that the said security, being units or other instruments issued by the collective investment scheme, has already been transferred by him for consideration, unless the transferee who claims the income in respect of units or other instruments issued by the collective investment scheme from the transfer or has lodged the security and all other documents relating to the transfer which may be required by the collective investment scheme with the collective investment scheme for being registered in his name within fifteen days of the date on which the income in respect of units or other instruments issued by the collective investment scheme became due.

31. SEBI has asked Jaipur Stock Exchange to furnish their books of accounts and audited financial statements for the period 1st April 2015 to 31st March 2017 within 30 days of the receipt of the communication by the stock exchange. The communication was received by the company on 30th April 2017 and no documents were furnished to SEBI in reply to the notice till 15th May 2017. Can the stock exchange be penalised for this inaction?

Answer

As per section 23A(a) of the Securities Contract (Regulation) Act, 1956, if any person fails to furnish any information, document, books, returns or report to a recognised stock exchange within the time specified in the listing agreement or conditions or bye-laws of the stock exchange or 17who furnishes false, incorrect or incomplete information, document, books, return or report, he shall punishable with a fine of at least one lakh rupees which may extend to one lakh rupees per day during which such failure continues, subject to a maximum of one crore rupees. Thus, Jaipur Stock Exchange shall not be liable to the afore-mentioned penalty under section 23A(a) of the Act.

32.RTP Nov'2020 Q no 19

According to Section 423 of the Companies Act, 2013, any person aggrieved by an order of the Appellate Tribunal may prefer an appeal to the Supreme Court.

Every appeal shall be filed within a period of 60 days from the date on which a copy of the order of the Appellate Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed.

Supreme Court may entertain an appeal even after the expiry of the said period of 60 days from the date aforesaid, but within a further period not exceeding 60 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within period.

In above case, since Mr. Rama even aggrieved by an order of Appellate Tribunal desires to fill an application before Supreme Court on 30th October 2020. But as Supreme Court can entertain appeal only upto 60 days + 60 Days (Extension if sufficient cause). Since this appeal was to be filled beyond 120 days by Mr. Rama, so, appeal to be filed before the Supreme Court will not be admissible.

Answer

Section 5(1) of the Securities Contracts (Regulations) Act, 1956 states that if the Central Government/ SEBI is of the opinion that the recognition granted to a stock exchange under the provisions of this Act, should, in the interest of the trade or in the public interest, be withdrawn, the Central Government or SEBI may serve on the governing body of the stock exchange, a written notice that the Central Government or SEBI is considering the withdrawal of the recognition for the reasons stated in the notice and after giving an opportunity to the governing body to be heard in the matter, the Central Government/SEBI may withdraw the recognition granted to the stock exchange.

Thus, Central Government or SEBI can withdraw the recognition of 'X' Stock Exchange Limited on the grounds that their activities were against the interest of the trade and general public.

As per section 19 of the Securities Contracts (Regulations) Act, 1956, no person shall organise or assist in organising or be a member of any stock exchange (other than a recognised stock exchange) for the purpose of assisting in , entering into or performing any contracts in securities, except with the approval of Central Government or SEBI.

Hence, no person can be a member of an unrecognised Stock exchange for the purpose of performing any contracts in Securities, except with the approval of Central Government or SEBI.

Chapter 2 – The securities Exchange Board of India Act,1992 and SEBI (LODR) Regulations 2015

Multiple Choice Questions

1.MTP Mar 2019 QN no 9

Mr. KG filed a complaint against Mr. P alleging that Mr. P has communicated unpublished price sensitive information to Mr. X. Mr. P took a plea that Mr. X requested him for such information and it was done bonafidely. State the correct statement as to the liability of Mr. P in the given situation-

(a) Mr. P will not be liable as he communicated about unpublished price sensitive information on the request of Mr. X

(b) Mr. P will not be liable as he communicated about unpublished price sensitive information to Mr. X in the ordinary cause of business

(c) Mr. P will not be liable as he communicated about unpublished price sensitive information to Mr. X as it was done without any malafide intention.

(d) Mr. P will be liable as he communicated about unpublished price sensitive information to Mr. X, whether with or without his request for such information.

Answer: Option D

2.MTP Mar 2019 QN no 10

P Ltd. was holding 35% of the paid up equity capital of X Stock Exchange. The company appoints M Ltd. as its proxy who is not a member of the X Stock Exchange, to attend and vote at the meeting of the stock exchange. State the correct statement as to the appointment of M Ltd. as a proxy for P Ltd. and on the voting rights of P Ltd. in the X Stock Exchange:

(a) X Stock Exchange can restrict the appointment of M Ltd., as proxy, and voting rights of P Ltd. in the Stock Exchange.

(b) Central Government can restrict appointment of proxies and voting rights of P Ltd. in the X Stock Exchange.

(c) Both (a) & (b)

(d) X Stock Exchange can restrict the appointment of M Ltd. & also voting rights of P Ltd. if rules of the exchange so provides. Otherwise can restrict the voting rights of P Ltd. & appointment of proxies through amendment in rules.

Answer: Option D

3.MTP Mar 2019 QN no 13

Mr. Ingenious, registered as an Intermediary, fails to enter into an agreement with his client and hence penalised by SEBI under the SEBI Act. Advise Mr. Ingenious as to what remedies are available to him against the order of SEBI.

(a) He may be given extension on the basis of the reasonable ground for not entering into an agreement with his client

(b) he shall be liable to a penalty for not entering into an agreement with his client which is required under this Act.

(c) he shall be liable for imprisonment for not entering into an agreement with his client which is required under this Act.

(d) Both (b) & (c)

Answer: Option B

4.MTP Mar 2019 Qn no 15

SEBI ordered Delhi Stock Exchange (DSE), to produce their books of accounts and audited financial statements for the period 1st April 2016 to 31st March 2018 within 30 days of the receipt of the communication by the stock exchange. The communication was received by the company on 30 th April 2018 and no documents were furnished to SEBI in reply to the notice till 15 th May 2018. State the consequences of not supplying the said documents to SEBI:

(a) Period of submission of said documents may be condoned on reasonable grounds

(b) Show cause notice may be served why DSE not be penalized for non-submitting of the documents within the time limit.

(c) DSE shall punishable with a fine only

(d) DSE shall be punishable with fine and imprisonment both

Answer: Option C

Descriptive Questions

5.RTP May 2018 Qn no 14

(i) On completion of 60 years of age as on 31st March 2014, Mr. Jain retired as Professor from a university. From 1st April 2014, he was appointed as Chairman of the Securities and Exchange Board of India for a period of three years. Under the, provisions of the Securities and Exchange Board of India Act, 1992, decide whether he can be re- appointed on the same post after expiry of the original tenure? Also discuss whether it could be possible for him to relinquish the office before expiry of his tenure?

(ii) List the quarterly compliances for a listed entity under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015?

Answer

(i) Appointment of Chairman: As per Section 5 of the SEBI Act, 1992 and the rules prescribed under the SEBI Act, 1992, the Chairman may hold office for a period of three years subject to the maximum age limit of 65 years and can be re-appointed by the Central Government.

Also, as **per Section 4(5)** of the Act, the Chairman shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to securities market or have special knowledge or experience of law; finance; economics, accountancy, administration or in any other discipline which, in the opinion of the Central Government, shall be useful to the Board.

In the instant case, Mr. Jain retired as professor from a university on completion of 60 years of age as on 31st March, 2014 appointed as Chairman of SEBI from 1st April, 2014 for a period of 3 years.

This appointment is valid as on the date of appointment, he is of 60 years of age and he, as a retired professor, is a person of ability, integrity and standing and have special knowledge or experience of law; finance; economics, accountancy, administration or in any other discipline.

If Mr. Jain is reappointed as a chairman after expiry of the original tenure of 3 years, he can be re-appointed but only upto 65 years of age i.e. upto 31st March, 2019 (i.e. only for two years).

Right to Relinquish the office: The Chairman shall equally have the right to relinquish office at any time before the expiry of their tenure by giving a notice of three months in writing or salary and allowances in lieu thereof to the Central Government.

Quarterly compliances– Listed Entity

A Listed company has to comply with the following quarterly compliances under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 :

1. Regulation 13(3):- Grievance Redressal Mechanism

The listed entity shall file with the recognized stock exchange(s) on a quarterly basis, within 21 days from the end of each quarter, a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter.

2. Regulation 27(2):- Other Corporate Governance Requirements

A listed entity shall submit quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognized stock exchange(s), within 15 days from close of quarter.

3. Regulation 31(1): Holding of Specified Securities and Shareholding Pattern.

A listed entity shall submit a statement showing holding of securities and shareholding pattern separately for each class of securities:-

(a) One day prior to listing of its securities on the stock exchange(s);

(b) On a quarterly basis, within 21 days from the end of each quarter; and,

(c) Within 10 days of any capital restructuring of the listed entity resulting in a change exceeding 2 % per cent of the total paid-up share capital.

4. Regulation 33(3): Financial Results

The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within 45 days of end of each quarter, other than the last quarter.

5. Regulation 32(1): Statement of Deviation(S) Or Variation(S)

A listed entity shall submit to the stock exchange the following statement(s) on a quarterly basis for public issue, rights issue, preferential issue etc. -

(a) indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable;

(b) indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilization of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilization of funds.

6.March 2018 Qn no 4(b) 6 Marks:

Mr. Moral, a member of SEBI was engaged in conducting of inquiries and Audit of various stock exchanges. A group of complainants suspected that Mr. Moral, have taken bribe in the conduct of inquiries and Audit of stock exchanges. Therefore, he should be removed from his office. Examine with reference to the SEBI Act the rationality of the complainants on removal of Mr. Moral as per the SEBI Act, 1992.

Answer:

Removal of Member of the SEBI (Section 6 of the Securities and Exchange Board of India Act, 1992)

According to section 6 of the Securities and Exchange Board of India Act, 1992, the Central Government shall have the power to remove a member appointed to the Board, if he:

(i) is, or at any time has been adjudicated as insolvent;

(ii) is of unsound mind and stands so declared by a competent court;

(iii) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude.

(iv) has, in the opinion of the Central Government so abused his position as to render his continuance in office detrimental to the public interest.

Before removing a member, he will be given a reasonable opportunity of being heard in the matter.

In the present case, a group of complainants have alleged that Mr. Moral, a member of the SEBI has a taken up bribe in the inquiries and audit of the stock exchanges that came up before the Board and he misused his position and committed an offence involved a moral turpitude. Therefore, he should be removed from his office.

The Central Government may remove Mr. Moral from his office after giving him a reasonable opportunity of being heard in the matter.

7.March 2018 Qn no 3(c) 3 Marks:

PQR Ltd., is a listed entity with its subsidiary, Twig Ltd. State the Corporate Governance requirements with respect to the subsidiary of Listed Entity as per the SEBI (LODR) Regulations, 2015.

Answer:

Regulation 24: Corporate Governance Requirements with respect to Subsidiary of Listed Entity.

The Board: Atleast one Independent Director on Board shall be a Director on Board of Unlisted Material Subsidiary. The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary.

A listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than **50 %** or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal.

Selling, disposing and leasing of assets amounting to more than **20%** of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the

sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal

8.Aug 2018 Qn no 3(c) 3 Marks:

List the common obligations of listed entities assigned under the SEBI (LODR) Regulations, 2015.

Answer:

A responsibility has been cast upon Key Managerial Personnel (KMP'S), Directors, and Promoters that they shall comply with responsibilities or obligations assigned to them under the SEBI (LODR) Regulations, 2015.

The following are the common obligations on Listed entities:-

Regulation 6: Compliance Officer And his Obligations

A listed entity shall appoint a qualified Company Secretary as the Compliance Officer. The Compliance officer so appointed shall be responsible for ensuring conformity with regulatory compliance, co-ordination and reporting to the Board, ensuring that correct procedures have been followed that would result in correctness of information filed by listed entity under the regulations and monitoring email address of grievance redressal division.

Regulation 7: Share Transfer Agent

The listed entity shall appoint a share transfer agent or manage the share transfer facility in house.

9.Nov 2018 Qn no 4(b) 6 Marks:

Mr. Ravi failed to pay the penalty imposed by the Adjudicating Officer for an offence committed under Securities and Exchange Board of India Act, 1992. After the penalty has become due, Mr. Ravi, otherwise than for adequate consideration, transferred his residential property to his sister and the fixed deposits with Banks in favour of his minor son. The minor son has become major and deposits continue to be held by his son.

With reference to the provisions of SEBI Act, 1992 discuss,

(i) **Whether the residential property and fixed deposits with Banks can be attached by the Recovery Officer for the purpose of recovering the penalty?**

Whether the Recovery Officer can seek assistance of local district administration for attaching the property?

Answer:

(a) As per requirement of section 28A of the Securities and Exchange Board of India Act, 1992, if a person fails to pay the penalty imposed by the adjudicating officer, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person and shall proceed to recover from such person the amount specified in the certificate by modes specified in the said section.

As per the explanation, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

Further, Section 28A states that the Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising his powers.

In the light of the provisions enumerated above and facts of the question,

(i) The residential property shall not be attached by the Recovery Officer for the purpose of recovering the penalty, as it has been transferred by Mr. Ravi to his sister and said transfer has not been covered in the section.

The Fixed deposits with Bank that have transferred by Mr. Ravi in favour his minor son can be attached by the Recovery Officer for the purpose of recovering the penalty. Further, these Fixed deposits can even after the date of attainment of majority by such minor son, continue to be included in Mr. Ravi's monies held in bank accounts for recovering any amount due from him under this Act.

(iii) Yes, the Recovery Officer can seek assistance of local district administration for attaching the property.

10.Oct 2018 Qn no 1(b) 6 Marks:

Mr. X files a complaint against Mr. P, Chief Executive Officer of the Company before SEBI. After enquiry SEBI finds that Mr. P. Mehta, on the basis of unpublished price sensitive information, has indulged in the trading of the securities of that company. Explain, on the basis of the said finding, what action SEBI can take against Mr. P. Mehta under the Securities and Exchange Board of India Act, 1992

Answer:

Section 15G of the Securities and Exchange Board of India (SEBI) Act, 1992 deals with penalty fo r Insider Trading. According to this, if any insider

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate on any stock exchange on the basis of any unpublished price sensitive information; or

(ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary cause of business or under any law, or

(iii) counsels or procures for, any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information,

shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher. As such SEBI can, after following the prescribed procedure, impose a penalty on Mr. P. The maximum penalty that SEBI can impose is Rupees twenty-five crores or three times the amount of profits made out of insider trading, whichever is higher.

11.Oct 2018 Qn no 4(b) 6 Marks:

Mr. R, an investor is not satisfied with the dealings of his stock broker who is registered with Chennai Stock Exchange. Mr. R approaches you to guide him regarding the avenues available to him for making a complaint against the stock broker under Securities and Exchange Board of India Act, 1992 and also the grounds on which such complaint can be made. You are required to briefly explain the answer to his queries.

Answer:

(i) Securities and Exchange Board of India (SEBI) was established for regulating the various aspects of stock market. One of its functions is to register and regulate the stock brokers. In the light of this, Mr. R is advised that the complaint against the erring stock broker may be submitted to SEBI.

The grounds on which or the defaults for which complaints may be made to SEBI are as follows:

(a) Any failure on the part of the stock broker to issue contract notes in the form and manner specified by the stock exchange of which the stock broker is a member.

(b) Any failure to deliver any security or any failure to make payment of the amount due to the investor in the manner within the period specified in the regulations.

(c) Any collection of charges by way of brokerage which is in excess of the brokerage specified in the regulations.

12.RTP Nov-18:

State the types and functions of the various committees constituted under the SEBI(LODR) Regulations, 2015?

Answer:

Audit Committee:

Every listed entity shall constitute a qualified and independent audit committee which shall have:

(a) The audit committee shall have minimum three directors as members.

(b) Two-thirds of the members of audit committee shall be independent directors.

(c) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

(d) The chairperson of the audit committee shall be an Independent Director and he shall be present at Annual general meeting to answer shareholder queries.

(e) The Company Secretary shall act as the secretary to the audit committee.

(f) The audit committee at its discretion shall invite the finance director or head of the finance function, head of internal audit and a representative of the statutory

auditor and any other such executives to be present at the meetings of the committee.

Meetings of Audit Committee:

(a) The audit committee shall meet at least four times in a year and not more than 120 days shall elapse between two meetings.

(b) The Quorum for audit committee meeting shall either be two members or one third of the members of the audit committee, whichever is greater, with at least 2 Independent directors.

(c) The audit committee shall have powers to investigate any activity within its terms of reference, seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.

Nomination and Remuneration Committee:

The Board of directors shall constitute the nomination and remuneration committee as follows:

- The committee shall comprise of at least 3 directors;
- All directors of the committee shall be Non-Executive Directors; and
- At least 50 percent of the directors shall be independent directors.

The Chairperson of the nomination and remuneration committee shall be an independent director. The chairperson of the listed entity, whether executive or non-executive, may be appointed as a member of the Nomination and Remuneration Committee and shall not chair such Committee.

Stakeholders Relationship Committee:

The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the mechanism of redressal of grievances of shareholders, debenture holders and other security holders.

- The Chairperson of this committee shall be a Non-Executive director.
- The Board of Directors shall decide other members of this committee.

Risk Management Committee

- The Board of directors shall constitute a Risk Management Committee.
- The majority of members of Risk Management Committee shall consist of members of the board of directors.
- The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.
- The Board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit.
- The provisions of this regulation regarding risk management committee shall be applicable to top 100 listed entities, determined on the basis of market capitalization, as at the end of the immediate previous financial year.

13.MTP Apr 2019 Qn no 4(a) 4 Marks

Mr. Kumar filed a complaint against Mr. P alleging that Mr. P has communicated unpublished price sensitive information to Mr. X. Mr. P took a plea that Mr. X requested him for such information and it was done bonafidely. Examine the liability of Mr. P in the given situation in the light of the Securities and Exchange Board of India (SEBI) Act, 1992.

Answer

Section 15G of the Securities and Exchange Board of India (SEBI) Act, 1992 deals with penalty for Insider Trading. According to this, if any insider

(a) either on his own behalf or on behalf of any other person, deals in securities of a body corporate on any stock exchange on the basis of any unpublished price sensitive information; or

(b) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary cause of business or under any law, or

(c) counsels or procures for, any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information,

Accordingly, Mr. P, is an insider as he communicated unpublished price sensitive information to Mr. X on his request, therefore he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

14.RTP May 2019 QN no 16

(i) Securities and Exchange Board of India (SEBI) has undertaken inspection of books of accounts and records of LR Ltd., a listed public company. Specify the measures which may be taken by SEBI under the Securities and Exchange Board of India Act, 1992 to protect the interest of investors and securities market, on completion of such inquiry.

Answer

(i) As per section 11 (4) of the Securities and Exchange Board of India Act, 1992, the Board may, by an order, for reasons to be recorded in writing, in the interest of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

1. suspend the trading of any security in a recognised stock exchange;
2. restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

3. suspend any office-bearer of any stock exchange or self-regulatory organization from holding such position;
4. impound and retain the proceeds or securities in respect of any transaction which is under investigation;
5. attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached.

6. direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation.

15.RTP May 2019 Qn no 16(ii)

Upon complaints been received by SEBI, regarding the listed securities of Blue Rock Limited at the Guwahati Stock Exchange, SEBI has passed an order to delist the securities of the company from the said stock exchange. Blue Rock Limited is

aggrieved by the order of the SEBI. Advise the company on the further step that the company can take against the order of SEBI to delist the securities.

Answer

As per the facts of the case given in the question above, the aggrieved company, i.e. Blue Rock Limited may appeal to the Securities Appellate Tribunal ('SAT') against the decision of SEBI within 45 days of date from which the order has been passed, unless further extension has been granted by SAT on reasonable grounds.

As per Section 23L, the Tribunal shall give an opportunity of being heard to the respondent and may pass the order confirming, modifying or setting aside the decision of SEBI.

SAT shall also send a copy of its order to every party to appeal and to the concerned adjudicating officer. Also, the company, Blue Rock Limited should be assured that a speedy decision shall be taken, since the Tribunal is required to dispose of in every 6 months from the date of receipt of appeal.

16.Mr. Zubin (Member of SEBI) was adjudged as an insolvent by the Adjudicating authority. As of that, a group of complainants have alleged that Mr. Zubin while rendering of his services in office may be biased in the performance of his duties. Working in such a state of position by him, may be detrimental to the public interest and so should be removed from his office. Advise in the given situation, the tenability of maintenance of complaint against Mr. Zubin.

Answer

Removal of Member of the SEBI (Section 6 of the Securities and Exchange Board of India Act, 1992)

According to section 6 of the Securities and Exchange Board of India Act, 1992, the Central Government shall have the power to remove a member appointed to the Board, if he:

(i) is, or at any time has been adjudicated as insolvent;

(ii) is of unsound mind and stands so declared by a competent court;

(iii) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude.

(iv) has, in the opinion of the Central Government so abused his position as to render his continuance in office detrimental to the public interest.

Before removing a member, he will be given a reasonable opportunity of being heard in the matter. In the present case, a group of complainants have alleged that Mr. Zubin, a member of the SEBI is being adjudicated as an insolvent. His state of position may effect on rendering of his services in a biased manner. This may be unfavorable to the public interest and so should be removed from his office.

Here, above complainants may approach the Central Government for removal of Mr. Zubin, and if the Central Government is of the opinion that Mr. Zubin was not competent in rendering of his services/duties in a office as a member of the Board. The Central Government may remove Mr. Zubin from his office in compliance with the said provision.

17.Nov 2019 Qn no 4(b) 4 Marks

The composition of Audit Committee of M/s MKBTC Limited, an unlisted Public Company, as on 31-3-2019 comprised of 7 Directors including 4 Independent Directors. The majority of the members of the Audit Committee has the ability to read and understand the financial statements but none of them has accounting or related financial management expertise. The Company listed its Securities in a recognized Stock Exchange in the month of August 2019. Referring to the regulations of Securities and Exchange Board of India [Listing Obligations and Disclosure Requirements] Regulations 2015, decide whether the existing

Audit Committee can continue after listing of its Securities?

Answer

Audit Committee: According to Regulation 18 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, every listed entity shall constitute a qualified and independent audit committee which shall have:

(a) Minimum three directors as members.

(b) Two-thirds of the members of audit committee shall be independent directors.

(c) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

As per the facts of the question, M/s MKBTC Limited, listed its securities in a recognised stock exchange in the month of August, 2019. In order to comply with the requirements of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the company requires to do the following:

(i) The audit committee of M/s MKBTC Limited already has 7 directors as members, which is in compliance.

(ii) The audit committee has 4 directors as independent directors. However, once the company gets listed, at least 5 [7*(2/3)] directors shall be independent directors. Thus, they need to change the composition of audit committee once the company gets listed on stock exchange.

(iii) In the existing audit committee though majority of the members have the ability to read and understand the financial statement but none of them has accounting or related financial management expertise.

However, once the company gets listed it is required that all members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise. Hence, it is required that the company should appoint at least one member in the audit committee who shall have accounting or related financial management expertise.

In view of above, the existing audit committee cannot continue after listing of its securities.

18.MTP Nov 2019

PQR Ltd., is a listed entity with its subsidiary, Twig Ltd. State the Corporate Governance requirements with respect to the subsidiary of Listed Entity as per the SEBI (LODR) Regulations, 2015.

Answer

Regulation 24: Corporate Governance Requirements with respect to Subsidiary of Listed Entity.

The Board: Atleast one Independent Director on Board shall be a Director on Board of Unlisted Material Subsidiary. The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary.

A listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than **50 %** or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal or under a resolution plan duly approved under section 31 of the IBC and such an event is disclosed to the recognised stock exchange within one day of the resolution plan being approved.

Selling, disposing and leasing of assets amounting to more than 20% of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal/ duly approved resolution plan.

19.RTP May 2020 Question no.16

SEBI on an complaint of Mr. KG enquires that Mr. Mehta, a Chief Executive Officer of the X Company, on the basis of unpublished price sensitive information, has been indulged in the trading of the securities of that company. Examine, on the basis of the said finding, what action SEBI can take against Mr. Mehta under the Securities and Exchange Board of India Act, 1992.

Answer

Section 15G of the Securities and Exchange Board of India (SEBI) Act, 1992 deals with penalty for Insider Trading. According to this, if any insider

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate on any stock exchange on the basis of any unpublished price sensitive information; or

(ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary cause of business or under any law, or

(iii) counsels or procures for, any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information,

shall be liable to a penalty of minimum ` 10 lacs which may extend upto twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher. As such SEBI can, after following the prescribed procedure, impose a penalty on Mr. Mehta. The maximum penalty that SEBI can impose is Rupees twenty-five crores or three times the amount of profits made out of insider trading, whichever is higher.

Study Material

20. Number of independent directors in Audit committee-

(a) one-third of the members of audit committee.

(b) Two-thirds of the members of audit committee shall be independent directors.

(c) minimum 2

(d) minimum 3

Answer: b) **Hint:** As per SEBI (LODR) Regulations, two-thirds of the members of audit committee shall be independent directors.

21. For how much capital restructuring, the listed entitiy shall submit a statement showing holding of securities and shareholding pattern with the stock exchange:

a) **resulting in a change exceeding 1% of the total paid-up share capital**

b) **resulting in a change exceeding 2% of the total paid-up share capital**

c) **resulting in a change exceeding 2.5% of the total paid-up share capital**

d) **resulting in a change exceeding 2% of the total issued share capital**

Answer: b) **Hint:** As per SEBI (LODR) Regulations, a listed entity shall submit a statement showing holding of securities and shareholding pattern separately for each class of securities:-

(a) One day prior to listing of its securities on the stock exchange(s);

(b) On a quarterly basis, within 21 days from the end of each quarter; and,

Within 10 days of any capital restructuring of the listed entity resulting in a change exceeding 2 % per cent of the total paid-up share capital

22. SEBI has imposed a penalty on Hotel Leel Ventures Ltd. for violation of Takeover Code. The directors of Management is seeking your advice to apprise them with the time period for filling an appeal with SAT and Supreme Court? Suggest what will be the time period for filing appeal with SAT and Supreme Court?

a) **In case of filing appeal with SAT: Within 45 days from the date of order of the copy made by SEBI or adjudicating officer and in case of filing appeal with Supreme Court: Within 60 days from the date of communication of the decision or order of SAT.**

b) **In case of filing appeal with SAT: Within 60 days from the date of order of the copy made by SEBI or adjudicating officer and in case of filing appeal with Supreme Court: Within 60 days from the date of communication of the decision or order of SAT.**

c) **In case of filing appeal with SAT: Within 30 days from the date of order of the copy made by SEBI or adjudicating officer and in case of filing appeal with Supreme Court: Within 60 days from the date of communication of the decision or order of SAT.**

d) **In case of filing appeal with SAT: Within 60 days from the date of order of the copy made by SEBI or adjudicating officer and in case of filing appeal with Supreme Court: Within 45 days from the date of communication of the decision or order of SAT**

Answer: a) **Hint:** Section 15T and 15Z of SEBI Act, 1992

23. Suppose SEBI has constituted its board as per requirements of section 4 of SEBI Act, 1992 with 3 whole time members under Section 4(1)(d) of the SEBI Act, 1992, but one of them resigned and to refill his post, it took 1 month. Examine acts done in between the vacancy period, as per SEBI Act 1992.

a) **All acts become void ab-initio as per section 8 of the SEBI Act, 1992.**

b) **Only financial acts are void ab initio as per section 8 of the SEBI Act, 1992.**

c) **All acts are valid as per section 8 of the SEBI Act, 1992.**

d) **All acts should be rectified after composition of proper board as per section 8 of the SEBI Act, 1992.**

Answer: c) **Hint:** Section 8 of SEBI Act, 1992

24. ABC & Co., Chartered Accountants, is a partnership firm, who is auditor of one of the listed company Z ltd. for the financial year 2018-19. Mr. B is engaging partner of that audit with a team of 15 members. While doing audit of the financial statement of the company, two members of the team, who are chartered accountant, passed the information to their friends and relatives that this year company's profit is increasing by 25% as compared to last audited financial year, before this information came in to public domain through the company. They made profit from this information by purchase at low price and after financial statements came in public domain and share prices raised, they sold shares at enhanced price.

Please state whether it is a case of insider trading. If yes, then how much penalty for this act, under SEBI Act, 1992.

a) **No, it is not insider trading, because that these persons are not restricted to use the information to benefit themselves.**

b) **No, it is not insider trading, because it is not price sensitive information.**

c) **Yes, it is insider trading and penalty u/s 15G would be minimum Rs. 10 lacs which may extend upto Rs. 25 cr. or 3 times of profit derived, whichever is higher.**

d) **Yes, it is insider trading and penalty u/s 12A would be Rs. 25 cr. or 3 times of profit derived, whichever is lower.**

Answer: c) **Hint:** Section 15G of the SEBI Act, 1992

25. A ltd., a listed company, wants to revise the rate of interest of its existing 12% bond by 1%i.e. 13% bond from 14th August 2019, the said proposal is to be laid before board meeting to be held on 14th July 2019. Upto which of the following date, A Ltd. has to intimate to stock exchange as per regulation 29 of SEBI (LODR), 2015:

(a) **3rd July 2019.**

(b) **3rd August 2019.**

(c) **5th July 2019.**

(d) **5th August 2019**.

Answer: a) **Hint:** Regulation 29

26. A group of complainants have alleged that Mr. Z, a Member of the Securities and Exchange Board of India (SEBI) has pecuniary interest in some of the cases that came up before the Board and that he misused his position and therefore, he should be removed from his office. The complainants seek your advice. Advise

Answer

Removal of Member of the SEBI (Section 6 of the Securities and Exchange Board of India Act, 1992)

According to section 6 of the Securities and Exchange Board of India Act, 1992, the Central Government shall have the power to remove a member appointed to the Board, if he:

(i) is, or at any time has been adjudicated as insolvent;

(ii) is of unsound mind and stands so declared by a competent court;

(iii) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude.

(iv) has, in the opinion of the Central Government so abused his position as to render his continuance in office detrimental to the public interest.

Before removing a member, he will be given a reasonable opportunity of being heard in the matter.

In the present case, a group of complainants have alleged that Mr. Z, a member of the SEBI has pecuniary interest in some of the cases that came up before the Board and he misused his position and therefore, he should be removed from his office.

Here, above complainants may approach the Central Government for removal of Mr. Z, a member of the SEBI and if the Central Government is of the opinion that Mr. Z has so abused his position as to render his continuation in office detrimental to the public interest, the Central Government may remove Mr. Z from his office after giving him a reasonable opportunity of being heard in the matter

27. SEBI received complaints from some investors alleging that ABC Ltd. and some brokers are indulging in price manipulation in the shares of ABC Ltd. Explain the powers that can be exercised by SEBI under the Securities and Exchange Board of India Act, 1992 in case the allegations are found to be correct.

Answer

Price manipulation in the shares of ABC Ltd. can be considered as fraudulent and unfair trade practices relating to securities market. In this case SEBI may exercise the following powers under section 11(4) of securities and Exchange Board of India Act, 1992.

(i) Suspend the trading of any security (in this case the securities of ABC Ltd.) in a recognized stock exchange.

(ii) Restrain persons (in this case ABC Ltd.) from accessing the securities market. It can also prohibit any person associated with securities market (i.e. brokers who have indulged in price manipulation) to buy, sell or deal in securities market.

SEBI may issue the above orders for reasons to be recorded in writing. SEBI shall, either before or after passing such orders give an opportunity of hearing to company and brokers concerned (proviso 2 to Section 11(4)) SEBI may also appoint an adjudicating officer who may levy penalty under section 15 HA after holding an enquiry in the prescribed manner. According to section 15HA if any person indulges in

fraudulent and unfair trade practices relating to securities, he shall be leviable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Prohibition on manipulation and deceptive practices: Further according to section 12A, no person shall directly or indirectly indulge in following (i.e.) (a) using in manipulative or deceptive device in connection with purchase, sale or securities listed (b) Employ any scheme or device to defraud in connection with dealing in securities which are listed (c) engage in an act which would operate as fraud or deceit upon any person in connection with dealing in securities which are listed. SEBI may impose penalty which shall not be less than one lakh rupees but which may extend to one crore rupees. (Section 15 HB).

28. Clever who is registered as an Intermediary fails to enter into an agreement with his client and hence penalised by SEBI under section 15B of the SEBI Act. Advise Mr. Clever as to what remedies are available to him against the order of SEBI.

Answer

Remedies against SEBI order: Section 15B of the Securities and Exchange Board of India Act, 1992 lays down that if any person, who is registered as an intermediary and is required under this Act or any rules or regulations made there under, to enterr into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Mr. Clever has been penalised under the above mentioned provision. Two remedies are available to Mr. Clever in this matter:-

(i) Appeal to the Securities Appellate Tribunal: Section 15T of the SEBI Act, (1) any person aggrieved,—

(a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or

(b) by an order made by an adjudicating officer under this Act; or

(c) by an order of the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order made by the Board or the Adjudicating Officer or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be, is received by him and it shall be in such form and be accompanied by such fee as may be prescribed :

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

The Securities Appellate Tribunal shall send a copy of every order made by it to the Board, or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be the parties to the appeal and to the concerned Adjudicating Officer.

The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

(ii) **Appeal to the Supreme Court**: Section 15Z of the SEBI Act, 1992 provides that any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order to him on any question of fact or law arising out of such order. The Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

29. A group of investors are upset with the functioning of two leading stock brokers of Calcutta Stock Exchange and want to make a complaint to SEBI for intervention and redressal of their grievances. Explain briefly the purpose of establishing SEBI and what type of defaults by the stock brokers come within the purview of SEBI Act, 1992.

Answer

The Securities and Exchange Board of India (SEBI) was established primarily for the purpose of

1. to protect the interests of investors in securities
2. to promote the development of securities market
3. to regulate the securities market and
4. For matters connected therewith and incidental thereto.

The following defaults by stock brokers come within the purview of SEBI Act:

(a) Any failure on the part of the stock broker to issue contract notes in the form and in the manner specified by the Stock Exchange.

(b) Any failure on the part of the broker to deliver any security or to make payment of

the amount due to the investor in the manner or within the period specified in the regulations.

(c) Any collection of charges by way of brokerage in excess of the brokerage as specified in the regulations. (Section 15 F, SEBI Act, 1992)

30. Mr. Raman, an investor is not satisfied with the dealings of his stock broker who is registered with Delhi Stock Exchange. Mr. Raman approaches you to guide him regarding the avenues available to him for making a complaint against the stock broker under Securities and Exchange Board of India Act, 1992 and also the grounds on which such complaint can be made. You are required to briefly explain the answer to his queries.

Answer

Securities and Exchange Board of India (SEBI) was established for regulating the various aspects of stock market. One of its functions is to register and regulate the stock brokers. In the light of this, Mr. Raman is advised that the complaint against the erring stock broker may be submitted to SEBI.

The grounds on which or the defaults for which complaints may be made to SEBI are as follows:

(a) Any failure on the part of the stock broker to issue contract notes in the form and manner specified by the stock exchange of which the stock broker is a member.

(b) Any failure to deliver any security or any failure to make payment of the amount due to the investor in the manner within the period specified in the regulations.

(c) Any collection of charges by way of brokerage which is in excess of the brokerage specified in the regulations.

31. On the complaint of Mr. Kamlesh Gupta, after enquiry SEBI finds that Mr. P. Mehta a Chief Executive Officer of the Company, on the basis of unpublished price sensitive information, has indulged in the trading of the securities of that company. Explain, on the basis of the said finding, what action SEBI can take against Mr. P. Mehra under the Securities and Exchange Board of India Act, 1992.

Answer

Section 15G of the Securities and Exchange Board of India (SEBI) Act, 1992 deals with penalty for Insider Trading. According to this, if any insider

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate on any stock exchange on the basis of any unpublished price sensitive information; or

(ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary cause of business or under any law, or

(iii) counsels or procures for, any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information,

shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher. As such SEBI can, after following the prescribed procedure, impose a penalty on Mr. P. Mehra. The maximum penalty that SEBI can impose is Rupees twenty-five crores or three times the amount of profits made out of insider trading, whichever is higher

32. Securities and Exchange Board of India (SEBI) has undertaken inspection of books of accounts and records of LR Ltd., a listed public company. Specify the measures which may be taken by SEBI under the Securities and Exchange Board of India Act, 1992 to protect the interest of investors and securities market, on completion of such inquiry

Answer

As per section 11 (4) of the Securities and Exchange Board of India Act, 1992, the Board may, by an order, for reasons to be recorded in writing, in the interest of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

1. suspend the trading of any security in a recognised stock exchange;

2. restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

3. suspend any office-bearer of any stock exchange or self-regulatory organization from holding such position;

4. impound and retain the proceeds or securities in respect of any transaction which is under investigation;

5. attach, after passing of an order on an application made for approval by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

However only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;

6.direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation.

33. Mr. S, a member of MN Ltd., obtained an order from the Securities and Exchange Board of India (SEBI) against the company. But the company failed to redress the grievance of Mr. S within the time fixed. Consequently, SEBI imposed penalty on the company. The company, however, did not pay the penalty also. State how the penalty can be recovered from the company?

Answer

1. According to Section 28A of the Securities and Exchange Board of India Act, 1992, if a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement /certificate in the specified form specifying the amount due from the person and shall proceed to recover from such person the amount specified in the

certificate by one or more of the following modes, namely:

(a) attachment and sale of the person's movable property;

(b) attachment of the person's bank accounts;

(c) attachment and sale of the person's immovable property;

(d) arrest of the person and his detention in prison;

(e) appointing a receiver for the management of the person's movable and immovable properties.

The expression 'Recovery Officer' means any officer of the Board who may be authorized by general or special order in writing, to exercise the powers of a Recovery Officer. The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers

34.RTP Nov'2020 Q no 20

The composition of Audit Committee of MKBTC Limited, an unlisted Public Company, as on 31-3-2019 comprised of 7 Directors including 4 Independent Directors. The majority of the members of the Audit Committee has the ability to read and understand the financial statements but none of them has accounting or related financial management expertise. The Company listed its Securities in a recognized Stock Exchange in the month of August 2019. Referring to the regulations of Securities and Exchange Board of India [Listing Obligations and Disclosure Requirements] Regulations 2015, decide whether the existing Audit Committee can continue after listing of its Securities?

Answer

Audit Committee: According to Regulation 18 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, every listed entity shall constitute a qualified and independent audit committee which shall have:

(a) Minimum three directors as members.

(b) Two-thirds of the members of audit committee shall be independent directors.

(c) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

As per the facts of the question, MKBTC Limited, listed its securities in a recognised Stock Exchange in the month of August, 2019. In order to comply with the requirements of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the company requires to do the following:

(i) The audit committee of MKBTC Limited already has 7 directors as members, which is in compliance.

(ii) The audit committee has 4 directors as independent directors. However, once the company gets listed, at least 5 [7*(2/3)] directors shall be independent directors. Thus, they need to change the composition of audit committee once the company gets listed on stock exchange.

In the existing audit committee though majority of the members have the ability to read and understand the financial statement but none of them has accounting or related financial management expertise. However, once the company gets listed it is required that all members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise. Hence, it is required that the company should appoint at least one member in the audit committee who shall have accounting or related financial management expertise. In view of above, the existing audit committee cannot continue after listing of its securities.

35. DEJY is a Company Limited incorporated in Singapore desires to establish a branch office at Mumbai. You being a practicing Chartered Accountant have been appointed by the company as a liaison officer for compliance of legal formalities on behalf of the company. Examining the provisions of the Companies Act, 2013,answer the following:

(i) Whether branch office will be considered as a company incorporated outside India.

(ii) If yes, state the documents you are required to furnish on behalf of the company, on the establishment of a branch office at Mumbai.

ANSWER:

(i) According to section 2(42) of the Companies Act, 2013, "Foreign company" means any company or body corporate incorporated outside India which-
(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
(b) conducts any business activity in India in any other manner.
Further, branch offices are generally considered as reflection of the Parent Company' office. Thus, branch offices of a company incorporated outside India are considered as a place of business for conducting business activity in India and will be required to follow provisions of this chapter and such other provisions as may be specified elsewhere under Companies Act, 2013.

(ii) Under section 380(1) of the Companies Act, 2013 every foreign company shall, within 30 days of the establishment of place of business in India, deliver to the Registrar for registration the following documents:
(a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company. If the instruments are not in the English language, a certified translation thereof in the English language;

(b) the full address of the registered or principal office of the company;
(c) a list of the directors and secretary of the company containing such particulars as may be prescribed;
In relation to the nature of particulars to be provided as above, the *Companies (Registration of Foreign Companies) Rules, 2014*, provide that the list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely:
(1) personal name and surname in full;
(2) any former name or names and surname or surnames in full;
(3) father's name or mother's name and spouse's name;
(4) date of birth;

(5) residential address;

(6) nationality;
(7) if the present nationality is not the nationality of origin, his nationality of origin;
(8) passport Number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)
(9) income-tax permanent account number (PAN), if applicable;
(10) occupation, if any;
(11) whether directorship in any other Indian company, (Director Identification Number (DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);
(12) other directorship or directorships held by him;
(13) Membership Number (for Secretary only); and
(14) e-mail ID.
(d) the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
(e) the full address of the office of the company in India which is deemed to be its principal place of business in India;
(f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;
(g) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
(h) any other information as may be prescribed.

According to the *Companies (Registration of Foreign Companies) Rules, 2014*, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

36. Abroad Ltd., a foreign company without establishing a place of business in India, proposes to issue prospectus for subscription of securities in India. Being a consultant of the company, advise on the procedure of such an issue of prospectus by Abroad Ltd.

ANSWER:

As per section 389 of the Companies Act, 2013, no person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed under Rule 11 of the Companies (Incorporated outside India) Rules,2014.

Accordingly, the Abroad Ltd. a foreign company shall proceed with the issue of prospectus in compliance with the above stated provisions of section 379 of the Act.

Part II Economic Laws

Chapter 1 – The Foreign Exchange Management Act,1999

Multiple Choice Questions

1.MTP Apr 2019 Qn no 1

Peter a citizen and resident of India, in the year 2011, got a job in a MNC in Germany. He planned to shift. Due to travelling and shifting, studies of his daughter Lisa was effected a lot, so he decided to admit her into Mayo College at Ajmer for her further studies. On 23rd March 2017, Peter, along with his wife and daughter reached India from Germany. On 22nd April 2017, Lisa got admission in the college and since then she is living in India only. Peter and his wife returned Germany on 1st May 2017. Peter did not visited India during the financial year 2017-18, however his wife was in India from 2nd December 2017 to 2nd January 2018. During the financial year 2018-19, Peter was in India for 185 days due to his deployment and Lisa's ill health. From the following who will be treated as person resident in India for the financial year ended on 2018-19 ---

(i) Lisa

(j) Peter

(k) Peter's wife

(l) Lisa and Peter's wife

Answer: Option (a)

2.MTP Apr 2019 Qn no 2

Rahul, Son of Mr. Manish was going to USA under cultural exchange programme of his college. For meeting Rahul's expenses in USA, Mr. Manish purchased 5000 USD from an authorized person on 15th February 2018. Rahul came back to India on 15th March 2018. At the time of his return to India he was having 1850 unspent USD with him. From the following which option is the best suited for the above situation –

(a) Unspent foreign exchange shall be surrendered to the authorized person within 180 days from the date of his return to India.

(b) Unspent foreign exchange shall be surrendered to the authorized person within 180 days from the date of purchase of foreign exchange.

(c) Unspent foreign exchange shall be surrendered to the authorized person within 90 days from the date of his return to India.

(d) Unspent foreign exchange not exceeding 2000 USD may be retained by a person resident in India.

Answer: Option (d)

3.RTP Nov 2019 Question no 5

Mr. Ram had resided in India during the Financial Year 2017-2018 for less than 183 days. He again came to India on 1st May, 2018 for higher studies and business and stayed upto 15th July, 2019. State the correct answer as to the residential status of Mr. Ram in the light of the given fact as per the Foreign Exchange Management Act, 1999.

(1) Mr. Ram can be considered as 'Person resident in India' during the financial year 2018-2019

(2) Mr. Ram cannot be considered as 'Person resident in India' during the financial year 2018-2019

(3) Mr. Ram can be considered as 'Person resident in India' during the financial year 2019-2020

(a) Both the statement (1) & (3) are correct

(b) Both the statement (2) & (3) are correct

(c) Only statement (1) is correct

(d) Only statement (2) is correct

Answer: (b)

Descriptive Questions

4.RTP May 2018 Qn no 15

Ms. Ashima daughter of Mr. Mittal (an exporter), is residing in Australia since long. She wants to buy a flat in Australia. Since she is unmarried, she wants to make her father Mr. Mittal a joint holder in that flat, for which entire proceeds are to be paid by her.

(i) Mr. Mittal, wants to receive advance payments against his exports from a buyer outside India. Explain the relevant provisions?

Answer:

Advance payment against export:

The following are the provisions governing the advance payments against exports : (1) Where an exporter receives advance payments (with or without interest) from a buyer/ third party named in the export declaration made by the Exporter, outside India, the exporter shall be under the obligation to ensure that:

(i) The shipment of goods is made within one year from the date of receipt of advance payment.

(ii) The rate of interest, if any, payable on the advance payment does not exceed the rate of interest London Inter-Bank Offered Rate (LIBOR) + 100

basis points and

(iii) The documents covering the shipment are routed through the authorised dealer through whom advance payment is received.

Provided that in the event of the exporter's inability to make the shipment, partly or fully, within one year from the date of receipt of advance payment or towards, no remittance towards refund of un-utilised portions of advance payment or towards payment of interest, shall be made after the expiry of the period of one year, without the prior approval of the Reserve bank of India.

Exemption : Notwithstanding anything contained in clause (i) of sub-regulation (1), an exporter may receive advance payment where the export agreement itself duly provides for shipment of goods extending beyond the period of one year from the date of receipt of advance payment.

5.March 2018 Qn no 6(d) 3 Marks:

Explain the meaning of "Capital Account Transactions" under the Foreign Exchange Management Act, 1999. Examine whether an Investment by person resident in India in Foreign Securities is permissible or not under the above Act as Capital Account transactions.

Answer:

Meaning of Capital Account Transaction: It means a transaction which alters the assets or liabilities including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of a person resident outside India, and includes transactions referred to in sub- section (3) of section 6 of FEMA Act, 1999.

The Reserve Bank of India has formed the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000.

As per these regulations, capital account transactions may be classified under the following heads.

(1) Permissible capital account transaction of persons resident in India (schedule 1)

(2) Permissible Capital transactions of persons resident outside India (schedule II).

(3) Prohibited capital account transactions.

A person resident in India may enter into any of the following capital account transactions provided the regulations specified by the Reserve Bank of India in respect of such capital account transactions are complied with.

In view of the above, **an Investment by person resident in India in Foreign Securities** is permissible capital account transaction.

6.May 2018 Qn no 3(d) 6 Marks:

Mr. Bandha, a software Engineer, Indian Origin took employment in USA. He is a resident of USA for a long time. He desires

(i) **to acquire a farm house in Munar (Kerala).**

(ii) **to make investment in KLJ (Nidhi) Ltd., registered as Nidhi Company.**

(iii) **to make investment in Rose Real Estate Ltd., an Indian Company formed for the development of township.**

Mr. Unsatisfactory, brother of Mr. Bandha residing at Chennai is aggrieved by an order made by Appellate Tribunal established under Foreign Exchange Management Act, 1999, desires to file further appeal.

With references to the provisions of Foreign Exchange Management Act, 1999, analyse whether there are any restrictions in respect of the transactions desired by Mr. Bandha. Also determine the appeal procedure to Mr. Unsatisfactory on the order of Appellate Tribunal under the said Act.

Answer:

Acquisition of a Farm House

Mr. Bandha, cannot acquire a farm house in Munnar (Kerala) because a person resident outside India who is a citizen of India may acquire immovable property in India other than an agricultural property, plantation, or a farm house.

Making Investments in KLJ Nidhi Limited

Mr. Bandha cannot make investment in KLJ (Nidhi) Ltd., as a person resident outside India is prohibited from making investments in India in any form, in any Company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engage as Nidhi Company.

Making Investments in Rose Real Estate Limited

The person resident outside India is prohibited from making investments in India in any form, in any Company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engage in real estate business, or construction of farm houses. However, development of townships shall not be included in the real estate business. Thus, Mr. Bandha can make investment in Rose Real Estate Ltd.

Appeal to High Court (Section 35)

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal on any question of law arising out of such Order.

However, the High Court may, if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Mr. Unsatisfactory can file an appeal to the High Court, as per the above procedure.

7.May 2018 Qn no 2(d) 6 Marks:

Mr. Satish, General Secretary of a political party received an invitation from the American Labour Party. He wants to avail foreign hospitality. Define the term "foreign hospitality". In the light of the provisions of the Foreign Contribution (Regulation) Act, 2010, decide whether he can avail it. Discuss also the exception, if any, under which the provisions of the said Act may be relaxed.

Answer:

Definition of "Foreign Hospitality"

> **"Foreign hospitality"** means any offer, not being a purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any fore ign country or territory or with free boarding, lodging, transport or medical treatment. [Section 2(i) of the Foreign Contribution (Regulation) Act, 2010]

Whether Mr. Satish can avail foreign Hospitality?

> As per Section 6 of the Act, Office bearers of political parties require prior approval from Ministry of Home Affairs before accepting Foreign Hospitality. In the instant case, Mr. Satish, General Secretary of a political party, before availing foreign hospitalit y shall require prior approval from Ministry of Home Affairs.

Exceptions

> It shall not be necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during a visit outside India. But, where such foreign hospitality has been received, the person receiving such hospitality shall give an intimation to the Central Government as to the receipt of such hospitality within one month from the date of receipt of such hospitality, and the source from which, and the manner in which, such hospitality was received.

8.Aug 2018 Qn no 6(d) 3 Marks:

Mr. Manthan, is deputed to India by his company to develop a software programme for a period of 3 years from 1st January, 2016. He is paid salary to his Indian bank account. On 1st May, 2018 he wants to remit his entire salaries ended till 30th April, 2018 to his home country USA. State in the light of relevant provision, the way the remittance of the salary may be done as per the Foreign Exchange of Management Act, 1999.

Answer:

As per Schedule III of the *FEM (Current Account Transactions) Rules, 2000,* a person who is resident but not permanently resident in India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company, may make remittance up to his net salary, after deduction of taxes, contribution to provident fund and other deductions. Accordingly, Mr. Manthan can remit the salary after payment of taxes and contributions related to social security schemes.

9.Nov 2018 Qn no 3(d) 6 Marks:

Bharat Computer Hardware Ltd. received an advance -payment for export of high-tech hardware to a business concern in Singapore by entering into an export agreement to supply the hardware within six months from the date of receipt of advance payment. The shipment of hardware was made after 9 months and the documents covering the shipment were routed through an authorized dealer through whom the advance payment was received.

Examine whether Bharat Computer Hardware Ltd. has discharged its obligation in accordance with the provisions of the Foreign Exchange Management Act, 1999?

Is it possible to receive advance payment where the export agreement provides for shipment of goods within 15 months from the date of receipt of advance payment? Also identify the maximum rate of interest payable on the advance payment under the said Act.

Answer:

According to the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015,

Advance payment against exports:

(1) Where an exporter receives advance payment (with or without interest), from a buyer / third party named in the export declaration made by the exporter, outside India, the exporter shall be under an obligation to ensure that –

(i) the shipment of goods is made within one year from the date of receipt of advance payment;

(ii) the rate of interest, if any, payable on the advance payment does not exceed the rate of interest London Inter-Bank Offered Rate (LIBOR) + 100 basis points and

(iii) the documents covering the shipment are routed through the authorised dealer through whom the advance payment is received;

Provided that in the event of the exporter's inability to make the shipment, partly or fully, within one year from the date of receipt of advance payment, no remittance towards refund of unutilized portion of advance payment or towards payment of interest, shall be made after

the expiry of the period of one year, without the prior approval of the Reserve Bank.

Notwithstanding anything contained in clause (i) of sub-regulation (1), an exporter may receive advance payment where the export agreement itself duly provides for shipment of goods extending beyond the period of one year from the date of receipt of advance payment.

In the light of the provisions as enumerated above,

Since Bharat Computer Hardware Ltd. has exported the hardware within 9 months of the date of receipt of advance payment, it has discharged its obligations within the provisions of the Foreign Exchange Management Act, 1999.

Yes, it is possible to receive advance payment where the export agreement provides for shipment of goods extending beyond the period of one year (here in question 15 months) from the date of receipt of advance payment.

The maximum rate of interest, if any, payable on the advance payment should not exceed the rate of interest London Inter-Bank Offered Rate (LIBOR) + 100 basis points.

10.Oct 2018 Qn no 3(d) 6 Marks:

Mr. Rohan, an Indian Resident individual desires to obtain Foreign Exchange for the following purposes:

(A) **US$ 1,20,000 for studies abroad on the basis of estimates given by the foreign university.**

(B) **Gift Remittance amounting US$ 10,000.**

Advise him whether he can get Foreign Exchange and if so, under what condition(s)?

Answer:

(A) Remittance of Foreign Exchange for studies abroad: Foreign exchange may be released for studies abroad up to a limit of US $ 2,50,000 for the studies abroad without any permission from the RBI. Above this limit, RBI's prior approval is required. Further proviso to Para I of Schedule III states that indiuvial may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case since US $ 1,20,000 is the drawal of foreign exchange, so permission of the RBI is not required.

(B) Gift remittance exceeding US $ 10,000: Under the provisions of Section 5 of FEMA 1999, certain Rules have been made for drawal of foreign exchange for current account transactions. Gift remittance is a current account transaction. Gift remittance exceeding US $ 2,50,000 can be made after obtaining prior approval of the RBI. In the present case, since the amount to be gifted by an individual, Mr. Rohan is USD 10,000, so there is no need for any permission from the RBI.

11.Oct 2018 Qn no 6(d) 3 Marks:

Explain the meaning of the term "Current Account Transaction" and the right of a citizen to obtain Foreign Exchange under the Foreign Exchange Management Act, 1999.

Answer:

The term "current account transaction" is defined in section 2(j) of Foreign Exchange Management

Act, 1999. It means a transaction other than a capital account transaction and includes:

(i) payments due in connection with foreign trade, other current business, services, and short –

term banking and credit facilities in the ordinary course of business.

(ii) payments due as interest on loans and as net income from investments.

(iii) remittances for living expenses of parents, spouse and children residing abroad and

(iv) expenses in connection with foreign travel education and medical care of parents, spouse and children.

According to Section 5 of FEMA, 1999 any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction. Provided that the Central Government may in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.

Further, any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction subject to the provisions of section 6(2).

12.RTP Nov-18:

Mr. Hillary Benjamin, a citizen of India, left India for employment in U.S.A. on 1 st June, 2015. Mr. Hillary Benjamin purchased a flat at New Delhi for `60 lacs in September, 2016. His brother, Mr. Henry Benjamin employed in New Delhi, also purchased a flat in the same building in September 2016 for ` 65 lacs. Mr. Henry Benjamin's flat was financed by a loan from a Housing Finance Company and the loan was guaranteed by Mr. Hillary Benjamin. Examine with reference to the provisions of the Foreign Exchange Management Act, 1999 whether purchase of flat and guarantee by Mr. Hillary Benjamin are Capital Account transactions and whether these transactions are permissible.

Answer:

Section 2(e) of Foreign Exchange Management Act, 1999 states that 'capital account transactions' means:

(a) a transaction which alters the assets or liabilities, including contingent liabilities, outside India of person's resident in India

(b) a transaction which alters assets or liabilities in India of persons resident outside India and includes transactions referred to in section 6(3).

According to the said definition, a transaction which alters the contingent liability will be considered as capital account transaction in the case of person resident in India, but it is not so in the case of person resident outside India.

Purchase of immovable property by Mr. Hillary Benjamin in India is a capital account transaction. It has also been specifically provided in section 6(3)(i) as a capital account transaction.

Guarantee will be considered as a capital account transaction in the following cases:

(1) Guarantee in respect of any debt, obligation or other liability incurred by a person resident in India and owed to a person resident outside India.

(2) Guarantee in respect of any liability, debt or other obligation incurred by a person resident outside India.

In this case, Mr. Hillary Benjamin, a resident outside India gives a guarantee in respect of a debt incurred by a person resident in India and owed to a person resident in India. Hence, it would appear that guarantee by Mr. Hillary Benjamin cannot be considered as a capital account transaction within the meaning of Section 2(e), particularly because it is a contingent liability.

All capital account transactions are prohibited unless specifically permitted. RBI is empowered to issue regulations in this regard [Section 6(3)]. Permissible capital account transactions by persons resident outside India are given in Schedule II to the *Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000.* According to the said regulations both the purchase of immovable property by Mr. Hillary Benjamin and guarantee by Mr. Hillary Benjamin are permissible.

13.MTP April 2019 Qn no 2(b) 6 Marks

Mr. Sugam resided in India during the Financial Year 2016-17. He left India on 15th July, 2017 for Australia for pursuing higher studies in Biotechnology for 2 years. What would be his residential status under the Foreign Exchange Management Act, 1999 during the Financial Years 2017-18?

Mr. Sugam requires every year USD 25,000 towards tuition fees and USD 30,000 for incidental and stay expenses for studying abroad. Is it possible for Mr. Sugam to get the required Foreign Exchange and, if so, under what conditions?

Answer:

Residential Status: According to section 2(v) of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for

more than 182 days during the course of preceding financial year [Section 2(v)(i)]. However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period.

Generally, a student goes out of India for a certain period. In this case, Mr. Sugam who resided in India during the financial year 2016-17 left on 15.7.2017 for Australia for pursuing higher studies in Biotechnology for 2 years, he will be resident for 2017-18, as he has gone to stay outside India for a 'certain period' (If he goes abroad with intention to stay outside India for an 'uncertain period' he will not be resident with effect from 15-7-2017).

Foreign Exchange for studies abroad: According to Para I of Schedule III to Foreign Exchange Management (Current Account Transactions), Amendment Rule, 2015 dated 26th May, 2015, individuals can avail of foreign exchange facility for the studies abroad within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit shall require prior approval of the RBI. Further proviso to Para I of Schedule III states that individual may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case the foreign exchange required is only USD 55,000 per academic year and hence approval of RBI is not required.

14.RTP Nov 2019 Qn no 13

Mr. Daksh, an Indian National desires to obtain foreign exchange for the following purposes:

(i) **Payment to be made for securing health insurance from a company abroad.**

(ii) **Payment of commission on exports under Rupee State Credit Route.**

Advise whether he can get foreign exchange and if so, under what condition?

Answer

Any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction. However, the Central Government may in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000.

The Rules stipulate some prohibitions and restrictions on drawal of foreign exchange for certain purposes. In the light of provisions of these rules, the answer to the given problem is as follows:

(v) Drawl of foreign exchange for securing health insurance from a company abroad does not fall under any of the Schedules I, II or III. Therefore, such a transaction is permitted without any restriction or condition.

(vi) Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibits payment of commission on exports under Rupees State Credit Route (except commission upto 10% of invoice value of exports of tea and tobacco). Therefore, payment of commission on exports under Rupee State Credit Route is prohibited unless such commission is paid for export of tea and tobacco, and the commission does not exceed 10% of invoice value of exports.

15.Nov 2019 MTP Qn no 3(b) (i) 3 Marks

(b) Examine the given situations in the light of the respective laws:

(i) Toy Ltd. is a Japanese company having several business units all over the world. It has a robotic unit with its head quarter in Mumbai and has a branch in Singapore. Headquarter at Mumbai controls the branch of robotic unit. Determine the residential status of robotic unit in Mumbai and that of the Singapore branch in reference to FEMA, 1999?

Answer

Toy Ltd. being a Japanese company would be a person resident outside India. [Section 2(w)]. Section 2(u) defines 'person'. Under clause (vii) of section 2(u), thereof person would include any agency, office or branch owned or controlled by such 'person'. The term such 'person' appears to refer to a person who is included in clauses (i) to (vi). Accordingly, robotic unit in Mumbai, being a branch of a company, would be a 'person'.

Section 2(v) defines 'person resident in India'. Under clause (iii) 'person resident in India' would include an office, branch or agency in India owned or controlled by a person resident outside India. Robotic unit in Mumbai is owned or controlled by a person 'resident outside India'. Hence, it would be 'person resident in India'.

However, robotic unit in Mumbai, though not 'owned' controls Singapore branch, which is a person resident in India. Hence *prima facie*, it may be possible to hold a view that the Singapore branch is 'person resident in India'.

16.RTP May 2020 Question no.12

Enumerate the given situations in the light of the term defined as Current Account Transaction under FEMA.

(a) An Indian resident imports machinery from a vendor in UK for installing in his factory.

(b) **An Indian resident imports machinery from a vendor in UK for installing in his factory on a credit period of 3 months.**

(c) **An Indian resident transfers US$ 1,000 to his NRI brother in New York as "gift". The funds are sent from resident's Indian bank account to the NRI brother's bank account in New York.**

Answer

(1) An Indian resident imports machinery from a vendor in UK for installing in his factory.

Answer: As per accounts and income-tax law, machinery is a "capital expenditure". However, under FEMA, it does not alter (create) an asset in India for the UK vendor. It does not create any liability to a UK vendor for the Indian importer. Once the payment is made, the Indian resident or the UK vendor neither owns nor owes anything in the other country. Hence, the said transaction, is a Current Account Transaction.

(2) **An Indian resident imports machinery from a vendor in UK for installing in his factory on a credit period of 3 months.**

Answer: As per accounts and income-tax law, for the credit period of 3 months, there is a liability of the Indian importer to the UK vendor. Technically under FEMA also, it is a liability outside India. However, under definition of Current Account Transaction [S. 2(j)(i)], "short-term banking and credit facilities in the ordinary course of business" are considered as a Current Account Transaction. Hence import of machinery on credit terms is Current Account Transaction.

(3) **An Indian resident transfers US$ 1,000 to his NRI brother in New York as "gift". The funds are sent from resident's Indian bank account to the NRI brother's bank account in New York.**

Answer: Under accounts and income-tax law, gift is a "capital receipt". However, under FEMA, once the gift is accepted by the NRI, no one owns or owes anything to anyone in India or USA. The transactions is over. Hence it is a Current Account Transaction.

Study Material

17. Mr. A had resided in India during the financial year 2015-2016 for less than 182 days. He had come to India again on April 1, 2016 for employment. What would be his residential status during the financial year 2016-2017?

Answer

Mr. A had come to India for taking up employment. During the financial year 2015-2016, he was in India for less than 182 days. Since, he has not fulfilled the condition of staying in India for more than 182 days, Mr. A will not be considered as a residential person for the financial year 2016- 2017. Here, as he come to India on 1st April, 2016, so he may primarily cannot be considered as person resident in India from 1st April

2016. However as he has come for employment, he will be considered as Indian resident from 1st April 2016

18. Mr. X had resided in India during the financial year 2015-2016 for less than 182 days. He had come to India on April 1, 2016 for business. He intends to leave the business on April 30, 2017 and leave India on June 30, 2017. What would be his residential status during the financial year 2016- 2017 and during 2017-2018 up to the date of his departure?

Answer

As explained in the above example, Mr. X will be considered 'as person resident in India' from 1st April 2016. As regards, financial year 2017-2018, Mr. X would continue to be an Indian resident from 1st April 2017.

If he leaves India for the purpose of taking up employment or for business/vocation outside India, or for any other purpose as would indicate his intention to stay outside India for an uncertain period, he would cease to be person resident in India from the date of his departure. It may be noted that even if Mr. X is a foreign citizen, if he has not left India for any these purposes, he would be considered, 'person resident in India' during the financial year 2017-2018. Thus it will depend on the purpose of leaving India which will decide his status from 1st July 2017.

19. Mr. Z had resided in India during the financial year 2015-2016. He left India on 1st August, 2016 for United States for pursuing higher studies for 3 years. What would be his residential status during financial year 2016-2017 and during 2017-2018?

Answer

Mr. Z had resided in India during financial year 2015-2016 for more than 182 days. After that he has gone to USA for higher studies. In other words, he has not gone out of, or stayed outside India for or on taking up employment, or for carrying a business or any other purpose, in not circumstances as would indicate his intention to stay outside India for an uncertain period. Accordingly, he would be 'person resident in India' during the financial year 2016-2017. RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies.

For the financial year 2017-2018, he would not have been in India in the preceding financial year (2016-2017) for period exceeding 182 days. Accordingly, he would not be 'person resident in India' during the financial year 2017-2018.

20. Toy Ltd. is a Japanese company having several business units all over the world. It has a robotic unit with its head quarter in Mumbai and has a branch in Singapore.

Headquarter at Mumbai controls the branch of robotic unit. What would be the residential status of robotic unit in Mumbai and that of the Singapore branch?

Answer

Toy Ltd. being a Japanese company would be a person resident outside India. [Section 2(w)]. Section 2(u) defines 'person'. Under clause (viii) thereof person would include any agency, office or branch owned or controlled by such 'person'. The term such 'person' appears to refer to a person who is included in clauses (i) to (vi). Accordingly, robotic unit in Mumbai, being a branch of a company, would be a 'person'

Section 2(v) defines 'person resident in India'. Under clause (iii) thereof 'person resident in India' would include an office, branch or agency in India owned or controlled by a person resident outside India. Robotic unit in Mumbai is owned or controlled by a person 'resident outside India'. Hence, it would be 'person resident in India'.

However, robotic unit in Mumbai, though not 'owned' controls Singapore branch, which is a person resident in India. Hence prima facie, it may be possible to hold a view that the Singapore branch is 'person resident in India'

21. Miss Alia is an airhostess with the British Airways. She flies for 12 days in a month and thereafter takes a break for 18 days. During the break, she is accommodated in 'base', which is normally the city where the airways are headquartered. However, for security considerations, she was based on Mumbai. During the financial year, she was accommodated at Mumbai for more than 182 days. What would be her residential status under FEMA?

Answer

Miss Alia stayed in India at Mumbai 'base' for more than 182 days in the preceding financial year. She is however employed in UK. She has not come to India for employment, business or circumstances which indicate her intention to stay for uncertain period. Under section 2(v)(B), such persons are not considered as Indian residents even if their stay exceeds 182 days in the preceding year. Thus, while Miss Alia may have stayed in India for more than 182 days, she cannot be considered to be an Indian resident.

If however she has been employed in Mumbai branch of British Airways, then she will be considered as Indian resident.

22. In September 2016, Mr. P, went to USA, London and Germany on a month long business trip. For this trip he got exchanged US$ 50000 from an authorized dealer. In December 2016 he remitted US$ 50000 to his son in Canada, who was studying there. In January 2017 he sent his mother and wife to America for his mother's treatment and for the purpose he remitted US$ 75000 to his younger brother, who was living there. In March 2017 his daughter got engaged and she opted for a destination marriage to be held in May 2017, in Switzerland. While on trip to Dubai in the March end, 2017, he spent US $ 35000 for his daughter's shopping in Dubai. Later, the event manager gave an estimate of US $ 250000

for the wedding. As per the provisions of FEMA, for how much remittance does he need to take prior approval of the Reserve bank of India.

a) **He does not need any prior approval at all**

b) **For US $ 210000**

c) **For US $ 250000**

d) **For US $ 15000**

Answer: a) Hint: He does not need any prior approval, because during the year April 2016-March 2017 his all foreign exchange transactions were amounted to US $ 210000 and an individual does not require any prior approval for remittances made up to US $ 250000 during a year (as per the Schedule III of the FEMA regulation).

23.Mr. Z was appointed as representative of ABC Company for a corporate programme organized in USA. During the said period in USA, he was diagnosed with the severe kidney disease, so decided to have a kidney transplant done in USA. State the maximum amount that can be drawn by Mr. Z as foreign exchange for the medical treatment abroad.

(a) USD 1,25,000

(b) USD 2,25,000

(c) USD 2,50,000

d)As estimated by a medical institute offering treatment

Answer: d) **Hint:** A person who has fallen sick after proceeding abroad may also be released foreign exchange by an Authorised Dealer (without seeking prior approval of the Reserve Bank of India) for medical treatment outside India exceeding the limit USD 2,50,000 on the basis of the estimation given by the medical institute offering treatment.

24.Mr. Ram had resided in India during the Financial Year 2017-2018 for less than 183 days. He again came to India on 1st May, 2018 for higher studies and business and stayed upto 15th July, 2019. State the correct answer as to the residential status of Mr. Ram in the light of the given fact as per the Foreign Exchange Management Act, 1999

(1) **Mr. Ram can be considered as 'Person resident in India' during the financial year 2018-2019**

(2) **Mr. Ram cannot be considered as 'Person resident in India' during the financial year 2018-2019**

(3) **Mr. Ram can be considered as 'Person resident in India' during the financial year 2019- 2020**

(a) **Both the statement (1) & (3) are correct**

(b) **Both the statement (2) & (3) are correct**

(c) **Only statement (1) is correct**

(d) **Only statement (2) is correct**

Answer b) **Hint:** Mr. Ram cannot be considered 'Person resident in India' during the financial year 2018-2019 notwithstanding the purpose or duration of his stay in India during 2018-2019. An individual has to be present in India for more than 182 days in the preceding financial year. Mr. Ram does not satisfy this condition for the financial year 2018-2019. But shall be considered as 'Person resident in India' during the financial year 2019-2020.

25. Printex Computer' is a Singapore based company having several business units all over the world. It has a unit for manufacturing computer printers with its Headquarters in Pune. It has a Branch in Dubai which is controlled by the Headquarters in Pune. What would be the residential status under the FEMA, 1999 of printer units in Pune and that of Dubai branch.

Answer

Printex Computer being a Singapore based company would be person resident outside India [(Section 2(w)]. Section 2 (u) defines 'person' under clause (viii) thereof, as person would include any agency, office or branch owned or controlled by such person. The term such person appears to refer to a person who is included in clause (i) to (vi). Accordingly, Printex unit in Pune, being a branch of a company would be a 'person'.

Section 2(v) defines a person resident in India. Under clause (iii) thereof person resident in India would include an office, branch or agency in India owned or controlled by a person resident outside India. Printex unit in Pune is owned or controlled by a person resident outside India, and hence it, would be a 'person resident in India.'
However, Dubai Branch though not owned is controlled by Print unit in Pune which is a person resident in India. Hence prima facie, it may be possible to hold a view that the Dubai Branch is a person resident in India.

26. Mr. Ram had resided in India during the Financial Year 2014-2015 for less than 183 days. He again came to India on 1st May, 2015 for higher studies and business and stayed upto 15th July, 2016. State under the Foreign Exchange Management Act, 1999.

(i) **If Mr. Ram can be considered 'person Resident in India' during the Financial year 2015-2016 and**

(ii) **Is citizenship relevant for determining such a status?**

Answer

(i)No. Mr. Ram cannot be considered 'Person resident in India' during the financial year 2015-2016 notwithstanding the purpose or duration of his stay in India during 2015- 2016. An

individual has to be present in India for more than 182 days in the preceding financial year. Mr. Ram does not satisfy this condition for the financial year 2015-2016.

(ii) No. Citizenship is no more relevant for determining the status.

27. Mr. Sane, an Indian National desires to obtain Foreign Exchange for the following purposes:

(i) **Remittance of US Dollar 50,000 out of winnings on a lottery ticket.**

(ii) **US Dollar 1,00,000 for sending a cultural troupe on a tour of U.S.A.**

Advise him whether he can get Foreign Exchange and if so, under what conditions?

Answer

Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.

(i) In respect of item No.(i), i.e., remittance out of lottery winnings, such remittance is prohibited and the same is included in First Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Sane can not withdraw Foreign Exchange for this purpose.

(ii) Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and Culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, in respect of item (ii), Mr. Sane can withdraw the Foreign Exchange after obtaining such permission.

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person as defined in Section 2(c) read with section 10 of the Foreign Exchange Management Act, 1999.

28. State which kind of approval is required for the following transactions under the Foreign Exchange Management Act, 1999:

i. X, a Film Star, wants to perform along with associates in New York on the occasion of Diwali for Indians residing at New York. Foreign Exchange drawal to the extent of US dollars 20,000 is required for this purpose.

ii. R wants to get his heart surgery done at United Kingdom. Up to what limit Foreign Exchange can be drawn by him and what are the approvals required?

Answer

Approval to the following transactions under FEMA, 1999:

(i) Foreign Exchange drawals for cultural tours require prior permission/approval of the Government of India irrespective of the amount of foreign exchange required. Therefore, in the given case X, the Film Star is required to seek permission of the Government of India.

(ii) Individuals can avail of foreign exchange facility within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the expenses in connection with medical treatment abroad, shall require prior approval of the Reserve Bank of India. Therefore, R can draw foreign exchange up to the USD 2,50,000 and for additional remittance in excess of this limit for bearing the expenses of medical treatment in UK, prior permission/approval of RBI will be required. Provided, the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalised Remittance Scheme if it is so estimated by a medical institute offering treatment.

29. Referring to the provisions of the Foreign Exchange Management Act, 1999, examine whether V, an exporter is bound to make declaration on gift exported from India to United Kingdom a jewellery valued at ` 20,000 to his friend in Australia.

Answer

In accordance with provisions of the FEMA, 1999 as contained in section 7 read with section 8, it imposes on an exporter to make appropriate declaration of the value of the goods being exported and he is also required to repatriate the foreign exchange due to India in respect of such exports to India in the manner within the time as may be prescribed. Under section 8, the exporter is under an obligation to realise and repatriate to India such foreign. However, if there is an delay in the receipt of export, it will not be a violation which shall be punishable. Section 8 applies to a resident who shall take all the reasonable steps, depending upon the individual case.

There are certain categories of export for which declaration need not be made. These are given under the Regulation 4 of the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015. According to the regulation, export of goods by way of gift shall be accompanied by a declaration by the exporter that they are not more than five lakh rupees in value. Taking into consideration the above, since the value of gift of jewellery to V's friend in Australia is less than ` 5 lac in value, the gift does not need any declaration to be furnished by exporter to the specified authority.

30. Referring to the provisions of the Foreign Exchange Management Act, 1999, state the kind of approval required for the following transactions:

(i) **M requires U.S. $ 5,000 for remittance towards hire charges of transponders.**

(ii) **P requires U.S. $ 2,000 for payment related to call back services of telephones.**

Answer

Under section 5 of the Foreign Exchange Management Act, 1999, and Rules relating thereto, some current account transactions require prior approval of the Central Government, some others require the prior approval of the Reserve Bank of India, some are free transactions and some others are prohibited transactions. Accordingly,

(i) It is a current account transaction, where M is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.

(ii) Withdrawal of foreign exchange for payment related to call back services of telephone is a prohibited transaction. Hence, Mr. P will not succeed in acquiring US $ 2,000 for the said purpose.

31. **Mr. Suresh resided in India during the Financial Year 2013-14. He left India on 15th July, 2014 for Switzerland for pursuing higher studies in Biotechnology for 2 years. What would be his residential status under the Foreign Exchange Management Act, 1999 during the Financial Years 2014-15 and 2015-16?**

Mr. Suresh requires every year USD 25,000 towards tuition fees and USD 30,000 for incidental and stay expenses for studying abroad. Is it possible for Mr. Suresh to get the required Foreign Exchange and, if so, under what conditions?

Answer

Residential Status: According to section 2(v) of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year [Section 2(v)(i)]. However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period.

Generally, a student goes out of India for a certain period. In this case, Mr. Suresh who resided in India during the financial year 2013-14 left on 15.7.2014 for Switzerland for pursuing higher studies in Biotechnology for 2 years, he will be resident for 2014-15, as he has gone to stay outside India for a 'certain period' (If he goes abroad with intention to stay outside India for an 'uncertain period' he will not be resident with effect from 16-7-2014.

Mr. Suresh will not be resident during the Financial Year 2015-2016 as he did not stay in India during the relevant previous financial year i.e. 2014-15.

Foreign Exchange for studies abroad: According to Para I of Schedule III to Foreign Exchange Management (Current Account Transactions), Amendment Rule, 2015 dated 26th May , 2015, individuals can avail of foreign exchange facility for the studies abroad within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit shall require prior approval of the RBI. Further proviso to Para I of Schedule III states that individual may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case the foreign exchange required is only USD 55,000 per academic year and hence approval of RBI is not required

32. Mrs. Chandra, a resident outside India, is likely to inherit from her father some immovable property in India. Are there any restrictions under the provisions of the Foreign Exchange Management Act, 1999 in acquiring or holding such property? State whether Mrs. Chandra can sell the property and repatriate outside India the sale proceeds.

Answer

As per sub-section 5 of section 6 of the FEMA, 1999, a person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

Accordingly, in the problem, Mrs. Chandra, a resident outside India, may acquire or hold any immovable property of his father in India by way of inheritance in both the conditions, firstly, where her father, a resident outside India, had acquired the property in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or as per the provisions of these Regulations or secondly, where her father, a resident in India.

Repatriation of sale proceeds: A person referred to in sub-section (5) of section 6 of the Act, or his successor shall not, except with the prior permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property.
Thus, accordingly Mrs. Chandra can sell the property and repatriate outside India the sale proceeds only with the prior permission of the RBI.

33. (i)Mr. P has won a big lottery and wants to remit US Dollar 20,000 out of his winnings to his son who is in USA. Advise whether such remittance is possible under the Foreign Exchange Management Act, 1999.

(ii)Mr. Z is unwell and would like to have a kidney transplant done in USA. He would like to know the formalities required and the amount that can be drawn as foreign exchange for the medical treatment abroad.

Answer

Remittance of Foreign Exchange (Section 5 of the Foreign Exchange Management Act, 1999): According to section 5 of the FEMA, 1999, any person may sell or draw foreign exchange to or from an authorized person if such a sale or drawal is a current account transaction. Provided that Central Government may, in public interest and in consultation with the reserve bank, impose such reasonable restrictions for current account transactions as may be prescribed.

As per the rules, drawal of foreign exchange for current account transactions are categorized under three headings-

1. Transactions for which drawal of foreign exchange is prohibited,
2. Transactions which need prior approval of appropriate government of India for drawal of foreign exchange, and
3. Transactions which require RBI's prior approval for drawl of foreign exchange.

(i) Mr. P wanted to remit US Dollar 20,000 out of his lottery winnings to his son residing in USA. Such remittance is prohibited and the same is included in the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence Mr. P cannot withdraw foreign exchange for this purpose.

(ii) "Remittance of foreign exchange for medical treatment abroad" requires prior permission or approval of RBI where the individual requires withdrawal of foreign exchange exceeding USD 2,50,000. The Schedule also prescribes that for the purpose of expenses in connection with medical treatment, the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalized Remittance Scheme, if so required by a medical institute offering treatment.

Therefore, Mr. Z can draw foreign exchange up to the USD 2,50,000 and no prior permission/ approval of RBI will be required. For amount exceeding the above limit, authorised dealers may release foreign exchange based on the estimate from the doctor in India or hospital or doctor abroad.

34.

(i) **Mr. Rohan, an Indian Resident individual desires to obtain Foreign Exchange for the following purposes:**

(ii) **(A) US$ 1,20,000 for studies abroad on the basis of estimates given by the foreign university.**

(B) Gift Remittance amounting US$ 10,000.

(iii) **Advise him whether he can get Foreign Exchange and if so, under what condition(s)?**

Answer

(A) Remittance of Foreign Exchange for studies abroad: Foreign exchange may be released for studies abroad up to a limit of US $ 2,50,000 for the studies abroad without any permission from the RBI. Above this limit, RBI's prior approval is required. Further proviso to Para I of Schedule III states that individual may be allowed remittances exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case since US $ 1,20,000 is the drawal of foreign exchange, so permission of the RBI is not required.

(B) Gift remittance exceeding US $ 10,000: Under the provisions of Section 5 of FEMA 1999, certain Rules have been made for drawal of foreign exchange for current account transactions. Gift remittance is a current account transaction. Gift remittance exceeding US $ 2,50,000 can be made after obtaining prior approval of the RBI. In the present case, since the amount to be gifted by an individual, Mr. Rohan is USD 10,000, so there is no need for any permission from the RBI.

35. RTP NOV 2020 Q no 13

Mr. Kamal is accused of an offence as mentioned in Part B of Schedule to the PMLA, 2002. What must be the minimum amount of the offence for which Mr. Kamal is accused of?

a) INR 25 Lakhs
b) INR 50 Lakhs
c) INR 100 Lakhs
d) INR 75 Lakhs

Answer: d)

Chapter 2 -The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

1.RTP May 2018 Qn no 16

Popular Limited defaulted in the repayment of term loan taken from a Bank against security created as a first charge on some of its assets. The bank issued notice pursuant to Section 13 of the SARFAESI Act, 2002 to the Company to discharge its liabilities within a period of 60 days from the date of the notice. The company failed to discharge its liabilities within the time limit specified.

Identify and explain the measures to be taken by the Bank to enforce its security interest under the said Act.

Answer

Sub-section (4) of section 13 of SARFAESI Act, 2002, provides that if the borrower fails to discharge his liability in full within the 60 days, the secured creditor may take recourse to one or more of the following measures to recover his secured debt:

(i) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(ii) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;

- appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;
- require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

In the instant case, the Bank may take the above mentioned procedure to enforce its security interest in case Popular Limited has failed to discharge its liabilities within the time limit specified.

2.March 2018 Qn no 3(d) 6 Marks:

XYZ Finance Ltd. is a NBFC company with total assets of 550 crore, and an NPA of 50 crore in its balance sheet. The 50 crore loan consists of 9 cases of 5 crore each and 10 cases of 50 lakhs each. The management of the company wants to sell bad loans worth 50 crore to an ARC. Of the `50 crore, 45 crore is secured against various properties, while one case of 5 crore is unsecured.

During detailed discussion with the legal counsel, it came to light that 2 crore of the secured bad loan has not been registered with the central registry CERSAI, however this was not informed to the buyer in the preliminary discussion. Analyse and advise the CEO of XYZ Finance Ltd. how much bad loan can he sell to the ARC under the SARFAESI, Act, 2002?

Answer:

SARFAESI is applicable to only those notified NBFC which has an asset base of 500 crore or above, hence in this case the XYZ Finance Ltd. shall be able to sell the bad loans to ARCs through SARFAESI.

Further SARFAESI is applicable to secured loans only, therefore only 45 crore of bad loans can be sold to ARC under SARFAESI.

As per section 26D no secured creditor shall be entitled to exercise the rights of enforcement of securities under Chapter III unless the security interest created in its favour by the borrower has been registered with the Central Registry, therefore the buyer may not be keen to take over the unregistered loan of 5 crore.

Further NBFCs can invoke SARFAESI for only those cases which are over 1 crore, therefore the 10 cases of 50 lacs each cannot be sold to ARC under SARFAESI.

Therefore, XYZ Finance Ltd. are left with 8 cases of 5 crore each which can be sold to ARC subject to meeting all other conditions of the law.

3.May 2018 Qn no 6(d) 3 Marks:

Beta Ltd. failed to repay the amount borrowed from KMP Bank Ltd. in accordance with the terms of lending. The loan was granted against the mortgage of its Building. The Bank issued notice as required under Section 13 of the SARFAESI Act, 2002. It was decided by the bank to take possession of the Building after getting necessary assistance from the judicial authority. State the provisions enumerated under Section 14 of the SARFAESI Act, 2002 in this regard.

Answer:

Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset (Section 14)

The secured creditor may, for the purpose of taking possession or control of secured asset, request, in writing, the Chief Metropolitan Magistrate or the District

Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor within a period of thirty days from the date of application.

Provided further that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.

4.May 2018 Qn no 4(c) 2 Marks:

Mr. AA, a farmer mortgaged his agriculture land and obtained a term loan for cultivation purpose from a Nationalized Bank. Due to continuous drought, Mr. AA could not honour the repayment schedule. Identify whether the Bank can initiate action invoking the provisions of the SARFAESI Act, 2002.

Answer:

According to Section 31 of the SARFAESI Act, 2002, the provisions of the Act do not apply to any security interest created in agricultural land.

Hence, the Bank cannot initiate action against Mr. AA who could not honour repayment schedule for a bank loan obtained against his mortgaged agricultural land.

5.Aug 2018 Qn no 4(c) 3 Marks:

Top Limited failed to repay the amount borrowed from the bankers, XYZ Bank, which is holding a charge on all the assets of the company. XYZ Bank took over control of the company in compliance to the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by appointing five persons as directors. The company is managed by a Managing Director, Mr. MD. Examine in the light of the SARFAESI Act, whether Mr. MD is entitled to compensation for loss of office.

Answer:

Top Limited failed to repay the amount borrowed from the XYZ Bank, which is holding a charge on all the assets of the company. The bank took over the control on management of the company in compliance to the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by appointing five persons as directors. The company is managed by a Managing Director, Mr. MD.

Here, Top Limited is a borrower and XYZ Bank is a secured creditor.

Compensation to Managing director (Mr. MD) for loss of office:

According to section 16 of the SARFAESI Act, 2002, no managing director or any other director or a manager or any person in charge of management of the business of the borrower shall be entitled to any compensation for the loss of office or for the premature termination under this Act.

However any such managing director or any other director or manager or any such person in charge of management has the right to recover from the business of the borrower, moneys recoverable otherwise than by way of such compensation.

So, Mr. MD is not entitled to compensation for loss of office.

6.Aug 2018 Qn no 3(d)(ii) 2 Marks:

Aman limited has issued listed bonds five years ago, which is due to be redeemed in the current year worth 50 crore. Market analyst feels that the projected cash flows and profitability seems inadequate to repay the bond value. The single largest bond holder Deep Ltd. holds bonds worth 20 crore, and wants to explore its options under SARFAESI law, in case Aman limited fails to repay the debt. Please advise whether Deep Ltd. can have any remedy under the SARFAESI Act.

Answer:

The definition of secured creditor under section 2(zd) of SARFAESI Act, 2002 includes debenture trustee appointed in respect of debt securities by an bank /financial institution, and corresponding recourse have also been made in SARFAESI Act and RDDBFI Act. Hence Deep Ltd. shall have an alternative to all options available to any secured creditor under the law such as enforcement of security, sale of loans to ARC etc. Unlike NBFC for which a threshold of assets of 500 crore is put for applicability of the SARFAESI Act, there is no such limit for debenture holders.

7.May 2019 Qn no 2(b) 6 Marks:

A Nationalized Bank had provided a term loan of ` 20 crores to Allwell Pharma Limited at an interest rate of 12% p.a. and principal amount is payable in equal half yearly installments of ` 2 crores in 5 years from the date of disbursement of loan. The loan is fully secured against the plant and machinery of the company. The company was regular in paying 3 half yearly installments along with the interest during the first two years. Due to recession in the market and increased competition from multinational companies, the price of the goods manufactured by the company had fallen down and consequently the company has to close down the plant. Hence, the company failed to pay the 4th installment but it paid the interest amount as and when due. After a period of 2 months (60 days) from the due date of the 4th installment, the Bank decided to sell the loan to an Asset Reconstruction company. It has also decided to sell a loan of ` 50 lakhs given to a farmer which is secured against the agricultural lands. The Manager seeks your advice on the above proposals in the light of the Provisions of the SARFAESI Act, 2002.

Answer:

The term loan sanctioned was ` 20 crore and the present balance is Rs 14 crore since 3 instalments of ` 2 crore are paid. This is more than 20 % of the total principal and interest amount as per section 31 (j). Therefore, the loan is to be treated as a financial asset and

the bank has security interest over the property as defined in the Act.

As per the provisions of the Act, for enforcement of security, there has to be a default as defined under section 2(1)(j) which requires the loan to be classified as a Non Performing Asset (NPA) in the present case, the debts are overdue by two months only which is less than 90 days. Therefore, it is not yet classified as NPA unlike the other loan given to a farmer as agricultural loan.

Hence, the loan given to Allwell Pharma Limited cannot be sold to an Asset Reconstruction company.

Further the loan given to a farmer being secured against agricultural land, cannot be sold as per the provisions of SARFAESI Act are not applicable to such assets as per section 31(j).

8.Nov 2018 Qn no 4(c) 2 Marks:

A Bank issued a notice pursuant to Section 13 of the SARFAESI Act, 2002 to a Company to discharge its loan which has already become time barred under the Limitation Act, 1963. The Company did not settle the loan beyond the prescribed notice period. The Bank took recourse under Section 13(4) of the SARFAESI Act, 2002 to take possession of the building to enforce its security interest. Discuss whether the Bank will succeed in its attempt. State whether the provision of SARFAESI Act, 2002 can over ride any other law?

Answer:

According to section 36 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, no secured creditor shall be entitled to take all or any of the measures under section 13(4), unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963.

Thus, the Bank will not succeed in its attempt to take possession of the building to enforce its security interest, as the loan has already become time barred under the Limitation Act, 1963.

According to section 35, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. Thus, provision of SARFAESI Act, 2002 can override any other law.

9.Nov 2018 Qn no 6(d) 3 Marks:

The Management of Gangotri Ltd. was taken by LBV Bank Ltd. (secured creditor) complying the provisions of SARFAESI Act, 2002 and appointed two Directors. The Board of Directors of Gangotri Ltd., duly authorized by its Articles, appointed two Alternate Directors and the majority of the Directors made a declaration required for voluntary liquidation proceedings. A special resolution requiring the Company to be liquidated voluntarily by appointing an insolvency professional to act as the Liquidator was passed at the general meeting of the Company. The Board of Directors and the Shareholders passed the resolutions without the approval/consent of Directors appointed by LBV Bank Ltd. Discuss the validity of the above resolutions under SARFAESI Act, 2002. Does an unsecured Creditor have recourse to this Act?

Answer:

Management of borrower taken by the secured creditor (Section 15 of the SARFAESI Act, 2002): Where the management of the business of a borrower, being a company is taken over by the secured creditor then, notwithstanding anything contained in the said Act or in the memorandum or articles of association of such borrower -

(a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

(b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor;

Accordingly, in the given situation in the question, appointment of alternate directors by the BoD of Gangotri Ltd. though authorised by its Articles, is not valid, and the special resolution so passed by majority for voluntary liquidation passed at general meeting shall not be given effect due to lack of consent of LBV Bank Ltd.

An unsecured creditor doesn't have recourse to this Act.

10.Oct 2018 Qn no 4(C) 3 Marks:

RST Ltd. is a securitization and reconstruction company under SARFAESI Act, 2002. The certificate of registration granted to it was cancelled. State the authority which can cancel the registration and the right of RST Ltd. against such cancellation.

Answer:

Cancellation of Certificate of Registration under SARFAESI Act, 2002: The Reserve Bank of India may cancel a certificate of registration granted to a securitisation and reconstruction company for the reasons stated in Section 4 of the SARFAESI Act, 2002.

RST Ltd., can prefer an appeal to the Central Government (Secretary, Ministry of Finance, Government of India) within a period of 30 days from the date on which

order of cancellation was communicated to it. The Central Government must also give such company a reasonable opportunity of being heard before rejecting the appeal. If RST Ltd., is holding investments of qualified institutional buyers at the time of cancellation of certificate of registration, it shall be deemed to be a securitisation and reconstruction company until it repays the entire investments held by it, together with interest if any, within such period as may be specified by the Reserve Bank.

11.RTP Nov-18:

M/s Solomon Optimum Nutrition Limited had availed credit facilities from Royal Bank Ltd. The company made repayment of loan to some extent and not entirely and accordingly, the bank took recourse under the provisions of Section 13(2) of the SARFAESI Act, 2002. Consequently, possession of the mortgaged property was taken up and was duly advertised by the bank. The company also filed an application under Section 17(1) of SARFAESI Act, 2002 before the debts recovery tribunal which was dismissed by the impugned order. Being aggrieved the company approached the court. Examine in the light of the SARFAESI Act, 2002 whether the company will succeed in the petition filed before the court.

Answer:

According to section 18(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal along with prescribed fees to the Appellate Tribunal within 30 days from the date of receipt of the order of Debts Recovery Tribunal.

Further, no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal 50% of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less. However, the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than 25% of debt.

Thus, in the given situation Solomon Optimum Nutrition Limited can appeal to the Appellate Tribunal (now to NCLAT) by following the above provisions.

12.RTP May 2019 Qn no 19

(i) On what grounds the Reserve Bank of India can cancel a certificate of registration granted to an Asset Reconstruction Company?

Answer

Cancellation of certificate of registration (Section 4)

The Reserve Bank may cancel a certificate of registration granted to an ARC, if such company-

(i) ceases to carry on the business of securitisation or asset reconstruction; or

(ii) ceases to receive or hold any investment from a qualified buyer; or

(i) has failed to comply with any conditions subject to which the certificate of registration has been granted to it; or

(ii) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (3) of section 3; or

(iii) fails to-

(a) comply with any direction issued by the Reserve Bank under the provisions of this Act; or

(b) maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Act; or

(c) submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank; or

(d) obtain prior approval of the Reserve Bank required under sub-section (6) of section 3.

Before cancelling a certificate of registration on the ground that the ARC has failed to comply with the provisions of clause (c) or has failed to fulfil any of the conditions referred to in clause (d) or sub-clause (iv) of clause (e), the Reserve Bank, unless it is of the opinion that the delay in cancelling the certificate of registration granted under sub-section (4) of section 3 shall be prejudicial to the public interest or the interests of the investors or the ARC, shall give an opportunity to such company on such terms as the Reserve Bank may specify for taking necessary steps to comply with such provisions or fulfilment of such conditions.

13.RTP Nov 2019 Qn no 12

Popular Limited defaulted in the repayment of term loan taken from a Bank against security created as a first charge on some of its assets. The bank issued notice pursuant to Section 13 of the SARFAESI Act, 2002 to the Company to discharge its liabilities within a period of 60 days from the date of the notice. The company failed to discharge its liabilities within the time limit specified.

Explain the measures to be taken by the Bank to enforce its security interest under the said Act.

Answer

Sub-section (4) of section 13 of SARFAESI Act, 2002, provides that if the borrower fails to discharge his liability in full within the 60 days, the secured creditor may take recourse to one or more of the following measures to recover his secured debt

(i): take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(ii)take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;

appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor; require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

In the instant case, the Bank may take the above mentioned procedure to enforce its security interest in case Popular Limited has failed to discharge its liabilities within the time limit specified.

14.Nov 2019 Qn no 2(C)

M/s. AWP Limited defaulted in repayment of a term loan taken from a Nationalized Bank against the security created as first charge on its Land & Buildings. The Bank classified the debt from M/s AWP Limited as Non-Performing Asset. The Bank issued Notice pursuant to Section 13 of the SARFAESI Act, 2002 to the Company to discharge its liabilities in full within a period of 60 days from the date of Notice. The Company objected for full settlement and the time limit for settlement. The Bank did not respond to the objection of the Company. In the light of the provisions of the SARFAESI Act, 2002 decide:

(i) Whether the objection of the Company is valid?

(ii) Whether the Bank has to respond to the objection of the Company?

(iii)Whether the Bank has right to enforce the security interest without the intervention of the court?

Answer

As per section 13(2) of the SARFAESI Act, 2002, where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub- section (4).

In the instant case, the bank issued notice to the company to discharge its liabilities in full within a period of 60 days from the date of notice and the company objected for full settlement and the time limit for settlement. In view of the provisions of the section 13(2) mentioned above, the objection of the company is not valid.

If, on receipt of the notice under sub-section (2), the company makes any representation or raises any objection, the bank shall consider such representation or objection and if the bank comes to the conclusion that such representation or objection is not acceptable or tenable, it shall communicate within fifteen days of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the company. [Section 3A]

Notwithstanding anything contained in Section 69 or Section 69A of the Transfer of Property Act, 1882, the security interest created in favour of the bank may be enforced without intervention of the court or tribunal.

15.MTP Nov 2019 Qn no 3 (b)(ii) 3 Marks

Apex Limited failed to repay the amount borrowed from the bankers, ACE Bank Limited, which is holding a charge on all the assets of the company. The Bank took over management of the company in accordance with the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by appointing four persons as directors. The company is managed by a Managing Director, Mr. X. Referring to the provisions of the said Act, examine whether Mr. X is entitled to compensation for loss of office.

Answer

Apex Limited failed to repay the amount borrowed from the bankers, ACE Bank Limited, which is holding a charge on all the assets of the company. The bank took over management of the company in accordance with the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by appointing four persons as directors. The company is managed by a Managing Director, Mr. X.

Here, Apex Limited is a borrower and ACE Bank Limited is a secured creditor.

Compensation to Managing director (Mr. X) for loss of office: According to section 16 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, irrespective of anything contained in any contract or in any other law for the time being in force, no managing director or any other director or a manager or any person in charge of management of the business of the borrower shall be entitled to any compensation for the loss of office or for the premature termination under this Act. However any such managing director or any other director or manager or any such person in charge of management has the right to recover from the business of the borrower, moneys recoverable otherwise than by way of such compensation.

Study Material

16. Minimum threshold prescribed for applicability of SARFAESI Act on NBFCs is –

(a) **1 crore**

(b) **10 crore**

(c) **100 crore**

(d) **500 crore**

Answer: d) **Hint:** Sarfaesi is applicable to only those notified NBFC which has an asset base of amount 500 crore or above.

17.State under which given situation, a lender can avail the benefits of SARFAESI Act -

(i) **An insolvency application has been launched against the borrower**

(ii) **The borrower is under BIFR**

(iii) **A winding up petition has been made against the borrower**

(iv) **A criminal proceeding has been launched by the lender against the borrower**

(a) **In situations (i) & (iii)**

(b) **In situations (ii) & (iv)**

(c) **In situations (ii), (iii) & (iv)**

(d) **In all the given situations (i), (ii), (iii) & (iv)**

Answer: c) **Hint:** Except in situation (i) i.e. Where an insolvency application is launched against the borrower, a secured lender shall not be able to exercise its powers under the SARFAESI Act during the first moratorium granted by the Adjudicating Authority under section 14(1)(c) of the Insolvency and Bankruptcy Code, 2016 for a period of 180 days from the date of admission of the application, which is extendable for another period of 90 days, rest in all other cases SARFAESI is applicable.

18. RST Ltd. is a securitization and reconstruction company under SARFAESI Act, 2002. The certificate of registration granted to it was cancelled. State the authority which can cancel the registration and the right of RST Ltd. against such cancellation.

Answer:

Cancellation of Certificate of Registration under SARFAESI Act, 2002:

The Reserve Bank of India may cancel a certificate of registration granted to a securitisation and reconstruction company for the reasons stated in Section 4 of SARFAESI Act, 2002.

RST Ltd., can prefer an appeal to the Central Government (Secretary, Ministry of Finance, Government of India) within a period of 30 days from the date on which order of cancellation was communicated to it. The Central Government must also give such company a reasonable opportunity of being heard before rejecting the appeal. If RST Ltd., is holding investments of qualified institutional buyers at the time of cancellation of certificate of registration, it shall be deemed to be a securitisation and reconstruction company until it repays the entire investments held by it, together with interest if any, within such period as may be specified by the Reserve Bank

19. Referring to the provisions of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 state the circumstances under which the Reserve Bank of India may cancel the certificate of registration granted to a Securitisation Company

Answer

Cancellation of Certificate of Registration (Section 4 of the securitisation & reconstruction of financial assets & enforcement of Security Interest Act, 2002)

As per the section 4 of the Securitisation & Reconstruction of Financial Assets & Enforcement of security Interest Act, 2002, the Reserve Bank may cancel a certificate of registration granted to a securitization company or a reconstruction company, if such company-

(i) ceases to carry on the business of securitisation or asset reconstruction; or

(ii) ceases to receive or hold any investment from a qualified institutional buyer; or

(iii) has failed to comply with any conditions subject to which the certificate of registration has been granted to it; or

(iv) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of section 3(3); or

(v) fails to-

(a) comply with any direction issued by the Reserve Bank under the provisions of this Act; or

(b) maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Act; or

(c) submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank; or

(d) obtain prior approval of the Reserve Bank required under section 3(6).

20. Apex Limited failed to repay the amount borrowed from the bankers, ACE Bank Limited, which is holding a charge on all the assets of the company. The Bank took over management of the company in accordance with the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 by appointing four persons as directors. The company is managed by a Managing Director, Mr. X. Referring to the provisions of the said Act, examine whether Mr. X is entitled to compensation for loss of office and also explain the effect of such takeover on certain rights of the shareholders of the company

Answer

Apex Limited failed to repay the amount borrowed from the bankers, ACE Bank Limited, which is holding a charge on all the assets of the company. The bank took over management of the company in accordance with the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by appointing four persons as directors. The company is managed by a Managing Director, Mr. X.

Here, Apex Limited is a borrower and ACE Bank Limited is a secured creditor.

Compensation to Managing director (Mr. X) for loss of office:

According to section 16 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, irrespective of anything contained in any contract or in any other law for the time being in force, no managing director or any other director or a manager or any person in charge of management of the business of the borrower shall be entitled to any compensation for the loss of office or for the premature termination under this Act. However any such managing director or any other director or manager or any such person in charge of management has the right to recover from the business of the borrower, moneys recoverable otherwise than by way of such compensation.

Effect of takeover on rights of the shareholders:

Where the management of the business of a borrower, being a company as defined in the Companies Act is taken over by the secured creditor, then, notwithstanding anything contained, such borrower- in the said Act or in the memorandum or articles of association of such company

(1) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

(2) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor;

(3) no proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any court, except with the consent of the secured creditor.

The secured creditor is under an obligation to restore the management of the business of the borrower, on realisation of his debt in full, in case of takeover of the management of the business of a borrower by such secured creditor.

"Provided that if any secured creditor jointly with other secured creditors or any asset reconstruction company or financial institution or any other assignee has converted part of its debt into shares of a borrower company and thereby acquired controlling interest in the borrower company, such secured creditors shall not be liable to restore the management of the business to such borrower."

Chapter 3 – Prevention of Money Laundering Act

Multiple Choice Questions

1.RTP Nov 2019

Mr. Ram gave two of his friends' cash amount of ` two lakh each for their business purposes. Later at the time of return, he asked both of them, in lieu of the same, to buy his product via credit card and online transfers in installments through next couple of months' time for which he issued bills to adjust the amount in his account books.

Does this payment system through credit card and online transfer mode are covered under Money Laundering Act?

a) No, because payment are made through credit cards & being an online transfers, it's a genuine transaction.
b) Yes, money laundering transactions done via credit card and online payments comes under the Prevention of Money Laundering Act
c) No, it is not money laundering as none of Mr. Ram friends are benefiting from this transaction.
d) No, because the transactions are not done with shell companies.

Answer: (b)

2.MTP Apr 2019 Qn no 19

On the basis of material in possession with the Director, Mr. Q was under remand evidencing that he is in possession of proceeds of crime falling under the offence said to be committed in PMLA. Director may order for provisional attachment of the property of Mr. Q for a period----------

a) Within 90 days from the date of the order
b) Exceeding 180 days from the date of the order
c) Within 180 days from the date of the order
d) Not exceeding 280 days from the date of the order

Answer: Option C

Descriptive Questions

3.RTP May 2018 Qn no 17

(i) The Adjudicating Authority appointed under the Prevention of Money Laundering Act, 2002 issued an order attaching certain properties of XYZ Limited alleged to be involved in money laundering for a specified period. The company aggrieved by the order of the Adjudicating Authority seeks your advice about the remedy that is available under the Act. Analyse and apply the relevant provisions of the Prevention of Money Laundering Act, 2002 in relation to the above given situation.

(ii) Sohan Lal, a farmer, was found involved in embezzlement of opium cultivated by him. State the punishment that can be awarded to him under the Prevention of Money Laundering Act, 2002.

Answer

(i) Section 25 of the Prevention of Money Laundering Act, 2002 empowers the Central Government to establish an Appellate Tribunal to hear appeal against order of the Adjudicating Authority and other authorities under the Act.

Section 26 deals with the right and time frame to make an appeal to the Appellate Tribunal. Any person aggrieved by an order made by the Adjudicating Authority may prefer an appeal to the Appellate Tribunal within a period of 45 days from the date on which a copy of the order is received by him. The appeal shall be in such form and be accompanied by such fee as may be prescribed. The Appellate Tribunal may extend the period if it is satisfied that there was sufficient cause for not filing it within the period of 45 days.

The Appellate Tribunal may after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, confirming, modifying or setting aside the order appealed against.

The Act also provides further appeal. According to Section 42 any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the order of the Appellate Tribunal.

In the light of the provisions of the Act explained above the company is advised to prefer an appeal to Appellate Tribunal in the first instance.

(ii) Section 4 of the Prevention of Money Laundering Act, 2002 provides for the punishment for Money-Laundering. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine. But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to 10 years instead of 7 years.

Paragraph 2 of Part A of Schedule to the Prevention of Money Laundering Act, 2002, covers Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 Whereby, embezzlement of opium by cultivator (section 19) is covered under paragraph 2 of Part A.

In the present case, Sohan Lal, a farmer, who was involved in embezzlement of opium cultivated by him shall be liable for the rigorous imprisonment for a term which may extend to 10 years and shall also be liable to fine.

4.March 2018 Qn no 1(C) 6 Marks:

(i)Raghu, a clerical staff in the Power Board, was assigned with the task of inspection of the file with the requisite documents of the applicants who have applied for the new connections. Mr. Rajiv Shah, for his new flat, applied for the power connection as per the required usage with all the supportive documents. Raghu, conveyed Mr. Rajiv Shah, that his file has been rejected due to discrepancies in the compliances. Indirectly he communicated that, if required, he may clear his file and put into process. Mr. Rajiv Shah give him cash amount of ` 2 lacs to clear his file. State in the light of the above situation, the liability of Raghu and Mr. Rajiv Shah in the commission of an offence as per the Prevention of Money Laundering Act, 2002.

(ii)The Adjudicating Authority appointed under the Prevention of Money Laundering Act, 2002 issued an order attaching certain properties of XYZ Limited alleged to be involved in money laundering for a specified period. The company, seeks your advice about the remedy available under the Prevention of Money Laundering Act, 2002.

Answer:

As per the section 3 of the Prevention of Money Laundering Act, 2002, offence of money laundering is said to be committed when whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money - laundering.

In the given case, Mr. Rajiv Shah and Raghu, is knowingly a party to an offence of lend ing and accepting of a bribe to move the file of applicant, which was prima facie rejected by the authority. Both Mr. Rajiv Shah and Raghu, are guilty of offence of money laundering.

Section 4 of the PMLA, specifies punishment for money-laundering. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

So accordingly, Mr. Rajiv Shah and Raghu are punishable in compliance with the above provisions.

(ii) Appeal to Appellate Tribunal: According to section 25 of the Prevention of Money Laundering Act, 2002, the Appellate Tribunal constituted under section 12(1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 shall be the Appellate Tribunal for hearing appeals against the orders of the Adjudicating Authority and the other authorities under this Act.

The appeal shall be filed within a period of 45 days from the date on which a copy of the order made by the Adjudicating Authority, However, period may be extended on the sufficient cause. The Appellate Tribunal may after hearing the parties, pass such

order as it thinks fit, confirming, modifying or setting aside the order appealed against.

Any person aggrieved by any decision or order of the Appellate Tribunal, may file an appeal to the High Court within 60 days from the date of communication of the order of the Appellate Tribunal. (Section 42)

In the light of the above provisions of the Act, the company is advised to prefer an appeal to Appellate Tribunal in the first instance.

5.May 2018 Qn no 1(C) 6 Marks:

(i)Define the term "Payment System" under the provisions of the Prevention of Money Laundering Act, 2002.

(ii) Mr. Honest, a notorious, was caught in possession of Counterfeit Currency Notes, an offence specified under Part A - Paragraph 1 of the Schedule of the Prevention of Money Laundering Act, 2002. State the Punishment that can be awarded to him under the above Act. Also identify the punishment for the offence specified under Part A - paragraph 2 of the Schedule of the Prevention of Money Laundering Act, 2002.

Answer:

(a) **(i) Payment System [Section 2(1)(rb) of the Prevention of Money Laundering Act, 2002]:** "Payment System" means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them.

It includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations.

(ii) Section 4 of the Prevention of Money Laundering Act, 2002 provides for the punishment for Money-Laundering. According to the Section, whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years

and shall also be liable to fine. But where the proceeds of crime involved in money- laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to ten years instead of seven years.

Since, counterfeiting of currency notes is a predicate offence, specified under paragraph 1 of Part A of the Schedule (and not under paragraph 2 of Part A of the Schedule), Mr. Honest can be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Where the offence specified falls under Part A- Paragraph 2 of the Schedule of PMLA, maximum punishment may extend to 10 years.

6.Aug 2018 Qn no 1(C) 6 Marks:

(i)Ali was assigned by Mr. X to deliver counterfeit currency-notes to one of his close friends to Honkong for which hefty commission was fixed by the Mr. X. Advise, whether the said act can be considered as money laundering. Who shall be liable for the commission of the money Laundering?

(ii) Ms. Farida with an intent to deceive the public, personated herself as a public servant and misused his position and gained monetary benefits. She was arrested for the said cognizable and non-bailable offence for a term of Imprisonment for 2 years and with fine. Discuss in the light of the Prevention of Money Laundering Act, 2002, liability of Ms. Farida in the said situation.

Answer:

As per the Prevention of Money Laundering Act, 2002, whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering (Section 3).

"Proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [Section 2(1)(u)].

Every Scheduled Offence is a Predicate Offence. The occurrence of the scheduled Offence is a pre requisite for initiating investigation into the offence of money laundering.

In the given case, Mr. X assigned Ali to deliver counterfeit currency notes to be given to his friends in Hongkong, which is an offence falling within the purview of scheduled offence in Part A of the PMLA, 2002 under section 489B of the IPC. This section deals with the using as genuine, forged or counterfeit currency-notes or bank-notes. According to the section whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be liable under the Prevention of Money Laundering Act.

Hence, Ali, Mr. X and his friends in Hongkong, all are said to be liable under the Prevention of Money Laundering Act.

Section 45 of the Prevention of Money Laundering Act, 2002, provides of the offences that are cognizable and non-bailable. According to which, person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall not be released on bail or on his own bond except on the conditions stated therein the said section.

Given instance as to the commission of an offence, is out of the purview of the predicate offence as given in the Schedule under the PMLA, 2002. Ms. Farida shall be liable for personating herself as a public servant in other law but will not be liable for arrest under the PMLA.

7.May 2019 Qn no 3(b) 6 Marks:

Mr. Dawood Moosa, a known smuggler was caught in transfer of funds illegally exporting narcotic drugs from India to some countries in Africa. State the maximum punishment that can be awarded to him under Prevention of Money Laundering Act, 2002.

(ii) Mr. Robert has been arrested for a cognizable and non-bailable offence under Part- A of the schedule punishable for a term of imprisonment for more than three years under the Prevention of Money Laundering Act, 2002. He seeks your advice as to how can he be released on bail. Advise him.

Answer:

Paragraph 2 of Part A of the Schedule to the Prevention of Money Laundering Act, 2002, covers Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985. Whereby, illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances (section 23) is covered under paragraph 2 of Part A.

Punishment: Section 4 of the said Act provides for the punishment for Money-Laundering. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine. But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to 10 years instead of 7 years. Thus, in the given case, the maximum punishment may extend to 10 years.

Section 45 of the Prevention of Money Laundering Act, 2002 provides that the offences under the Act shall be cognizable and non bailable. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence [under this Act shall be released on bail or on his own bond unless-

(i) The Public Prosecutor has been given an opportunity to oppose the application for such release and

(ii) Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

In case of any person who is under the age of 16 years or in case of a woman or in case of a sick or infirm or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees may be released on bail,if the the Special Court so directs.

In compliance to above provision, Mr. Robert can be released on bail.

8.May 2019 Qn no 6(c)(i) 3 Marks:

Who is a "Reporting Entity" under the Prevention of Money Laundering Act, 2002 and what are the obligations cast on them under Sec. 12 of the Act? The Bank account of Amar has been attached by the order of an Assistant Director for a period of 180 days. The lawyer of Amar objected to this attachment. Decide the validity of the attachment.

Answer:

"Reporting entity" means a banking company, financial institution, intermediary or a person carrying on a designated business or profession.

Section 12 of the Prevention of Money Laundering Act, 2002 provides for the obligation of Banking Companies, Financial Institutions and Intermediaries.

According to section 12,

1. Maintenance of records: Every reporting entity shall –
   (a) maintain a record of all transactions,
   (b) furnish to the Director information relating to such transactions, whether attempted or executed, the nature and value of the said transactions;
   (c) verify the identity of its clients
   (d) identify the beneficial owner, if any, of its clients,

   maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.
2. Maintenance of records related to the transactions (i.e. for above clause a): The records shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.
3. Maintenance of records related to evidencing identity of its clients and beneficial owners (i.e., for above clause e): The records shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

   In the instant case, the bank account of Amar has been attached by the order of an Assistant Director for a period of 180 days. As per section 5 of the Prevention of Money Laundering Act, 2002, attachment of a property can be done by the Director or any other officer not below the rank of Deputy Director. Here the order is issued by an Assistant Director who is below the rank of the Deputy Director. Therefore, the objection of the lawyer of Amar is valid.

9.May 2019 Qn no 1(c) 6 Marks:

(i)An Appellate Tribunal consisting of two members was formed to hear the appeal preferred by Mr. Hari, being aggrieved by an Order made by the Adjudicating Authority under the Prevention of Money Laundering Act, 2002. Two members of the Bench differ in their opinion on a particular point referred in the appeal.
Explain the next course of action to be followed by the Bench members under the said Act.

(ii)Mr. Narayan willfully gives false information, refuses to give evidence and to sign statement made by him in the course of proceedings under the provisions of Prevention of Money Laundering Act, 2002. Explain the penal provisions and mode of recovery of fine or penalty enumerated under the said Act.

Answer:

Decision to be by majority [Section 38 of the Prevention of Money Laundering Act, 2002]

If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by third Member of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

In the instant case, the above procedure has to be followed by the Bench members.

Punishment for false information or failure to give information, etc. [Section 63 of the Prevention of Money Laundering Act, 2002]

1. Any person willfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall on conviction be liable for imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees or both.
2. If any person,-
   (a) refuses to give evidence and
   (b) refuses to sign statement made by him in the course of proceedings

   he shall pay, by way of penalty, a sum which shall not be less than 500 rupees but which may extend to 10,000 rupees for each such default or failure.

Mode of Recovery of fine or penalty [Section 69]

Where any fine or penalty imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine or penalty, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.

10.Oct 2018 Qn no 1(c) 6 Marks:

The Adjudicating Authority appointed under the Prevention of Money Laundering Act, 2002, issued an order attaching certain properties of XYZ Limited alleged to be involved in money laundering for a specified period. The company aggrieved by the order of the Adjudicating Authority seeks your advice about the remedy that is available under the Act. Apply the relevant provisions of the Prevention of Money Laundering Act, 2002 in relation to above given situation

(ii) Mr. Criminal (a minor)) was arrested for a cognizable and non-bailable offence punishable for a term of imprisonment for more than three years under the Prevention of Money Laundering Act, 2002. He seeks your advise as to how can he be released on bail. Advise him.

Answer:

(i) Section 25 of the Prevention of Money Laundering Act, 2002 empowers the Central Government to establish an Appellate Tribunal to hear appeal against order of the Adjudicating Authority and other authorities under the Act.

Section 26 deals with the right and time frame to make an appeal to the Appellate Tribunal. Any person aggrieved by an order made by the Adjudicating Authority may prefer an appeal to the Appellate Tribunal within a period of 45 days from the date on which a copy of the order is received by him. The appeal shall be in such form and be accompanied by such fee as may be prescribed. The Appellate Tribunal may extend the period if it is satisfied that there was sufficient cause for not filing it within the period of 45 days.

The Appellate Tribunal may after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, confirming, modifying or setting aside the order appealed against.

The Act also provides further appeal. According to Section 42 any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the order of the Appellate Tribunal.

In the light of the provisions of the Act explained above the company is advised to prefer an appeal to Appellate Tribunal in the first instance.

(ii) In accordance with the provisions contained under section 45 of the Prevention of Money Laundering Act, 2002, the offences under the Act shall be cognizable and non-bailable. In case of a minor person who is an accused of an offence punishable for a term of imprisonment of more than 3 years under Part A of the Schedule shall be released by the Special Court on bail.

11.RTP Nov-18:

Explain the term "Offence of Money Laundering" within the meaning of the Prevention of Money Laundering Act, 2002. Mr. Alfred, a known smuggler was caught in transfer of funds illegally exporting narcotic drugs from India to some countries in South Africa. State the maximum punishment that can be awarded to him under Prevention of Money Laundering Act, 2002.

Answer:

Offence of Money Laundering: Section 2(i)(y) of the prevention of Money Laundering

Act, 2002 defines the term "scheduled offence", which accordingly means -

(i) the offences specified under Part A of the Schedule; or

(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more

(iii) The offences specified under Part C of the Schedule. This Schedule to

the Act gives a list of all the above offences.

Paragraph 2 of Part A of the Schedule to the Prevention of Money Laundering Act, 2002, covers Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985. Whereby, illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances (section 23) is covered under paragraph 2 of Part A.

Punishment:

Section 4 of the said Act provides for the punishment for Money- Laundering. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine. But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to 10 years instead of 7 years.

12.MTP Mar 2019 Qn no 3(b) 6 Marks

Mr. Ramesh was partner in the Firm, Rajkumar & sons. The said firm was established by Mr. Raj Kumar, who is director of the Subh Labh Pvt. Limited which is a one person company. Subh Labh PVT. LTD. have foreign income from the clientele being of outside India. Companies generation of foreign income was invested by the Mr. Rajkumar in its firm without being disclosed in its financial records. Mr. Ramesh was not aware of the such undisclosed flow of fund in the Firm. Give the following answer considering the given facts-

(i) **Liability of Mr. Ramesh being a partner of a firm, involved in use of income of Subh Labh Pvt. Ltd. obtained from their foreign clientele.**

(ii) **Liability of Mr. Rajkumar being a director of the Subh Labh Pvt. Ltd.**

Answer

Section 70 of the PMLA, 2002 states of the offences by companies. According to the provision where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

Where above contravention has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

As per the explanation to the section term "Company" means any body corporate and includes a firm or other association of individuals; and the term "Director", in relation to a firm, means a partner in the firm.

Accordingly, following are the answers:

(i) Though Mr. Ramesh was a partner of a firm, he was not aware of proceeds of crimes. He shall not be liable for the punishment for an offence committed by Rajkumar & sons for using of undisclosed foreign income of Subh Labh Pvt Ltd. However, the firm is liable for commission of the scheduled offence.

(ii) Both Mr. Rajkumar, the director and Subh-Labh Pvt. Ltd., the company, are liable for the commission of the scheduled offence as per the above provision.

13.MTP Apr 2019 Qn no 6(b) (i) 3 Marks

What are the possible actions which can be taken against persons / properties involved in Money Laundering?

Answer

(i) Following actions can be taken against the persons involved in Money Laundering:-

(a) Attachment of property under Section 5, seizure/ freezing of property and records under Section 17 or Section 18. Property also includes property of any kind used in the commission of an offence under PMLA, 2002 or any of the scheduled offences.

(b) Persons found guilty of an offence of Money Laundering are punishable with imprisonment for a term which shall not be less than three years but may extend up to seven years and shall also be liable to fine [Section 4].

(c) When the scheduled offence committed is under the Narcotics and Psychotropic substances Act, 1985 the punishment shall be imprisonment for a term which shall not be less than three years but which may extend up to ten years and shall also be liable to fine.

(d) The prosecution or conviction of any legal juridical person is not contingent on the prosecution or conviction of any individual.

14.MTP Apr 2019 QN no 3(b) 6 Marks

Raghu, an officer in the Power Board, was assigned with the task of inspection of the file with the requisite documents of the applicants who have applied for the new connections. Mr. Rajiv Shah was one among the applicants who applied for the power connection for his new flat, as per the required usage with all the supportive documents. Raghu, conveyed Mr. Rajiv Shah, that his file has been rejected due to discrepancies in the compliances. Indirectly he also communicated that, if required, he may clear his file and put into process. Mr. Rajiv Shah gave him cash Rs. 2 lacs to clear his file.

Analyse, in the light of the above situation, the liability of Raghu and Mr. Rajiv Shah in the commission of an offence as per the Prevention of Money Laundering Act, 2002.

Answer:

As per the section 3 of the Prevention of Money Laundering Act, 2002, offence of money laundering is said to be committed when whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

In the given case, Mr. Rajiv Shah and Raghu, is knowingly a party to an offence of lending and accepting of a bribe to move the file, which was prima facie rejected by the authority. Both Mr. Rajiv Shah and Raghu, are guilty of offence of money laundering.

Section 4 of the PMLA, specifies punishment for money-laundering . Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

So accordingly, Mr. Rajiv Shah and Raghu both are punishable in compliance with the above provisions.

15.RTP May 2019 Qn no 20

(i) The Adjudicating Authority appointed under the Prevention of Money Laundering Act, 2002 issued an order attaching certain properties of XYZ Limited alleged to be involved in money laundering for a specified period. The company aggrieved by the order of the Adjudicating Authority seeks your advice about the remedy that is available under the Act. Advise explaining the relevant provisions of the Prevention of Money Laundering Act, 2002.

Answer

Establishment of Appellate Tribunal

According to section 25 of the Prevention of Money Laundering Act, 2002, the Appellate Tribunal constituted under sub-section (1) of section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 shall be the Appellate Tribunal for hearing appeals against the orders of the Adjudicating Authority and the other authorities under this Act.

Appeals to Appellate Tribunal

Section 26 deals with the right and time frame to make an appeal to the Appellate Tribunal. The Director or any person aggrieved by an order made by the Adjudicating Authority under this Act may prefer an appeal to the Appellate Tribunal.

The appeal shall be filed within a period of 45 days from the date on which a copy of the order made by the Adjudicating Authority is received and it shall be in such form and be accompanied by prescribed fees. The appeal shall be in such form and be accompanied by such fee as may be

prescribed. The Appellate Tribunal may extend the period if it is satisfied that there was sufficient cause for not filing it within the period of 45 days.

The Appellate Tribunal may after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, confirming, modifying or setting aside the order appealed against.

Appeals to High Court

The Act also provides further appeal. According to Section 42 any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the order of the Appellate Tribunal.

In the light of the provisions of the Act explained above the company is advised to prefer an appeal to Appellate Tribunal in the first instance.

16.RTP Nov 2019 Qn no 18

Neeraj was given an offer by a company vendor to disclose him the lowest bid quoted by other vendors. Neeraj accessed the computer of his Executive Director and passed on the lowest quotation to the vendor and thus helped him in quoting the lowest among all the bids. Examine and analyse the situation and conclude how Neeraj will be held liable under Prevention of Money Laundering Act?

Answer

In the given instance, Neeraj is liable for the commission of scheduled offence specified under Part A Para 22 of the PMLA, 2002. He is liable for an offence committed under section 72 of the Information TechnologyAct, 2000. It provides for the offence for breach of confidentiality and privacy without consent of the person concerned.

Here as per the stated facts, Neeraj acted without consent of the concerned person i.e. his executive director and accessed the electronic records and passed on the official information to the vendor, thus leading to the breach of confidentiality & privacy of the company. This sharing of confidential information can produce large profits & ill gotten gains to Mr. Neeraj. Thus his involvement is connected with the obtaining of profits from proceeds of crime. Therefore, he is liable under sections 3 and 4 of the PMLA, 2002 which provides rigorous imprisonment for a term which shall not be less than 3 years, but which may extend to 7 years and shall be liable to fine.

17.Nov 2019 Qn no 3(b) 6 Marks

Mr. 'B' purchased a flat out of the proceeds earned by Drug Trafficking. The flat was attached by the Director, Director of Enforcement after complying the procedures under Section 5 of the Prevention of Money Laundering Act, 2002 (PMLA, 2002). Mr 'B' got a stay from the High Court for any proceedings under the said Act. The stay

was subsequently vacated

State the relevant provisions of the PMLA, 2002 for computing the period of provisional attachment including extension, if any.

Whether Mr. 'C', son of Mr. 'B' can occupy the flat during the period of provisional attachment?

Answer

According to section 5 of the Prevention of Money Laundering Act, 2002, where the Director or any other officer (not below the rank of Deputy Director authorised by the Director), has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding 180 days from the date of the order, in such manner as may be prescribed.

Provided further that, any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

Computation of period of attachment: Provided also that for the purposes of computing the period of 180 days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding 30 days from the date of order of vacation of such stay order shall be counted.

No effect on the right to enjoy the property: This section shall not prevent the person interested in the enjoyment of the immovable property attached from such enjoyment.

Here, "**person interested**", in relation to any immovable property, includes all persons
claiming or entitled to claim any interest in the property.

In the given case, Mr. C, son of Mr. B can occupy the flat during the period of provisional attachment if he claims to have any interest in the said property.

18.Nov 2019 Qn no 6(C) 4 Marks

Mr. 'K' used his car for smuggling cash and the Special Court found on conclusion of trial that an offence of money laundering was committed by Mr. 'K' under the provisions of the Prevention of Money Laundering Act, 2002 (PMLA, 2002). The car was under hypothecation to a Nationalized Bank for the car loan obtained. Referring to provisions of the PMLA, 2002, examine whether the car can be confiscated despite the existence of encumbrance?

Answer

Vesting of property in Central Government [Section 9]: Where an order of confiscation has been made under section 8(5) or section 8(7) or section 58B or section 60(2A) of PMLA, 2002 in respect of any property of a person, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances.

However, where the Special Court or the Adjudicating Authority, as the case may be, after giving an opportunity of being heard to any other person interested in the property attached under this Chapter, or seized or frozen, is of the opinion that any encumbrance on the property or lease-hold interest has been created with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrance or lease-hold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrances or lease-hold interest.

In the instant case, Mr. K used his car for smuggling cash and Special Court found on conclusion of trial that an offence of money laundering was committed by Mr. K. The car was under hypothecation to a Nationalized bank for the car loan obtained. As the encumbrance on the car has been created to defeat the provisions and special court may order to declare such encumbrance to be void and therefore the car can be confiscated and shall vest in the Central Government.

19.MTP Nov 2019 Qn no 3(b)(i) 3 Marks

The Adjudicating Authority appointed under the Prevention of Money Laundering Act, 2002 issued an order attaching certain properties of XYZ Limited alleged to be involved in money laundering for a specified period. The company aggrieved by the order of the Adjudicating Authority seeks your advice about the remedy that is available under the Act. Analyse and apply the relevant provisions of the Prevention of Money Laundering Act, 2002 in relation to the above given situation.

Answer:

Section 25 of the Prevention of Money Laundering Act, 2002 empowers the Central Government to establish an Appellate Tribunal to hear appeal against order of the Adjudicating Authority and other authorities under the Act.

Section 26 deals with the right and time frame to make an appeal to the Appellate Tribunal. Any person aggrieved by an order made by the Adjudicating Authority may prefer an appeal to the Appellate Tribunal within a period of 45 days from the date on which a copy of the order is received by him. The appeal shall be in such form and be accompanied by such fee as may be prescribed. The Appellate Tribunal may extend the period if it is satisfied that there was sufficient cause for not filing it within the period of 45 days.

The Appellate Tribunal may after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, confirming, modifying or setting aside the order appealed against.

The Act also provides further appeal. According to Section 42 any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the order of the Appellate Tribunal.

In the light of the provisions of the Act explained above the company is advised to prefer an appeal to Appellate Tribunal in the first instance.

20.MTP Nov 2019 Qn no 3(b)(ii) 3 Marks

Sohan Lal, a farmer, was found involved in embezzlement of opium cultivated by him. State the nature of the act committed by Sohan Lal in the light of the Prevention of Money Laundering Act, 2002.

Answer

In the present case, Sohan Lal, a farmer, who was involved in embezzlement of opium cultivated by him shall be said to have committed a scheduled offence under the Paragraph 2 of Part A of Schedule to the Prevention of Money Laundering Act, 2002. It covers offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 whereby, embezzlement of opium by cultivator (section 19) is an offence which is illegal by law and hence the person involved in the proceeds of crimes arising out of the commission of scheduled offences shall be liable for commission of trial under PMLA.

Accordingly, as per section 4 of the PMLA, 2002, Sohan lal shall be liable for the rigorous imprisonment for a term which may extend to 10 years and shall also be liable to fine.

21.MTP Nov 2019 Qn no 6(b)(ii) 3 Marks

What are the possible actions which can be taken against persons / properties involved in Money Laundering?

Answer

Following actions can be taken against the persons involved in Money Laundering:-

(a) Attachment of property under Section 5, seizure/ freezing of property and records under Section 17 or Section 18. Property also includes property of any kind used in the commission of an offence under PMLA, 2002 or any of the scheduled offences.

(b) Persons found guilty of an offence of Money Laundering are punishable with imprisonment for a term which shall not be less than three years but may extend up to seven years and shall also be liable to fine [Section 4].

(c) When the scheduled offence committed is under the Narcotics and Psychotropic substances Act, 1985 the punishment shall be imprisonment for a term which shall not be less than three years but which may extend up to ten years and shall also be liable to fine.

(d) The prosecution or conviction of any legal juridical person is not contingent on the prosecution or conviction of any individual.

22.RTP May 2020 Question no 13

Mr. X was found to be guilty of offence of money-laundering by being involved in an activity connected with proceeds of crime. Adjudicating Authority(AA) as per findings confirmed the attachment of the property and ordered for the investigation. The investigation was initiated by the AA on 1st February, 2019. The attachment of the property of Mr. X was still to be continued by 31st January 2020. Enumerate in the given situation the validity of the attachment period.

Answer

Order for attachment/retention of property etc.: As per section 8 of the PMLA, 2002, where the Adjudicating Authority decides that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect.

Period for attachment, retention, or freezing of the seized or frozen property or record: Whereupon such attachment, retention, or freezing of the seized or frozen property or record, AA shall—

(a) continue during investigation, for a period not exceeding three hundred and sixty-five days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

(b) become final after an order of confiscation is passed under section 8(7) or section 8(5) or section 58B or section 60(2A) by the Special Court .

For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.

Accordingly, the attachment of the property of Mr. X to be continued by 31st January 2020 is valid as it is within 365 days from the date of order of the investigation by the Adjudicating Authority.

Study Material

23. The offences under the Prevention of Money Laundering Act, 2002 shall be:

(a) Cognizable and Bailable

(b) Non- cognizable and non - bailable

(c) Cognizable and non-bailable

(d) Non- cognizable and bailable

Answer : **(c) Hint :** As per section 45 of the PMLA

24. Mr. Ram gave two of his friends' cash amount of two lakh each in case of dire necessity for their business purposes. Later at the time of return, he asked both of them, in lieu of the same, to buy his product via credit card and online transfers in installments through next couple of months' time for which he issued bills to adjust the amount in his account books.

Does this payment system through credit card and online transfer mode are covered under money laundering act?

a) No, payment are made through credit cards & online transfers hence all the transaction are genuine

b) Yes, money laundering transactions done via credit card and online payments comes under the Prevention of Money Act

c) No, it is not money laundering as none of Mr. Ram friends are benefiting from this transaction.

d) No, because the transactions are not done with shell companies.

Answer: b) **Hint :** In terms of clause (b) of sub – section (1) of section 2 "payment system" means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them. It includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations.

25. Explain the meaning of the term "Money Laundering". Z, a known smuggler was caught in transfer of funds illegally exporting narcotic drugs from India to some

countries in Africa. State the maximum punishment that can be awarded to him under Prevention of Money Laundering Act, 2002.

Answer

Money Laundering: Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering. [Section 3 of the Prevention of Money Laundering Act, 2002]

Paragraph 2 of Part A of the Schedule to the Prevention of Money Laundering Act, 2002, covers Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985. Whereby, illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances (section 23) is covered under paragraph 2 of Part A.

Punishment: Section 4 of the said Act provides for the punishment for Money-Laundering. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine. But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to 10 years instead of 7 years.

26. Mr. Fraudulent has been arrested for a cognizable and non-bailable offence punishable for a term of imprisonment for more than three years under the Prevention of Money Laundering Act, 2002. Advise, as to how can he be released on bail in this case?

Answer

Section 45 provides that the offences under the Act shall be cognizable and non-bailable. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence under this Act shall be released on bail or on his own bond unless-

(i) The Public Prosecutor has been given an opportunity to oppose the application for such release and

(i) Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

In case of any person who is under the age of 16 years or in case of a woman or in case of a sick or infirm person or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees, may be released on bail, if the Special Court so directs.

27. The Adjudicating Authority appointed under the Prevention of Money Laundering Act, 2002 issued an order attaching certain properties of XYZ Limited alleged to be involved in money laundering for a specified period. The company aggrieved by the order of the Adjudicating Authority seeks your advice about the remedy that is available under the Act. Advise explaining the relevant provisions of the Prevention of Money Laundering Act, 2002.

Answer

Establishment of Appellate Tribunal

According to section 25 of the Prevention of Money Laundering Act, 2002, the Appellate Tribunal constituted under sub-section (1) of section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 shall be the Appellate Tribunal for hearing appeals against the orders of the Adjudicating Authority and the other authorities under this Act.

Appeals to Appellate Tribunal

Section 26 deals with the right and time frame to make an appeal to the Appellate Tribunal. The Director or any person aggrieved by an order made by the Adjudicating Authority under this Act may prefer an appeal to the Appellate Tribunal.

The appeal shall be filed within a period of 45 days from the date on which a copy of the order made by the Adjudicating Authority is received and it shall be in such form and be accompanied by prescribed fees. The appeal shall be in such form and be accompanied by such fee as may be prescribed. The Appellate Tribunal may extend the period if it is satisfied that there was sufficient cause for not filing it within the period of 45 days.

The Appellate Tribunal may after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, confirming, modifying or setting aside the order appealed against.

Appeals to High Court

The Act also provides further appeal. According to Section 42 any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the order of the Appellate Tribunal.

In the light of the provisions of the Act explained above the company is advised to prefer an appeal to Appellate Tribunal in the first instance.

28.RTP Nov 2020 Q no 12

Mr. Kamal is accused of an offence as mentioned in Part B of Schedule to the PMLA, 2002. What must be the minimum amount of the offence for which Mr. Kamal is accused of?

(a) INR 25 Lakhs

(b) **INR 50 Lakhs**

(c) **INR 100 Lakhs**

(d) **INR 75 Lakhs**

Answer: c)

29. **RTP Nov'2020 Q no 21**

Mr. Kunal used his car for smuggling cash and for other illegal activities. On trial before the Special Court, it was found that an offence of money laundering was committed by Mr. 'Kunal'. Also found that the car was under hypothecation to a Bank for the car loan obtained. Referring to provisions of the PMLA, 2002, examine whether the car can be confiscated in the light of the given situation?

Answer

Vesting of property in Central Government [Section 9]: Where an order of confiscation has been made under section 8(5) or section 8(7) or section 58B or section 60(2A) of PMLA, 2002 in respect of any property of a person, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances.

However, where the Special Court or the Adjudicating Authority, as the case may be, after giving an opportunity of being heard to any other person interested in the property attached under this Chapter, or seized or frozen, is of the opinion that any encumbrance on the property or lease-hold interest has been created with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrance or lease-hold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrances or lease-hold interest.

In the instant case, Mr. Kunal used his car for smuggling cash and for other illegal activities for committing of an offence under the purview of the Prevention of Money Laundering Act. The Special Court found on conclusion of trial that an offence of money laundering was committed by Mr. Kunal. The car was under hypothecation with the bank for the car loan obtained. As the encumbrance on the car has been created to defeat the provisions and special court may order to declare such encumbrance to be void and therefore the car can be confiscated and shall vest in the Central Government.

30.**RTP Nov'2020 Q no 24**

Mr. Ramesh Kulkarni conducts private tuition classes from his residence. It was alleged by the Enforcement Directorate that Mr. Kulkarni has under reported his income and collected income in tax and used the proceeds to purchase a house property in Marol, Mumbai. The ED officers through written orders provisionally attached the properties on suspicion of it being derived from the proceeds of crime. Comment on the validity of the provisional attachment on the order issued by the ED officers.

Answer

As per Section 5(5) of the Prevention of Money Laundering Act, 2002, the Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a

period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

As per Section 8(4) of the Prevention of Money Laundering Act, 2002, where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under section 5 or frozen under sub-section (lA) of section 17, in such manner as may be prescribed. Accordingly , the Director is to file a petition with the Adjudicating Authority within 30 days of attachment. After order of attachment is confirmed, the Director take possession of the attached property.

Chapter 4- Foreign Contribution Regulation Act,2010

Multiple Choice Questions

1.MTP Mar 2019 Qn no 4

Surya Ltd., incorporated and registered in New Delhi with a foreign shareholding more than 50% due to liberalisation in Foreign Direct Investment (FDI) policy. State the correct statement as to the status of the Surya Ltd.

(a) Surya limited shall not considered as foreign source because of its registration in India.

(b) Surya Ltd would be 'foreign source' have foreign shareholding more than 50% of foreign company.

(c) Surya Ltd would be 'foreign source' have foreign contribution through various international agencies.

(d) Both (b) & (c)

Answer: Option B

Descriptive Questions

2.March 2018 Qn no 2(d) (i) 3 Marks:

Examine the given situations in the light of the legal provisions covered in the relevant Acts:

Mr. Indian received foreign contribution of amount 1.10 lakh from his relative residing abroad. Examine whether foreign remittances received by Mr. Indian to be treated as foreign contribution as per the FCRA, 2010.

Answer:

No. As per Section 4(e) of FCRA, 2010 read with Rule 6 of FCRR, 2011, even the persons prohibited under section 3, i.e., persons not permitted to accept foreign contribution, are allowed to accept foreign contribution from their relatives. However, in terms of Rule 6 of FCRR, 2011, any person receiving foreign contribution in excess of one lakh rupees or equivalent thereto in a financial year from any of his relatives shall inform the Central Government in prescribed Form within thirty days from the date of receipt of such contribution.

So Mr. Indian shall inform the Central Government of his receiving of the foreign contribution of 1.10 lakh from his relative due to receiving of foreign contribution in excess of 1 lakh rupees.

3.Aug 2018 Qn no 6(e) 3 Marks:

List the restrictions marked for the grant of the registration and grant of prior permission for acceptance of foreign contribution according to FCRA, 2010.

Answer:

In terms of Sec.12 (4) of FCRA, 2010, the following restrictions/conditions have been marked for the grant of registration and prior permission for acceptance of foreign contribution:

The 'person' making an application for registration or grant of prior permission-

i. is not fictitious or benami;
ii. has not been prosecuted or convicted in activities aimed at conversion from one religious faith to another;
iii. has not been prosecuted or convicted for creating communal tension / disharmony
iv. has not been found guilty of diversion or mis-utilisation of its funds;
v. is not engaged or likely to engage in propagation of sedition or violent methods to achieve its ends;
vi. is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;
vii. has not contravened any of the provisions of this Act;
viii. has not been prohibited from accepting foreign contribution;
ix. the person being an individual, neither been convicted nor any prosecution for any offence is pending against him.
x. the person being other than an individual, any of its directors or office bearers has neither been convicted nor any prosecution for any offence is pending against him.

4.(i) Discuss whether foreign remittances received from a relative are to be treated as foreign contribution as per the FCRA, 2010?

(ii) In the light of the Foreign contribution Regulation Act, 2010, discuss whether foreign contribution be received in and utilised from multiple Bank Accounts?

Answer

(i) No. As per Section 4(e) of the Foreign Contribution Regulation Act, 2010 and Rule 6 of Foreign Contribution Regulation Rules, 2011, even the persons prohibited under section 3, i.e., persons not permitted to accept foreign contribution, are allowed to accept foreign contribution from their relatives. However, in terms of Rule 6 of Foreign Contribution Regulation Rules, 2011, any person receiving foreign contribution in excess of one lakh rupees or equivalent thereto in a financial year from any of his relatives shall inform the Central Government in prescribed Form within thirty days from the date of receipt of such contribution.

(ii) The foreign contribution should be received only in the exclusive single foreign contribution account of a Bank (also called designated FC account), as mentioned in the order for registration or prior permission granted and should be separately

maintained by the associations. However, one or more accounts (called Utilization Account) in one or more banks may be opened by the association for 'utilising' the foreign contribution after it has been received in the designated FCRA bank account, provided that no funds other than that foreign contribution shall be received or deposited in such account or accounts and in all such cases, intimation is to be given online within 15 days of opening of such account.

Nov 2018 Qn no 2(d) 6 Marks:

An Association registered under the Foreign Contribution (Regulation) Act, 2010 (the Act) received donation from a club registered in Singapore. The Association proposes:

(a) **To transfer 10% of the donation to "Home for Aged Society", an unregistered person and 15% to "Welfare Club" a registered person under the Act,**

(b) **To invest portion of the donation in Chits promising high returns.**

5.In the light of provisions of the Foreign Contribution (Regulation) Act, 2010 decide whether the Association can carryout the above proposals and if so state the procedures to be followed under the said Act?

Answer:

(i) According to Section 7 of the Foreign Contribution (Regulation) Act, 2010, a person who is registered and granted a certificate and receives any foreign contribution, shall not transfer such foreign contribution to any other person unless such other person is also registered and had been granted the certificate or obtained the prior permission under this Act.

However, that such person may transfer, with the prior approval of the Central Government, a part of such foreign contribution to any other person who has not been granted a certificate or obtained permission to an extent not exceeding ten per cent of the total value thereof and for this purpose, make an application to the Central Government in prescribed Form. [Read with *Rule 24 of FCRR, 2011*]

In the instant case, the association can transfer 10% of the donation to "Home for Aged Society" an unregistered person after making an application to the Central Government in prescribed form and can also transfer 15% to "Welfare Club" a registered person under the Act.

(ii) According to proviso to Section 8 of the FCRA, 2010 any foreign contribution shall not be used for speculative business.

Speculative activities have been defined in Rule 4 of FCRR, 2011 as under:-

(a) any activity or investment that has an element of risk of appreciation or depreciation of the original investment, linked to market forces, including investment in mutual funds or in shares;

(b) participation in any scheme that promises high returns like investment in chits or land or similar assets not directly linked to

the declared aims and objectives of the organization or association.

In the instant case, the association cannot invest portion of the donation in Chits promising high returns.

6.RTP Nov-18:

Mr. Peter, a Member of the Legislature in India, visited Sydney, Australia to attend World Trade Conference as a representative of Government of India after obtaining due permission of the Central Government as per the provisions of Foreign Contribution (Regulation) Act, 2010. His expenditure on foreign travel was borne by Bret Lee Limited, a foreign company. While attending the conference, Mr. Peter suddenly encountered chest pain and he was immediately admitted in the nearby hospital for medical care and treatment. The medical expenses of ` 2,00,000/- was borne by Bret Lee Limited. Mr. Peter seeks your advice about the procedure to be followed in the above situation under the provisions of Foreign Contribution (Regulation) Act, 2010. Please advise suitably.

Answer:

Section 6 of the Foreign Contribution (Regulation) Act, 2010 prescribes that no member of a Legislature shall while visiting any country accept, except with the prior permission of the Central Government for any foreign hospitality. Foreign Hospitality [as per section 2(m)]

means any offer not being a purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any foreign country with free boarding lodging or medical treatment. Therefore, prior approval is required from Central Government for the medical expenses. Provided that it shall not be necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during a visit outside India, but where such foreign hospitality has been received, the person receiving such hospitality shall give, within one month from the date of receipt of such hospitality an intimation to the Central Government as to the receipt of such hospitality, and the source from which and the manner in which such hospitality was received by him.

As per Rule 7 of *Foreign Contribution (Regulation) 2011*, foreign hospitality may be received by member of Legislature in the following manner.

In case of emergent medical aid needed on account of sudden illness during a visit abroad, the acceptance of foreign hospitality shall be required to be intimated to the Central Government within One Month of such receipt giving full details including the source, approximate value in Indian Rupees, and the purpose for which and the manner in which it was utilized.

Hence, Mr. Peter has to follow the above procedure.

7.Oct 2018 Qn no 2(d) 6 Marks:

Mr. Peter, a Member of the Legislature in India, visited Sydney, Australia to attend World Trade Conference as a representative of Government of India after obtaining due permission of the Central Government as per the provisions of Foreign Contributors (Regulation) Act, 2010. His expenditure on foreign travel was borne by Bret Lee Limited, a foreign company. While attending the conference, Mr. Peter suddenly encountered chest pain and he was immediately admitted in the nearby hospital for medical care and treatment. The medical expenses of Rs. 2,00,000/ - was borne by Bret Lee Limited. Mr. Peter seeks your advice about the procedure to be followed in the above situation under the provisions of Foreign Contribution (Regulation) Act, 2010. Please advise suitably.

Answer:

Section 6 of the Foreign Contribution (Regulation) Act, 2010 prescribes that no member of a Legislature shall while visiting any country accept, except with the prior permission of the Centr al Government for any foreign hospitality. Foreign Hospitality [as per section 2(m)] means any offer not being a purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any foreign country with free boarding lodging or medical treatment. Therefore, prior approval is required from Central Government for the medical expenses. Provided that it shall not be necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during a visit outside India, but where such foreign hospitality has been received, the person receiving such hospitality shall give, within one month from the date of receipt of such hospitality an intimation to the Central Government as to the receipt of such hospitality, and the source from which and the manner in which such hospitality was received by him.

As per Rule 7 of *Foreign Contribution (Regulation) 2011*, foreign hospitality may be received by member of Legislature in the following manner.

In case of emergent medical aid needed on account of sudden illness during a visit abroad, the acceptance of foreign hospitality shall be required to be intimated to the Central Government within one month of such receipt giving full details including the source, approximate value in Indian Rupees, and the purpose for which and the manner in which it was utilized.

Hence, Mr. Peter has to follow the above procedure.

8.May 2019 Qn no 4(b) 6 Marks:

After giving a reasonable opportunity of being heard, Central Government cancelled the certification of registration of Toastea Ltd, a company registered under FCRA on the ground of public interest 2.5 years have passed since such cancellation. Company has submitted its written declaration not to involve in such activity again and request to restore the registration. Advise Toastea Ltd. on its eligibility for re-registration or grant of prior permission. Also state the circumstance under which Government can cancel the certificate of registration granted to a person under the Foreign Contribution (Regulation) Act, 2010.

Answer:

Restoration of Registration: As per section 14(3) of the Foreign Contribution (Regulation) Act, 2010, any person whose certificate has been cancelled under this section shall not be eligible for registration or grant of prior permission for a period of three years from the date of cancellation of such certificate.

In the instant case, Toastea Ltd. is not eligible for re-registration or grant of prior permission as only 2.5 years have passed since such cancellation. So, requirement of 3 years of cooling period from the date of cancellation of such certificate for re-registration is not complied with.

Circumstances for cancellation of certificate of registration [Section 14(1) of the Foreign Contribution (Regulation) Act, 2010]

(i) The Central Government may, by an order, cancel the certificate if —

(a) the holder of the certificate has made a statement in, or in relation to, the application for the grant of registration or renewal thereof, which is incorrect or false; or

(b) the holder of the certificate has violated any of the terms and conditions of the certificate or renewal thereof; or

(c) in the opinion of the Central Government, it is necessary in the public interest to cancel the certificate; or

(d) the holder of certificate has violated any of the provisions of this Act or rules or order made there under; or

(e) if the holder of the certificate has not been engaged in any reasonable activity in its chosen field for the benefit of the society for two consecutive years or has become defunct.

9.MTP Mar 2019 Qn no 4(b) 6 Marks

A foreign co., Srikripa Ltd. established by few Indians in Singapore. Being a strong believer of Sai, the management of the company used to donate a huge amount to the sai trust, in Mumbai, India. Enumerate in the given situation whether the donation so made by Srikripa Ltd. is a foreign contribution. Is the acceptance of such donation by the Sai trust is valid

Answer

As per the definition of Foreign Contribution given in section 2(1)(*h*) of FCRA, 2010, "Foreign contribution" means the donation, delivery or transfer made by any foreign source,—

(i) of any article, (except given as a gift for personal use), if the market value, in India, of such article, on the date of such gift, is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf;

(ii) of any currency, whether Indian or foreign;

(iii) security and includes any foreign security under the Foreign Exchange Management Act, 1999.

As per explanation to the section, a donation, delivery or transfer of any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution within the meaning of this clause.

Whereas the foreign source as per the definition given in section 2(j) of the FCRA includes a foreign company. Since the Srikripa Ltd. is a foreign company, so donation made by the Srikripa Ltd is a foreign contribution for the religious and charitable purpose.

Whereas, Sai Trust can accept foreign contribution with prior permission of Central Government, if it is not registered under the FCRA. But where if the Sai trust is registered under the FCRA, [section 11 of FCRA, 2010], it may accept the foreign contribution within the limit without seeking prior permission.

10.RTP May 2019 Qn no 19(ii)

X is an association having registration to transfer the Foreign Contribution received by it to another organization? Is the valid act of X? If yes, then what is the process to do so? Is there any restriction on transfer of funds to other organisations?

Answer

Yes, X can transfer the Foreign Contribution received by it to another organization as section 7 of FCRA, 2010. According to the provision no person who –

a. is registered and granted a certificate or has obtained prior permission under this Act; and

b. receives any foreign contribution,

shall transfer such foreign contribution to any other person unless such other person is also registered and had been granted the certificate or obtained the prior permission under this Act:

Provided that such person may transfer, with the prior approval of the Central Government, a part of such foreign contribution to any other person who has not been granted a certificate or obtained permission under this Act in accordance with the rules made by the Central Government."

Restrictions on transfer: *Rule 24 of FCRR, 2011,* prescribes the procedure for transferring foreign contribution to any unregistered person as under:

Limit on transfer of Foreign Contribution: A person who has been granted a certificate of registration or prior permission under section 11 and intends to transfer part of the foreign contribution received by him to a person who has not been granted a certificate of registration or prior permission under the Act, may transfer such foreign contribution to an extent not exceeding ten per cent of the total value thereof and for this purpose, make an application to the Central Government in the prescribed Form.

Declaration to be annexed : Every application made under sub-rule (1) shall be accompanied by a declaration to the effect that-

(a) the amount proposed to be transferred during the financial year is less than ten per cent of the total value of the foreign contribution received by him during the financial year;

(b) the transferor shall not transfer any amount of foreign contribution until the Central Government approves such transfer.

Eligibility of the recipient A person who has been granted a certificate of registration or prior permission under section 11 shall not be required to seek the prior approval of the Central Government for transferring the foreign contribution received by him to another person who has been granted a certificate of registration or prior permission under the Act provided that the recipient has not been proceeded against under any of the provisions of the Act.

Responsibility for Proper Utilisation of the foreign Contribution : Both the transferor and the recipient shall be responsible for ensuring proper utilisation of the foreign contribution so transferred and such transfer of foreign contribution shall be reflected in the returns in Form FC – 6 to be submitted by both the transferor and the recipient.

11.RTP Nov 2019 Qn no 15

A foreign company, Max Ltd. was established by few Indians in Singapore. The management of the company used to donate a huge amount to the religious trust, in Mumbai, India. Enumerate in the given situation in the light of the Foreign Contribution and Regulation Act, 2010 whether the donation so made by Max Ltd. is a foreign contribution? Is the acceptance of such donation by the Religious trust is valid?

Answer

As per the definition of Foreign Contribution given in section 2(1)(h) of FCRA 2010, "Foreign contribution" means the donation, delivery or transfer made by any foreign source,-

(a) of any article, (except given as a gift for personal use), if the market value, in India, of such article, on the date of such gift, is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf:

(b) of any currency, whether Indian or foreign; security and includes any foreign security under the Foreign Exchange Management Act,1999

As per explanation to the section, a donation, delivery or transfer of any article, currency or foreign security so referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons,

shall also be deemed to be foreign contribution within the meaning of this clause.

Whereas the foreign source as per the definition given in section 2(j) of the FCRA includes a foreign company. Since the Max Ltd. is a foreign company, so donation made by the Max Ltd is a foreign contribution for the religious and charitable purpose.

Whereas, Religious Trust can accept foreign contribution with prior permission of Central Government, if it is not registered under the FCRA But where if the Religious trust is registered under the FCRA [section 11 of FCRA 2010], it may accept the foreign contribution within the limit without seeking prior permission.

12.Nov 2019 Qn no 5(C) 6 Marks

In the light of the provisions of the Foreign Contribution (Regulation) Act, 2010 examine and decide whether the following persons in India are permitted to receive the amount/articles in the following situations:

(i) **M/s KG & C; a partnership firm obtained loan from a club registered in London for its business purpose.**

(ii) **Hello FM, a registered association, received funds from a foreign company for establishing Frequency Model Radio Station to broadcast audio news.**

Mr. Happy received a wrist watch as marriage anniversary gift from his uncle, a citizen of USA. The market value of the wrist watch is Rs.25,000.

Answer

(i) As per section 2(j) of the FCRA, 2010, "foreign source" includes a society, club or other association or individuals formed or registered outside India. Accordingly in the given case, amount (i.e., loan) received by M/s KG & Co., being a partnership firm not covered under the above provisions, from club registered in London for its business purpose, is permissible.

(ii) As per section 3 of the FCRA, 2010, no foreign contribution shall be accepted by any association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programs through any electronic mode, or any other electronic form as defined in the Information Technology Act, 2000 or any other mode of mass communication; Accordingly, Hello FM is not permitted to receive any fund from a foreign company.

(iii) As per the provisions of the Foreign Contribution (Regulation) Act, 2010, "foreign contribution" means the donation, delivery or transfer

made by any foreign source, of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf; (This sum has been specified as ` 25,000/- currently). In the given situation, Mr. Happy received the wrist watch

(market value ` 25,000) as marriage anniversary gift from his uncle, a citizen of USA. Since, the value of the wrist watch is within the prescribed limit, hence, Mr. Happy is permitted to receive the article.

13.MTP Nov 2019 Qn no 4(b)(i) 3 Marks

Mr. Indian received foreign contribution of amount 1.10 lakh from his relative residing abroad. Examine whether foreign remittances received by Mr. Indian to be treated as foreign contribution as per the FCRA, 2010.

Answer

No. As per Section 4(e) of FCRA, 2010 read with Rule 6 of FCRR, 2011, even the persons prohibited under section 3, i.e., persons not permitted to accept foreign contribution, are allowed to accept foreign contribution from their relatives. However, in terms of Rule 6 of FCRR, 2011, any person receiving foreign contribution in excess of one lakh rupees or equivalent thereto in a financial year from any of his relatives shall inform the Central Government in prescribed Form within thirty days from the date of receipt of such contribution.

So Mr. Indian shall inform the Central Government of his receiving of the foreign contribution of 1.10 lakh from his relative due to receiving of foreign contribution in excess of 1 lakh rupees.

14.RTP May 2020 Question no 15

Bhrat Ltd. is a subsidiary of Global Ltd., which is a MNC registered in Hongkong. The Bhrat Ltd. had obtained the permission to receive foreign contribution in a designated account in the SBI. Later it was discovered that the obtained foreign contribution were deposited in other account for its functioning. Advise on the given situation as to depositing of the amount of foreign contribution from designated account to any other account. And state the duty of the bank on the said transactions made?

Answer:

Every person who has been granted a certificate or given prior permission shall receive foreign contribution in a single account only through such one of the branches of a bank as he may specify in his application for grant of certificate. However, person may open one or more accounts in one or more banks for utilising the foreign contribution received by him. No funds other than foreign contribution shall be received or deposited in such account or accounts.

Every bank or authorised person in foreign exchange shall report to such authority as may be specified —

(e) prescribed amount of foreign remittance;

(f) the source and manner in which the foreign remittance was received; and

(g) other particulars, in such form and manner as may be prescribed.

As per the above stated provisions, Foreign contributions should be received only in the branch of Bank as specified in the application for grant of registration certificate. If permission is obtained to receive foreign contribution in a designated account, and depositing the same in other account, is an offence. However, for utilisation of the funds, one or more banks are permissible [proviso to section 17(1) of FCRA, 2010].

Obligations of Bank receiving foreign contribution of its customer

According to *Rule 16 of FCR, Rule 2011,* the bank shall report to the Central Government within forty-eight hours any transaction in respect of receipt or utilisation of any foreign contribution by any person whether or not such person is registered or granted prior permission under the Act.

Study Material

15.As per the FCRA, the restrictions on 'foreign contribution' are applicable if the foreign contribution is from 'foreign source'. Who among the following are excluded from the purview of foreign source in the Act-

(a) United nations

(b) World Bank

(c) International monetary Fund

(d) All of the above

Answer: d) **Hint:** Foreign source includes Foreign Government, international agency (but not UN or its agencies, World Bank, IMF etc.), foreign company, multi-national corporation, company where more than 50% capital is held by foreigner or foreign company, foreign trust, foreign citizen etc. [section 2(1)(j) of FCRA, 2010.

16.Surya Ltd., incorporated and registered in New Delhi with a foreign shareholding more than 50% due to liberalisation in Foreign Direct Investment (FDI) policy.

State the correct statement as to the status of the Surya Ltd.

a) Surya limited shall not be considered as foreign source because of its registration in India.

b) Surya Ltd would be 'foreign source' having foreign shareholding more than 50% of foreign company.

c) Surya Ltd would be 'foreign source' having foreign contribution through various international agencies.

d) Both (b) & (c)

Answer: b) **Hints:** Many companies in India have foreign shareholding more than 50% due to liberalisation in Foreign Direct Investment (FDI) policy. These would be 'foreign source' as per section 2(1)(j)(vi) of FCRA. Receipt of donations/contributions directly or indirectly by persons and organisations from these companies are presently violative of the FCRA.

17.An association was holding the certificate of registration making it eligible for acceptance of foreign contribution established for the betterment of poor children. Central Government later cancelled the certificate of the association for violation of the terms and conditions of certificate for being not engaged in chosen activity for the poor children. Such association again applied for the registration. State weather the association is eligible for registration-

a) Yes, it can apply freshly at any time

b) No, permanently becomes disqualified

c) yes, after 3 years from the date of cancellation of certificate

d) after reasonable opportunity of being heard, and on warning, same registration will be restored.

Answer: c) **Hint:** As per section 14 of the FCRA, cooling period of 3 years is prescribed for registration of any person whose certificate has been cancelled by the Central Government.

18. State under what circumstances Government can cancel the certificate of registration granted to a person under FCRA?

Answer

Yes. As per section 14 of the FCRA, Central Government may cancel the certificate, after carrying out an inquiry, on the following grounds –

(a) the holder of the certificate has made an incorrect/false statement in the application for the grant of registration or renewal

(b) the holder of the certificate has violated any of the terms and conditions of the certificate or renewal thereof

(c) in the opinion of the Central Government, it is necessary in the public interest to cancel the certificate

(d) the holder of the certificate has violated any of the provisions of this Act or rules or order made thereunder.

(e) if the holder of the certificate has not been engaged in any reasonable activity in its chosen field for the benefit of the society for two consecutive years or has become defunct.

In any person whose certificate has been cancelled under this section shall not be eligible for registration or grant of prior permission for a period of three years from the date of cancellation of such certificate.

19. X, is an association having registration to transfer the Foreign Contribution received by it to another organization? Is the valid act of X? If yes, then what is the process to do so? Is there any restriction on transfer of funds to other organisations?

Answer

2. Yes X can transfer the Foreign Contribution received by it to another organization as per section 7 of FCRA, 2010. According to the provision no person who –

- is registered and granted a certificate or has obtained prior permission under this Act; and
- receives any foreign contribution,

shall transfer such foreign contribution to any other person unless such other person is also registered and had been granted the certificate or obtained the prior permission under this Act:

Provided that such person may transfer, with the prior approval of the Central Government, a part of such foreign contribution to any other person who has not been granted a certificate or obtained permission under this Act in accordance with the rules made by the Central Government."

Restrictions on transfer: *Rule 24 of FCRR, 2011,* prescribes the procedure for transferring foreign contribution to any unregistered person as under:

(1) A person who has been granted a certificate of registration or prior permission under section 11 and intends to transfer part of the foreign contribution received by him to a person who has not been granted a certificate of registration or prior permission under the Act, may transfer such foreign contribution to an extent not exceeding ten per cent of the total value thereof and for this purpose, make an application to the Central Government in the prescribed Form.

(2) Every application made under sub-rule (1) shall be accompanied by a declaration to the effect that-

(a) the amount proposed to be transferred during the financial year is less than ten per cent of the total value of the foreign contribution received by him during the financial year;

(b) the transferor shall not transfer any amount of foreign contribution until the Central Government approves such transfer.

(3) A person who has been granted a certificate of registration or prior permission under section 11 shall not be required to seek the prior approval of the Central Government for transferring the foreign contribution received by him to another person who has been granted a certificate of registration or prior permission under the Act provided that the recipient has not been proceeded against under any of the provisions of the Act.

Both the transferor and the recipient shall be responsible for ensuring proper utilisation of the foreign contribution so transferred and such transfer of foreign contribution shall be reflected in the returns in Form to be submitted by both the transferor and the recipient."

20. Can foreign contribution be received in and utilised from multiple Bank Accounts?

Answer

The foreign contribution should be received only in the exclusive single foreign contribution account of a Bank (also called designated FC account), as mentioned in the order for registration or prior permission granted and should be separately maintained by the associations. However, one or more accounts (called Utilization Account) in one or more banks may be opened by the association for 'utilising' the foreign contribution after it has been received in the designated FCRA bank account, provided that no funds other than that foreign contribution shall be received or deposited in such account or accounts and in all such cases, intimation is to be given online within 15 days of opening of such account.

21.Can capital assets purchased with the help of foreign contributions be acquired in the name of the Mr Ram, an office bearers of the association?

Answer

No. Every asset purchased with foreign contribution should be acquired and possessed in the name of the association since an association has a separate legal entity distinct from its members.

22.RTP Nov 2020 Q no 23

XYZ Foundation, a society registered under the Societies Registration Act, 1860, has received foreign contribution from a Mala Company LLC, a company incorporated in Singapore. XYZ Foundation deposited the amount of foreign contribution in a bank and earned interest on it. XYZ Foundation desires to invest maturity proceeds from deposits in mutual funds. You are required to advise whether XYZ Foundation is allowed to make such investment considering the provisions of the Foreign Contribution (Regulation) Act, 2010 (Note: XYZ Foundation has obtained certificate of registration under section 11 of the Act).

Answer

As per the explanation 2 to the definition of the Foreign Contribution under the Act, the interest accrued on the foreign contribution deposited in any bank referred to in section 17(1) or any other income derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution within the meaning of this clause.

Further as per section 8 of the Act, every person, who is registered and granted a certificate or given prior permission under this Act and receives any foreign contribution, shall utilise such contribution for the purpose for which the contribution has been received.

Provided that any foreign contribution or any income arising out of it shall not be used for speculative business, where as speculative business includes investment in mutual fund. XYZ Foundation cannot use

the contribution as well as the interest component for the Investment in Mutual Fund.

23. X, an association having registration wishes to transfer the Foreign Contribution received by it to another organization? Can it do so? Is there any restriction on transfer of funds to other organisations?

ANSWER:

Under the amended Section 7 of FCRA, 2011 No person who -
(a) is registered and granted a certificate or has obtained prior permission under this Act; and (b) receives any foreign contribution,
shall transfer such foreign contribution to any other person.
Earlier, foreign contribution accepted with the permission of the Central Government could be transferred to any other person who is registered under FCRA, 2010 or has obtained prior permission. It can be seen that the legislature has placed a blanket prohibition on transfer of foreign contribution received by any person to any other person. The intention is to prevent recipients of foreign contribution acting as mere conduits or facilitating agents for obtaining foreign contributions.

24.Mr. X, an individual of Indian origin but currently a citizen of a foreign country gives a donation. State whether the donation given by Mr. X will be treated as 'foreign contribution'?

ANSWER:

Yes. Donation from an Person of Indian origin who has acquired foreign citizenship is treated as foreign contribution. This will also apply to Person of Indian Origin / Overseas Citizen of India cardholders. However, this will not apply to 'Non-resident Indians', who still hold Indian citizenship and they are not foreigners. Therefore, donation given by Mr. X, an individual of Indian origin with foreign nationality will be treated as foreign contribution.

25.Mr. Rohit, a relative of Mr. Suman, who is residing in France remitted foreign contribution of Rs. 2 lakhs to her for arrangement of religious programme for the believers of Gurudev. Whether foreign remittances received from a relative are to be treated as foreign contribution as per FCRA,2010?

ANSWER:

No. As per Section 4(e) of FCRA, 2010 and Rule 6 of FCRR, 2011, even the persons prohibited under section 3, i.e., persons not permitted to accept foreign contribution, are allowed to accept foreign contribution from their relatives. However, in terms of Rule 6 of FCRR, 2011, any person receiving foreign contribution in excess of one lakh rupees or equivalent thereto in a financial year from any of his relatives shall inform the Central Government in Form FC-1 within thirty days from the date of receipt of such contribution.
Here in the given situation, since the amount remitted by Mr. Rohit is more than Rs. One lakh, so Ms. Suman is required to inform the Central Government in Form FC-1 within thirty days from the date of receipt of such contribution.

26.Mr. Ramakant Hathi, an Indian Administrative Service (IAS) officer has received an invitation to visit Germany for representing India in an Annual Summit programme. Mr. Ramakant Hathi, on his visit has met with a sudden illness and received foreign hospitality of amount 65,000 in the form of emergent medical treatment. Under the given scenario, you are required to advise Mr. Ramakant Hathi regarding his responsibility to intimate the receipt of Foreign Hospitality as per the provisions of the Foreign Contribution (Regulation) Act, 2010 and rules made thereunder.

ANSWER:

As per section 6 of the Foreign Contribution (Regulation) Act, 2010, various categories of persons are required to take prior permission of the Central Government before accepting Foreign Hospitality, while visiting any country or territory outside India. Government servants are one of such persons who are required to take prior permission. Provided it shall not be necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during a visit outside India.

Further as per Rule 7 of Foreign Contribution Rules 2011 and amendments thereto, in case of emergent medical treatment aid needed on account of sudden illness during a visit abroad, the acceptance of foreign hospitality shall be required to be intimated to the Central Government within one month of such receipt giving full details including the source, approximate value in Indian rupees, and the purpose for which and the manner in which it was utilised. However, no such intimation is required if the value of such hospitality in emergent medical aid is upto one lakh rupees or equivalent. Accordingly, Mr. Ramakant Hathi is not required to intimate such details of acceptance of foreign hospitality as the value of such hospitality in emergent medical treatment is within the limits specified in Rule 7 of Foreign Contribution (Regulation) Rules, 2011.

Chapter 5 –The Arbitration and Conciliation Act,1996

Multiple Choice Questions

1.RTP Nov 2019

Mr. A. Mr. B and Mr. C are partners in XYZ partnership firm. The firm made an agreement in writing to refer a dispute between them in business to an arbitrator. Inspite of this agreement Mr. B files a suit against Mr. A and Mr. C relating to the dispute in a court. Examine on the admission of the suit filed by Mr. B in the court in the light of the Arbitration and Conciliation Act, 1996.

(a) Yes it can be admitted by the court, as the said court has jurisdiction over the matter and it overpowers arbitration agreement

(b) Yes it can be admitted by the court, only in the case of challenge to the arbitral award in appeal

(c) Yes, it can be admitted by the court, if Mr. A and Mr. C mutually agrees.

(d) No it cannot be admitted by the court, as the jurisdiction of court is ousted because of existence of a valid arbitration agreement

Answer: (d)

Descriptive Questions

2.RTP May 2018 Qn no 18

In 2016, Company Amar, food processor manufacturing unit entered into a joint venture agreement with Company USHA, the largest manufacturer of Food processors for supply of parts of mixer & grinder for manufacturing its latest model. Both the companies are registered under the Companies Act 2013. Agreement carries the term that all disputes shall be arbitrated in Mumbai. Discuss the type of arbitration agreement made between them.

Examine what will happen if the agreement does not have any clause relating to arbitration and disputes arose between them concerning quality of material supplied in 2017?

3.March 2018 Qn no 6(e) 3 Marks:

Raman garments manufacturer entered into an arbitration agreement with its regular customers on the supply of dress material on demand in advance. At the same time, also hold the term that in case of disputes they may refer to the arbitration for the settlement of the matter. Raman garments manufacturer fail to make delivery of supply of dress material to Mr. X, a regular customer. MR. X already made Raman garments manufacturer aware of this important order in advance. Since Raman garments manufacturer was not able to meet the said the order well in time, he took the plea of theft and setting of fire to the property in the manufacturing unit.

The said matter was referred to the arbitration. State the validity as to the submission of the sa id dispute to the arbitration in the light of the Arbitration and Conciliation Act, 1996.

Answer:

As per the arbitration agreement, the disputes submitted/ proposed to be submitted to arbitration must be arbitrable. In other words that law must permit arbitration in that matter only which are capable of arbitration. There are certain disputes that the law retains exclusively for the court, and the same cannot be submitted for arbitration. The rationale is that given the nature of disputes, the courts are the only appropriate forum for adjudicating the matter.

In the given matter, it clearly reveals of non-performance of the duties of the Raman garments manufacturer within the specified timelines. To safeguard himself from the non-performance of the contract, took the cause of theft and setting of fires in the manufacturing unit. Accordingly, in the given situation, the submitted disputes before arbitration is not arbitrable as they are the offences of criminal natures. Such types of disputes is to be tried by the court of proper jurisdiction.

Therefore, the submission of the dispute in the situation to arbitration is invalid.

4.March 2018 Qn no 2(d)(ii) 3 Marks:

Ms. Rajkumari launch her boutique. She contacted with M/s Shyamlal merchants for supply of dress materials. The communication between the parties were over email. There was a term of service between the parties containing that "any disputes regarding quality or delivery shall be submitted to arbitration conducted under the guidance of Indian Clothes Manufacturers Association. Please place your order if the above terms and conditions are agreeable to you." Ms. Rajkumari placed an order. Comment on the validity of the such arbitration agreement according to the Arbitration and Conciliation Act, 1996.

Answer:

As per the Arbitration and Conciliation Act, 1996 an agreement must be in writing. There is however no requirement for the same to be in writing in one document. There is also no particular form or template for an arbitration agreement. The communication over email of the term of services is proper valid agreement and the same have been stood affirmed by reason of their conduct. This would be an arbitration agreement in writing contained in correspondence between the parties.

5.May 2018 Qn no 6(e) 3 Marks:

Smart Automobiles Limited and Apex Four wheelers Limited entered into an agreement regarding annual maintenance services to be provided by Smart Automobiles for all vehicles within the state of Uttar Pradesh for five years. The agreement was containing a clause that in the event of a dispute between the parties the matter would be submitted to arbitration. At the end of the fifth year, the service agreement was not renewed.

Decide whether the arbitration. agreement should not be treated as terminated. Also describe the other grounds of termination of an arbitration agreement.

Answer:

Termination of an arbitration agreement

Just the way parties can enter into an arbitration agreement, they can also terminate an arbitration agreement. Thus, an arbitration agreement could be put to an end by:

1. Mutual consent: like any contract, the parties involved can joint ly agree to put an end to a particular arbitration agreement.

2. Termination of principal contract: an arbitration agreement always operates in relation to a principal contract. If the principal contract is terminated through discharge or novation, the arbitration agreement terminates with the contract. However, if the principal contract is breached, then the arbitration agreement survives because of the operation of the doctrine of separability.

   In the given instance, at the end of the fifth year, the Service Agreement was not renewed. Hence, the contract terminates, and along with it the arbitration agreement.

6.Aug 2018 Qn no 2(d) 6 Marks:

ABC Pvt. Ltd. is a construction company. Mr. Builder is a Chief Engineer of the ABC Pvt. Ltd. A common arbitration agreement was framed by ABC Pvt. Ltd. in case of disputes if arises under any contract. According to the term of an agreement , any question, claim, right, matter, thing, whatsoever, in any way arising out of or relating to the contract designs, drawings, specifications estimates, instructions, or orders, or those conditions or failure to execute the same whether arising during the progress of the work, or after the completion, termination or abandonment thereof, the dispute shall, in the first place, be referred to the Chief Engineer who has jurisdiction over the work specified in the contract. The Chief Engineer shall within a period of ninety days from the date of dispute bought into notice, give written notice of his decision to the contractor. Chief Engineer's decision shall be final. Examine on the validity of such arbitration agreement.

Answer:

As per the requirements of a valid arbitration agreement, parties to the arbitration agreement must agree that the determination of their substantive rights by a neutral third person acting as the arbitral tribunal would be final and binding upon them.

Since in the given case, the arbitration agreement formed by the XYZ Pvt. Ltd. contained a clause that any questions, claim right, matter, thing, whatsoever, in any way arising out o f or relating to the contract designs, drawings, specifications estimates, instructions, or orders, or those conditions or failure to execute the same whether arising during the progress of' the work, or after the completion, termination or abandonment thereof, the dispute shall, firstly, be referred to the Chief Engineer , Mr. Builder. He will has jurisdiction over the work specified in the contract. He shall within a period of ninety days from the date of dispute bought into notice, give written notice of his decision to the contractor. Chief Engineer's decision shall be final and binding on both the parties.

Here Chief Engineer is not a neutral party and has a Control over the work specified in the contract, so this is not a valid arbitration agreement.

7.Oct 2018 Qn no 6(e) 3 Marks:

Differentiate between Litigation and arbitration.

Answer:

Differences

Litigation	Arbitration
Takes place in court	The place of arbitration is chosen by the parties.
A judge is assigned by the court. The litigants have no say on who will judge their disputes.	The arbitrator(s) is selected by the parties. Parties therefore are able to choose people with the appropriate expertise, educational qualifications, trade experience, etc., as arbitrators.
The procedure followed by the court is fixed and determined by the Rules of the court. In India it would be governed by the Code of Civil procedure and rules applicable to the particular court.	The parties have adequate flexibility to choose the procedures that would apply to their arbitration. They could either construct such procedures or adopt procedures of an arbitral institution.
The proceedings are generally open to public. In other words there is very little privacy and confidentiality.	Confidentiality is one of the most important characteristic of arbitration. In other words apart from the parties (including their lawyers) no other person is permitted to participate in the arbitral proceedings.
Court decisions are subject to numerous appeals.	Arbitral awards can be challenged on very limited grounds.
It is often difficult to enforce judgments of court of one country in a foreign country.	Enforcing an arbitral award in foreign nations is much easier and is governed by international treaties such as The Recognition and Enforcement of Foreign Arbitral Awards, 1958.

8.RTP Nov-18:

On 1st day of April, 2016, Arnold Food Processors limited, a company engaged in food processor manufacturing unit entered into a joint venture agreement with Ronnie and Coleman Company Limited, the largest manufacturer of Food processors for supply of parts of mixer and grinder for manufacturing its latest model. Both the companies are registered under the Companies Act, 2013. Agreement carries the term that all disputes shall be arbitrated in Delhi. In the light of The Arbitration and Conciliation Act, 1996, discuss:

(i) **The type of arbitration agreement made between them.**

(ii) **Examine what will happen if the agreement does not have any clause relating to arbitration where disputes arose between them concerning quality of material supplied in 2017.**

Answer:

There are two basic types of arbitration agreement:

(i) Arbitration clause - a clause contained within a principal contract. The parties undertake to submit disputes in relation to or in connection with the principal contract that may arise in future to arbitration.

(ii) Submission agreement - an agreement to refer disputes that already exist to arbitration. Such an agreement is entered into after the disputes have arisen.

In first case, the agreement already carries the term that all disputes shall be arbitrated in Delhi at the time of entering into joint venture agreement. This would be an arbitration clause as it is contained in the principal contract (JVA) and no disputes have arisen till yet. It concerns future disputes that may arise.

In the second case, the Principal contract (JVA) does not have any term relating to arbitration. Disputes arose between the parties concerning quality of supplied goods in 2017. To resolve this dispute, parties later entered into an agreement "That all disputes including quality of goods supplied by Ronnie and Coleman Company Limited to Arnold Food Processors Limited shall be submitted to arbitration. The parties hereby agree to abide by the decision of the arbitrator". Such an agreement that is made after the disputes have arisen would be called a submission agreement.

9.MTP Apr 2019 Qn no 4(B) 6 Marks

In 2017, Company Amar, food processor manufacturing unit entered into a joint venture agreement with Company USHA, the largest manufacturer of Food processors for supply of parts of mixer & grinder for manufacturing its latest model. Both the companies are registered under the Companies Act, 2013. Agreement carries the term that all disputes shall be arbitrated in Mumbai. State the type of arbitration agreement made between

them.

What will happen if the agreement does not have any clause relating to arbitration? Disputes arose between them concerning quality of material supplied in 2018. Examine the given situation in the light of the Arbitration & Conciliation Act, 1996

Answer

There are two basic types of arbitration agreement:

(i) Arbitration clause - a clause contained within a principal contract. The parties undertake to submit disputes in relation to or in connection with the principal contract that may arise in future to arbitration.

(ii) Submission agreement - an agreement to refer disputes that already exist to arbitration. Such an agreement is entered into after the disputes have arisen.

In first case ,the agreement already carries the term that all disputes shall be arbitrated in Mumbai at the time of entering into joint venture agreement. This would be an arbitration clause as it is contained in the principal contract (JVA) and no disputes have arisen till yet. It concerns future disputes that may arise.

In the second case, the Principal contract (JVA) does not have any term relating to arbitration. Disputes arose between the parties concerning quality of supplied goods in 2018. To resolve this dispute, parties later entered into an agreement "That all disputes including quality of goods supplied by Company USHA to Company Amar shall be submitted to arbitration. The parties hereby agree to abide by the decision of the arbitrator." Such an agreement that is made after the disputes have arisen would be called a submission agreement.

10.RTP May 2019 Qn no 20(ii)

(iii) **In 2016, Company Amar, food processor manufacturing unit entered into a joint venture agreement with Company USHA, the largest manufacturer of Food processors for supply of parts of mixer & grinder for manufacturing its latest model. Both the companies are registered under the Companies Act 2013. Agreement carries the term that all disputes shall be arbitrated in Mumbai. State the type of arbitration agreement made between them**

Answer

There are two basic types of arbitration agreement are:

(a) **Arbitration clause** - a clause contained within a principal contract. The parties undertake to submit disputes in relation to or in connection with the principal contract that may arise in future to arbitration.

(b) **Submission agreement** - an agreement to refer disputes that already

exist to arbitration. Such an agreement is entered into after the disputes have arisen.

In this case, the agreement already carries the term that all disputes shall be arbitrated in Mumbai at the time of entering into joint venture agreement. This would be an arbitration clause as it is contained in the principal contract (JVA) and no disputes have arisen till yet. It concerns future disputes that may arise.

11.RTP Nov 2019 Qn no 17

On 1st day of April, 2018, Almond Food Processors limited, a company engaged in food processor manufacturing unit entered into a joint venture agreement with Ronnie and Coleman Company Limited, the largest manufacturer of Food processors. Both the companies are registered under the Companies Act, 2013. Agreement carries the term that all disputes shall be arbitrated in Delhi. In the light of the Arbitration and Conciliation Act, 1996, discuss:

(i) **The type of arbitration agreement made between them.**

(ii) **Examine what will happen if the agreement does not have any clause relating to arbitration where disputes arose between them concerning quality of material supplied in 2019.**

Answer

There are the basic types of arbitration agreement:

(i) **Arbitration clause -** a clause contained within a principal contract. The parties undertake to submit disputes in relation to or in connection with the principal contract that may arise in future to arbitration.

(ii) **Submission agreement -** an agreement to refer disputes that already exist to arbitration. Such an agreement is entered into after the disputes have arisen.

In first case, the agreement already carries the term that all disputes shall be arbitrated in Delhi at the time of entering into joint venture agreement. This would be an arbitration clause as it is contained in the principal contract (JVA) and no disputes have arisen till yet. It concerns future disputes that may arise.

In the second case, the Principal contract (JVA) does not have any term relating to arbitration. Disputes arose between the parties concerning quality of supplied goods

in 2019. To resolve this dispute, parties later entered into an agreement "That all disputes including quality of goods supplied by Ronnie and Coleman Company Limited to Almond Food Processors Limited shall be submitted to arbitration". The parties hereby agree to abide by the decision of the arbitrator". Such an agreement that is made after the disputes have arisen would be called a submission agreement.

12.MTP Nov 2019 4(b) (ii) 3 Marks

Ms. Rajkumari launch her boutique. She contacted with M/s Shyamlal merchants for supply of dress materials. The communication between the parties were over email. There was a term of service between the parties containing that "any disputes regarding quality or delivery shall be submitted to arbitration conducted under the guidance of Indian Clothes Manufacturers Association. Please place your order if the above terms and conditions are agreeable to you." Ms. Rajkumari placed an order. Comment on the validity of the such arbitration agreement according to the Arbitration and Conciliation Act, 1996

Answer

As per the Arbitration and Conciliation Act, 1996 an agreement must be in writing There is however no requirement for the same to be in writing in one document. There is also no particular form or template for an arbitration agreement. The communication over email of the term of services is proper valid agreement and the same have been stood affirmed by reason of their conduct. This would be an arbitration agreement in writing contained in correspondence between the parties.

13.RTP May 2020 Question no 17

Mr. R, the respondent had placed an order of purchase of various quantities of phosphoric acid from the Mr. P, the petitioner. The purchase order noted that the terms and conditions were to be as per the Fertilizer Association of India (FAI). Terms and Conditions for Sale and Purchase of Phosphoric Acid were as per Clause 15 of the FAI which also provided terms for settlement of disputes by arbitration. Enumerate in the light of the given circumstances as to existence of a valid arbitration agreement between the parties as per the Arbitration and Conciliation Act, 1996

Answer

Arbitration agreement through reference: The Arbitration and Conciliation Act, 1996 envisages a possibility of an arbitration agreement coming into being through incorporation. In other words, parties to an agreement could agree to arbitrate by referring to another contract containing an arbitration agreement. The requirement is that the reference must leave no doubt in the mind of the reader that the parties indeed wanted to incorporate the arbitration agreement into the agreement between them.[Section 7(5)]

Accordingly, as per the said provision, yes this a valid reference for an arbitration agreement to come into existence. It was held by the Supreme Court of India in *Groupe Chimique Tunisien SA v. Southern Petrochemicals Industries Corpn Ltd 2006 (2) ArbLR 435 (SC)* that for a reference to constitute an arbitration agreement the contract should be in writing and reference should be such as to make that arbitration clause a part of the

contract. Both the conditions were held to be fulfilled in the present instance.
Study Material

14. Mr. Komal and Mr. Rajesh, entered into arbitration agreement for the disputes that arise, if any in their business transactions. Due to certain fault on the part of Mr. Rajesh, the dispute came before the arbitration for settlement. In the meantime, Mr. Komal dies. Mr. Rajesh shed of their liabilities on the plea that arbitration agreement has come to end with the death of the other party. Decide the affirmative statement in the given situation-

(a) **Arbitration agreement get terminated due to death of the party.**

(b) **It shall be remain enforceable by or against the legal representatives of the deceased.**

(c) **Since it is a private law between the parties, it will be terminated with the death of the party.**

(d) **Both (a) & (c)**

Answer: c) **Hint:** As per section 40 of the Arbitration and Conciliation Act,1 996, an arbitration agreement shall not be discharged by the death of any party thereto either as respects the deceased or as respects any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

15.Mr. A. Mr. B and Mr. C are partners in XYZ partnership firm. The firm made an agreement in writing to refer a dispute between them in business to an arbitrator. Inspite of this agreement Mr. B files a suit against Mr. A and Mr. C relating to the dispute in a magisterial court. Examine on the admission of the suit filed by Mr. B in the court in the light of the Arbitration and Conciliation Act, 1996.

a) **Yes it can be admitted by the Magisterial court , as the said court has jurisdiction over the matter and it overpowers arbitration agreement**

b) **Yes it can be admitted by the Magisterial court, only in the case of challenge to the arbitral award in appeal**

c) **Yes, it can be admitted by the court, if Mr. A and Mr. C mutually agrees.**

d) **No it cannot be admitted by the court, as the jurisdiction of court is ousted because of existence of a valid arbitration agreement**

Answer: d) **Hint:** The jurisdiction of court is ousted as a valid arbitration agreement exists. As per Section 8, if there is an arbitration agreement between the parties, the dispute shall not be submitted to the court, but instead shall be submitted to arbitration

16.Mr. X wants to start a bakery and so he contacts Mr. Y Confectioners & Bakers for supply of cakes and biscuits. The communication between the parties were over email. On

e-mail, there was a term of service between the parties containing that "any disputes regarding quality or delivery shall be submitted to arbitration conducted under the guidance of Indian Confectionary Manufacturers Association. Please place your order if the above terms and conditions are agreeable to you." X placed an order. State which statement is correct with respect to the arbitration agreement made between X and Y:

a) **It is not valid agreement, as the terms of service is not contained in same document of agreement**

b) **It is not valid, as the agreement is not laid down in particular format / formally.**

c) **It is not valid, as communication over email of the term of services is not proper.**

d) **It is valid arbitration agreement in writing contained in correspondence between the parties over email.**

Answer: d) **Hint:** As per the arbitration and Conciliation Act, an agreement must be in writing. There is however no requirement for the same to be in writing in one document. There is also no particular form or template for an arbitration agreement. The communication over email of the term of services is a proper valid agreement and the same have been stood affirmed by reason of their conduct. This would be an arbitration agreement in writing contained in correspondence between the parties.

17. In 2016, Company Amar, food processor manufacturing unit entered into a joint venture agreement with Company USHA, the largest manufacturer of Food processors for supply of parts of mixer & grinder for manufacturing its latest model. Both the companies are registered under the Companies Act 2013. Agreement carries the term that all disputes shall be arbitrated in Mumbai. State the type of arbitration agreement made between them.

What will happen if the agreement does not have any clause relating to arbitration? Disputes arose between them concerning quality of material supplied in 2017

Answer

There are two basic types of arbitration agreement are:

(a) **Arbitration clause** - a clause contained within a principal contract. The parties undertake to submit disputes in relation to or in connection with the principal contract that may arise in future to arbitration.

(b) **Submission agreement** - an agreement to refer disputes that already exist to arbitration. Such an agreement is entered into after the disputes have arisen.

In first case, the agreement already carries the term that all disputes shall be arbitrated in Mumbai at the time of entering into joint venture agreement. This would be an arbitration clause as it is contained in the principal contract (JVA) and no disputes have arisen till yet. It concerns future disputes that may arise.

In the second case, the Principal contract (JVA) does not have any term relating to arbitration. Disputes arose between the parties concerning quality of supplied goods in 2017. To resolve this dispute, parties later entered into an agreement "That all disputes including quality of goods supplied by Company USHA to Company Amar shall be submitted to arbitration. The parties hereby agree to abide by the decision of the arbitrator." Such an agreement that is made after the disputes have arisen would be called a submission agreement.

18. How important are the ideas of independence and impartiality in arbitration?

Is the arbitrator required to disclose anything to the parties?

Is membership of the same sports club as one of the parties problematic?

Answer

(a)The arbitrator are under a duty of disclose any relations with parties or their lawyer that might give rise to justifiable doubts as to their independence and impartiality.

(b) Such an association is too remote to count as a relation that might lead to doubts of bias.

19. Can an arbitrator resign on their own account? Do they have to give reasons for their resignation? Could an award be challenged on the ground that the arbitrator had resigned without giving any proper justifications?

Answer

An arbitrator can resign when they want, without giving reasons for their resignation. This action does not affect the validity either of the arbitration proceedings or the arbitral award.

20. Mr. X wants to start a bakery and so he contacts Mr. Y Confectioners & Bakers for supply of cakes and biscuits. The communication between the parties were over email. On e-mail, there was a term of service between the parties containing that "any disputes regarding quality or delivery shall be submitted to arbitration conducted under the guidance of Indian Confectionary Manufacturers Association. Please place your order if the above terms and conditions are agreeable to you." X placed an order. State the legal position as the validity of the arbitration agreement.

Answer

As per the arbitration and Conciliation Act, an agreement must be in writing There is however no requirement for the same to be in writing in one document. There is also no particular form or template for an arbitration agreement. The communication over email of the term of services is a proper valid agreement and the same have been stood affirmed by reason of their conduct. This would be an arbitration agreement in writing contained in correspondence between the parties.

21.RTP Nov'2020 Q no 14

Milan Limited entered into an agreement with Vinne Limited for the supply of confectionary biscuits and cakes for a period of 5 years. The Arbitration clause of the agreement states, "That all the disputes shall be submitted to arbitration." After a period, it was found that the

principal contract is invalid in the light of the Indian Contract Act, 1872. You are required to select the best option in the given scenario considering the provisions of the Arbitration and Conciliation Act, 1996.

(a) **The arbitration clause in the principal agreement also stands invalid due to the principal contract becoming invalid.**

(b) **The arbitration clause is an independent agreement of the principal agreement and cannot be treated as invalid merely because the principal contract was invalid.**

(c) **The arbitration clause shall be exercisable only if the Judicial Authority under the Arbitration and Conciliation Act, 1996 allows to treat it as an independent agreement.**

(d) **The arbitration clause in the principal agreement stands valid only till the time the principal contract was in force and valid.**

Answer: b)

22. XYZ Company Ltd entered into an agreement with PQR Company Ltd for the supply of terrain tyres to PQR Company Ltd for a period of 5 years. The agreement had referred to the terms and conditions contained in the Indian Tyre Manufacturing Association for sale and purchase of manufacturing tyres. Clause 14 of the terms provided that if any dispute arises between the parties, the same shall be mutually decided by the parties or shall be referred for arbitration if the parties so determine. You are required to state whether the parties under the agreement will be able to refer the dispute, if any, to the arbitration considering the given scenario and the provisions of the Arbitration and Conciliation Act, 1996.

ANSWER:

The provisions of the Arbitration and Conciliation Act, 1996 outlines the requirements of a valid arbitration agreement. One of such requirements is clarity of consent i.e. the intention to go to arbitration must be clear in other words there must be consensus ad idem. Utilization of vague words cannot be considered as adequate.
Further the Arbitration and Conciliation Act, 1996 envisages the possibility of an arbitration agreement coming into being through incorporation i.e. arbitration agreement through reference. In other words, parties to an agreement could agree to arbitrate by referring to another contract containing an arbitration agreement.
In the given scenario, it was an arbitration agreement through reference, but the terms and conditions of the said agreement were not clear and vague and therefore the said agreement is not a valid arbitration agreement as the italicized portion in the agreement clearly highlights the need for further agreement between the parties.

Accordingly in the given instance, the parties will not be able to refer the disputes, if any, to arbitration since the terms and conditions of arbitration agreement through reference are vague and not clear and thus the arbitration agreement is not valid in law.

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Chapter 6- Insolvency and Bankruptcy Code

Multiple Choice Questions

1.Under the IBC, The resolution plan shall be approved by the Committee of Creditors by a vote of not less than----------percent of voting share of the financial creditors.

- **(a) 51%**
- **(b) 66%**
- **(c) 75%**
- **(d) 95%**

Answer: Option B

2.MTP Mar 2019 Qn no 3

ABC and Co, the tax consultants of X Limited for which an interim resolution professional – Mr A, has been appointed under the Corporate Insolvency resolution process has refused to furnish information to Mr A on the grounds of client confidentiality. Are they right?

- **(a) Yes, they are right**
- **(b) No, the Code provides powers to the IRP to access all information from various parties**
- **(c) Partly right, they can do so only after consent of the directors**
- (d) **Mr A is not right in even asking for this information**

ANSWER : OPTION B

3.MTP Mar 2019 Qn no 17

With whom will the Central Government file an application if it is of the opinion that such a scheme is not in public interest or in the interest of the creditors?

- **(a) Cannot move an application**
- **(b) it may file an application before the Tribunal**
- **(c) it may file an application before the Parliament**
- **(d) it may be through special leave filed before Supreme Court**

Answer: Option B

4.MTP Apr 2019 Qn no 11

In case of a contravention of the resolution plan, an application for liquidation can be made by

a) **Only the original applicant**
b) **Only by the corporate debtor**
c) **By any person other than the corporate debtor whose rights have been prejudicially affected**
d) **By the financial creditors only**

Answer: Option C

5.MTP April 2019 Qn no 13

For initiation of Voluntary liquidation, a declaration of solvency (no debts or assets are sufficient to discharge liabilities) should be given by

a) **Two directors**
b) **Two directors and 80% shareholders**
c) **Two directors and 80% shareholders and statutory auditors**
d) **Majority of the directors**

Answer: Option D

Descriptive Questions

6.RTP May 2018 QN no 20

(i) Wisdom Ltd. commits a default against the debts taken from the financial creditors. Mr. F, a financial creditor initiated the corporate insolvency resolution process against the Wisdom Ltd. Mr. X, another financial creditor, thereof files an application for initiating corporate insolvency resolution process with the Adjudicating Authority. Examine with reference to the validity as to the filing of an application by Mr. X for initiation of corporate insolvency resolution process?

(ii) Standard International Ltd. who is a foreign trade creditor having its office in Hong Kong wanted to file a petition under insolvency and bankruptcy code 2016 on default of the debtor in India. It moved a petition under section 9 of the code seeking commencement of insolvency process. The foreign company was not having any office or bank account in India. Because of this, it couldn't submit a "certificate from financial institution "as required under the code. Examine whether the petition is permissible under the Insolvency & Bankruptcy Code, 2016?

ANSWER:

In the given problem, on commission of default by the Wisdom Ltd., Mr. F filed an application for initiating corporate insolvency resolution process before adjudicating

authority. Further, Mr. X another financial creditor moved an application for initiation of insolvency resolution process against the Wisdom Ltd.

According to the section 6 of the Code, where any corporate debtor commits a default, a financial creditor, Operational creditor or the Corporate debtor itself may initiate insolvency resolution process against such corporate debtor.

But as per Section 13 of the Code, once an application is admitted by the Adjudicating authority, it shall by an order declare a moratorium for the purposes referred to in section 14. Then causes a public announcement of the initiat ion of CIRP by IRP and call for the submission of claims under section 15 and appoint an IRP in the manner as laid down in section 16 of the Code. Public announcement lays down all the relevant information related to the CIRP. So that the all creditors entitled under the law can raise their claim in this case.

So, no further application for initiation of CIRP can be initiated by Mr. X., however he is entitled under the law to raise his claim in this case against the Wisdom Ltd.

(ii) Section 1 of the Insolvency and Bankruptcy Code, 2016 specifies of the extent, commencement and applicability of the Code. According to this, it extends to the whole of India and shall apply for insolvency, liquidation, voluntary liquidation or bankruptcy of any company incorporated under the Companies Act, 2013 or under any previous law.

In view of this, the IBC Code, 2016 applies to the corporate debtor incorporated under the Companies Act, 2013 or under any previous laws.

As per the definition of the Creditor given in section 3(10) of the Insolvency and Bankruptcy Code, 2016, it means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor, and a decree holder. So, Standard International Ltd. is a creditor under the purview of the Code.

As per the facts given in question, Standard International Ltd., is a foreign trade creditor. He wanted to file a petition under the under Section 9 of the Insolvency and Bankruptcy Code, 2016 for commencement of Insolvency process against the defaulter in India. Standard International Ltd. was not having any office or bank account in India.

As per the requirement of section 9 of the Code, along with application certain documents were needed to be furnished by the creditor to the Adjudicating authority. Being a foreign trade creditor, Standard International Ltd was also required to provide a copy of certificate from the financial institutions maintaining accounts of the creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor. Since, Standard International Ltd. was not having any office or bank account in India, it cannot furnish certificate from financial institution as defined under the section 3(14) of the code. So, Petition under section 9 of the Code is not permissible.

7.March 2018 Qn no 5(c) 6 Marks:

X Ltd. was intending to initiate voluntarily liquidation proceedings. A declaration was made on affidavit of the some of the directors of the X Ltd. verifying full inquiry of the affairs of the company. They gave the opinion that the company will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation.

Analysing the given situation, comment whether X Ltd can initiate voluntary liquidation proceeding in compliance with the conditions given in the Insolvency and Bankruptcy Code, 2016. What are the required documents to be accompanied with the declaration? Also, state the consequences, where if the articles fixed the period of duration for which company may be carried and that period expires.

Answer:

Section 59 of the Insolvency & Bankruptcy Code, 2016 empowers a corporate person intending to liquidate itself voluntarily if it has not committed any default to initiate voluntary liquidation proceedings under the provisions of this Code.

Any corporate person registered as a company shall meet the following conditions to initiate a voluntary liquidation process:-

(a) A declaration from majority of the directors of the company verified by an affidavit stating

i. That they have made a full inquiry into the affairs of the company and have formed an opinion that either the company has no debts or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and

ii. That the company is not being liquidated to defraud any person.

(b) The declaration shall be accompanied with the following documents, namely:

i. Audited financial statements and a record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;

ii. A report of the valuation of the assets of the company, if any, prepared by a registered valuer.

(c) After making the declaration the corporate debtor shall within four weeks -

i. Pass a special resolution at a general meeting stating that the company should be liquidated voluntarily and insolvency professional to act as the liquidator may be appointed.

ii. Pass a resolution at a general meeting stating that the company be liquidated voluntarily as a result of expiry of the period of its duration (fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, if any)

and appointing an insolvency professional to act as the liquidator.

In the given situations, according to the above provisions, a declaration was made on affidavit of the some of the directors of the X Ltd. verifying full inquiry of the affairs of the company, is not in compliance as the majority was the requirement for initiation of the voluntary liquidation proceedings. And the further declaration that the company is not being liquidated to defraud any person is not given in the affidavit. The documents to be accompanied with declaration shall be as per the point (b) given above.

Where if the articles fixed the period of duration of continuation and that period expires, X Ltd. after making declaration, shall within 4 weeks pass a resolution at a general meeting stating that the company be liquidated voluntarily as a result of expiry of the period of its duration as fixed by its articles and appointing an insolvency professional to act as the liquidator.

8.March 2018 Qn no 4(d) 3 Marks:

State the manner of initiation of corporate insolvency resolution process by financial creditor under the Insolvency and Bankruptcy Code, 2016.

9.RTP Nov-18:

What is the Insolvency Resolution Process for financial creditors?

Answer:

Initiation of corporate insolvency resolution process by financial creditor [Section 7 of the Insolvency and Bankruptcy Code, 2016]

As per the Code, financial creditor either by itself or jointly with other financial creditors or any other person on behalf of the financial creditor as may be notified by the central government may file an application against a corporate debtor before the Adjudicating Authority (National Company Law Tribunal) when a default has occurred.

The financial creditor shall, along with the application furnish the relevant information as to the record of default, name of resolution professional and other required information.

The Adjudicating Authority shall, within fourteen days of the receipt of the application, ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor. Adjudicating Authority if, satisfied that a default has occurred and complying with other requirements of the section, it may, by order, admit such application; or if, default has not occurred, it may, by order, reject such application.

The corporate insolvency resolution process shall commence from the date of admission of the application

10.May 2018 Qn no 5(C) 6 Marks ;MTP Apr 2019 Qn no 5(b) 6 Marks

Rose Garden Ltd. was incurring continuous losses and its financial position went bad to

worse. Black Stone (Private) Ltd., a trade creditor, issued notice under Section 271 of the Companies Act, 2013 for winding up of Rose Garden Ltd. on the ground that it was unable to pay its debts. After some time, Black Stone (Private) Ltd. being an operational creditor filed a petition before the Adjudicating Authority to initiate insolvency process under the Insolvency and Bankruptcy Code, 2016. Demand Notice and copy of invoice were not served to Rose Garden. Ltd. since a notice was earlier issued for winding up. All other formalities were complied with. The Adjudicating Authority initiated Insolvency Resolution Process by admitting the application and appointed Resolution Professional. After complying required formalities, the Adjudicating Authority issued orders for moratorium and other relief within the stipulated time. Being aggrieved by the order of Adjudicating Authority, Rose Garden Ltd. (Corporate debtor) filed an appeal before NCLAT under the Insolvency and Bankruptcy Code, 2016. Determine will the Company succeed in its appeal?

Answer

As per **Section 8** of the Insolvency and Bankruptcy Code, 2016, once a default has occurred, the operational creditor has to deliver a demand notice or a copy of invoice demanding payment of debt in default to the corporate debtor.

Since in the given case, demand notice and copy of invoice was not served to the Rose Garden Ltd., so the requirement for the initiation of the corporate insolvency resolution process by operational creditor under section 9 of the Code, was not in compliance. So, the admission of application in line with the compliance of other required formality as to issue of order of moratorium and other relief, given by the NCLT was against the law.

As Rose Garden Ltd. (Corporate debtor) was aggrieved by the Order of the Adjudicating Authority on the non-compliance of requirement of Section 8, Rose Garden Ltd. will succeed in its appeal filed before the National Company Law Appellate Tribunal.

Further, as IBC is a special law, having an overriding effect on the Companies Act, 2013, therefore serving of notice for winding up as per the Companies Act, will not be considered as a sufficient compliance of the requirement for prevailing of section 8 of the Insolvency and Bankruptcy Code.

11.May2018 Qn no 4(d) 4 Marks:

You are appointed as Interim Resolution Professional in XYZ Company Ltd. under the Insolvency and Bankruptcy Code, 2016. State the time limit to make Public Announcement? Also state the protocol for issuance of public notice. Who shall bear the expenses of public announcement?

Answer:

Time Limit for making Public Announcement

Interim Resolution Professional shall make the Public Announcement immediately after his appointment. "Immediately" here means not more than three days from the date of appointment of the Interim Resolution Professional. Hence, the time limit to make Public Announcement is within 3 days from the date of appointment of the Interim Resolution Professional.

2.Protocol for issuance of Public Notice

As per Section 15 of the Insolvency and Bankruptcy Code,2016, public announcement shall include the following:-

(a) Name & Address of Corporate Debtor under the Corporate Insolvency Resolution Process.

(b) Name of the authority with which the corporate debtor is incorporated or registered.

(c) Details of interim resolution Professional who shall be vested with the management of the Corporate Debtor and be responsible for receiving claims.

(d) Penalties for false or misleading Claims.

(e) The last date for the submission of the claims.

(f) The date on which the Corporate Insolvency Resolution Process ends which shall be the 180th day from the date of admission of the application under section 7,9 or section 10 as the case may be.

3)Expenses of Public Announcement

The expenses of public announcement shall be borne by the applicant which may be reimbursed by the Committee of Creditors, to the extent it ratifies them.

12.Aug 2018 Qn no 5(c) 6 Marks:

Mr. Ramlal, an Insolvency professional was appointed as a resolution professional for a corporate insolvency process initiated against the corporate debtor, Monotech Ltd. Mr. Ramlal is a partner of consulting firm M/s supervision and company which is entity recognized under the IBBI. It was discovered that M/s supervision and company had a transaction with the Monotech Ltd. amounting to 11% of its gross turnover in the last financial year 2017-2018.

Analyse the given situation as per the Insolvency and Bankruptcy Code, 2016, and advise on the validity of appointment of Mr. Ramlal as resolution professional against Monotech Ltd.

What if, the creditor of the Monotech Ltd. opines that the resolution professional

appointed is required to be replaced.

Answer:

As per Regulation 3 of *Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulation, 2016*, an insolvency professional shall be eligible for appointment as a resolution professional for a corporate insolvency process if he and all partners and directors of the insolvency professional entity of which he is partner or director are independent of the corporate debtor. However such an Insolvency professional who is appointed as an resolution professional shall not be an employee or proprietor or a partner of a legal or consulting firm that has or had any transaction with the corporate debtor amounting to ten per cent or more of the gross turnover of such firm in the last three financial years, subject to compliance of other requirements.

In the given instance, Mr. Ramlal, was appointed as Resolution professional for a corporate insolvency process initiated against the Monotech Ltd. During the process, it was discovered that Mr. Ramlal is a partner of a consultant firm M/s supervision and company, which has made transaction of 11% of the gross turnover of the firm in the financial year 2017 -2018 with Monotech Ltd.

Accordingly, Mr. Ramlal being a partner of the Firm had made a transaction of more than 10% of the gross turnover of the firm in the previous financial year 2017-2018. So his appointment as resolution professional against Monotech Ltd for initiation of CIRP, is not valid.

Replacement of Resolution Professional: As per the Code, if a debtor or a creditor is of the opinion that the resolution professional appointed is required to be replaced, he may apply to the Adjudicating Authority (AA) for replacement of such professional. As per Section 27 of the Code, the Committee of Creditors (CoC) may replace the insolvency Resolution Professional with another resolution professional by passing a resolution for the same to be approved by a vote of sixty six per cent of voting shares of the creditors. The Committee of Creditors shall forward the name of the new proposed Insolvency Professional to the Adjudicating Authority, and after the confirmation of the proposed insolvency resolution professional by the Board he shall be appointed in the same manner as laid down in Section 16 which deals with the Appointment of IRP.

13.Aug 2018 Qn no 4(d) 3 Marks:

Discuss the Principles on the basis of which the Insolvency Professional Agency (IPA) is enrolled and regulate insolvency professionals as its members in accordance with the I & B Code, 2016 .

Answer:

The Code provides for establishment of insolvency professionals agencies (IPA) to enroll and regulate insolvency professionals as its members in accordance with the Insolvency and Bankruptcy Code 2016 and read with relevant regulations.

Principles governing registration of Insolvency Professional Agency

- to promote the professional development of and regulation of insolvency professionals
- to promote the services of competent insolvency professionals to cater to the needs of debtors, creditors and such other persons as may be specified
- to promote good professional and ethical conduct amongst insolvency professionals
- to protect the interests of debtors, creditors and such other persons as may be specified
- to promote the growth of insolvency professional agencies for the effective resolution of insolvency and bankruptcy processes under this Code.

14.Nov 2018 Qn no 4(d) 4 Marks:

As on March 31, 2018, the audited balance sheet of M/s. Sharp Industries Limited, revealed total assets of `1 crore. M/s. Sharp Industries Limited, in the capacity of a Corporate Debtor, filed an application on July 1, 2018 with the Adjudicating Authority for initiating a fast track corporate insolvency resolution process. Explain under the provisions of Insolvency and Bankruptcy Code, 2016 the following:

(i) **Whether the application made by M/s. Sharp Industries Ltd. for initiating a fast track corporate insolvency resolution process is admissible?**

The time period including the extension of time period, if any, within which the fast track corporate insolvency resolution process shall be completed?

Answer:

Application by corporate debtor: An application for fast track insolvency resolution can be made by any corporate debtor falling under any of the below mentioned category:-

(a) a corporate debtor with assets and income below a level as may be notified by the Central Government; or

(b) a corporate debtor with such class of creditors or such amount of debt as may be notified by the Central Government; or

(c) such other category of corporate persons as may be notified by the Central Government.

Time period for completion of fast track corporate insolvency resolution process

The fast track corporate insolvency resolution process shall be completed within a period of 90 days from the insolvency commencement date.

Extension: The aggrieved may make an application to the Adjudicating Authority if it is satisfied that the fast track corporate insolvency resolution process cannot be completed within a period of 90 days, it may, by order; extend the duration of such process to a further period which shall not be exceeding 45 days.

In the light of the provisions above and the fact of the question:

(i) The application made by M/s Sharp Industries for initiating fast track

corporate insolvency resolution process is admissible if it falls within the purview of the mentioned categories of corporate debtor.

(ii) The fast track corporate insolvency resolution process shall be completed within 135 days (90+45) from the insolvency commencement date.

15.Nov 2018 Qn no 5(c) 6 Marks:

XY Ltd. filed a petition under Insolvency and Bankruptcy Code, 2016 with NCLT against DF Ltd. (Corporate Debtor) and the petition was admitted. There were only three financial creditors including XY Ltd. During the Corporate Insolvency Resolution process, the Corporate Debtor settled the claims of all the 3 financial creditors. Whether such settlement agreement could be termed as a valid resolution plan? Also discuss whether a financial creditor in respect of whom there is no default can file an application before Adjudicating Authority (NCLT) for initiating corporate insolvency resolution process. Discuss.

Answer:

As per section 7 of the Insolvency and Bankruptcy Code, 2016, a financial creditor either by itself or jointly with other financial creditors, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

As per the facts given, the Adjudicating Authority admitted the petition. During the Corporate Insolvency Resolution Process (CIRP), the DF (Corporate debtor) settled the claims of all the 3 financial creditors.

However, as per the Code, during the insolvency resolution process, the IRP/RP was appointed to collate the claims in a collective mechanism to propose a time bound solution to resolve the situation of insolvency and prepare the resolution plan as agreed to by the debtors and creditors and submit the same to Committee of Creditors for its approval.

Since in the give case, debtor itself settled the claims without following the said procedure. Therefore, such a settlement agreement cannot be termed as valid resolution plan.

As per requirement of the Code, the process of insolvency is triggered by occurrence of default. Default means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be. [Section 3(12)].So a financial creditor in respect of whom there is no default, cannot file an application for initiating insolvency resolution process.

16.Oct 2018 Qn no 5(c) 6 Marks:

The following particulars relate to Big Rammy (Private) Ltd. which has gone into Corporate Insolvency Resolution Plan (CIRP):

Sr. No.	Particulars	Amount in Rs.
1	Amount realized from the sale of liquidation of assets	14,00,000
2	Secured creditor who has relinquished the security	5,00,000
3	Unsecured financial creditors	4,00,000
4	Income-tax payable within a period of 2 years preceding the liquidation commencement date	50,000
5	Cess payable to state government within a period of one year preceding the liquidation commencement date	20,000
6	Fees payable to resolution professional	75,000
7	Expenses incurred by the resolution professional in running the business of the Big Rammy (Private) Ltd. on going concern	25,000
8	Workmen salary payable for a period of thirty months preceding the liquidation commencement date. The workmen salary is equal per month	3,00,000
9	Equity shareholders	10,00,000

State the priority order in which the liquidator shall distribute the proceeds under the Insolvency and Bankruptcy Code 2016.

Answer:

As per section 53 of the Insolvency and Bankruptcy Code, 2016, the proceeds from the sale of liquidation assets shall be distributed in the following order of priority:

Insolvency Resolution Process Cost and Liquidation cost to be paid in full

(i)	Fees payable to Resolution Professional in full	75,000
(ii)	Expenses incurred by the Resolution professional in running the business on going concern	25,000
(iii)	Workmen salary outstanding for a period of 24 months (proportionate to 24 months only). The balance Rs. 60,000 is considered as remaining debts and dues and will be settled before preference shareholder/equity shareholder.	2,40,000
(iv)	Secured creditor who has relinquished the security	5,00,000
(v)	Unsecured Financial Creditors	4,00,000
(vi)	Income- tax payable with in the period 2 years	50,000
(vii)	Cess to State Government payable with in a period of one year	20,000
(vii)	Balance amount in workmen salary	60,000
	Total distribution in the above priority	13,70,000

	Amount realized from the sale of liquidation of assets	14,00,000
	Balance available to Equity share holder on pro rata basis	30,000

17.May 2019 Qn no 5(b) 6 Marks:

The following particulars relate to M/s. Star House (P) Limited which has gone into Corporate Insolvency Resolution Process (CIRP):

S. No.	*Particulars*	*Amount in Rupees*
1.	*Amount realized from the sale of liquidation of Assets*	*7,00,000*
2.	*Secured Creditors who has relinquished the security*	*2,50,000*
3.	*Unsecured Financial Creditors.*	*2,00,000*
4.	*Income Tax Payable within a period of two years preceding the liquidation commencement date.*	*25,000*
5.	*Cess Payable to State Government within a period of one year preceding the liquidation commencement date.*	*10,000*
6.	*Fees payable to resolution professional.*	*37,500*
7.	*Expenses incurred by the resolution professional in running the business of M/s. Star House (P) Limited on going concern.*	*17,500*
8.	*Workmen salary payable for a period of thirty months preceding the liquidation commencement date. The workmen salary is equal per month.*	*1,50,000*
9.	*Equity Shareholders.*	*5,00,000*

State the priority order in which the liquidator shall distribute the proceeds under the Insolvency & Bankruptcy Code, 2016.

Answer:

The priority order in which the liquidator shall distribute the proceeds will be as under*:*

Particulars	Amount (in `)	
Amount realised from the sale of liquidation of assets		7,00,000
Less: (i) Fees payable to resolution professional	37,500	
(ii) Expenses incurred by the resolution professional in running the business of M/s Star House (P) Ltd. on going concern	17,500	(55,000)
Balance available		6,45,000

Less: (i) Secured creditors who has relinquished the security (ii) Workmen salary payable for a period of 24 months preceding the liquidation commencement date [1,50,000*(24/30)]	2,50,000 1,20,000	(3,70,000)
Balance available		**2,75,000**
Less: Unsecured Financial Creditor	2,00,000	**(2,00,000)**
Balance available		**75,000**
Less: (i) Income tax payable (ii) Cess payable to State Government	25,000 10,000	**(35,000)**
Balance available		**40,000**
Less: Balance Workmen salary payable (apart for a period of 24 months preceding the liquidation commencement date) [1,50,000 – 1,20,000]	30,000	**(30,000)**
Balance Available for equity shareholders		**10,000**

18.May 2019 Qn no 6(c)(ii) 3 Marks:

Continental Rubber Limited is a supplier of raw materials to Smooth Latex Limited. It filed a petition before the NCLT for the recovery of ` 10,00,000 from Smooth Latex Limited. Smooth Latex Limited, the Corporate Debtor, has other financial creditors to the extent of ` 1,50,00,000 and they also joined together and filed petitions to NCLT. The Corporate Debtor has a total of 40 financial creditors and 2 operational creditors. Further, all the financial creditors are having equal voting rights/shares.

Notice was issued on 1st August, 2018 for the conduct of the first meeting to be held on 5th August, 2018 at a common venue. The meeting was attended by all 40 financial creditors and 2 operational creditors. A resolution was passed to appoint Mr. TK as a Resolution Professional. 25 of the financial creditors voted in favour of the resolution and 10 voted against the resolution and 5 financial creditors and 2 operational creditors abstained from voting. Decide whether the resolution passed is valid? In the light of the provisions of Insolvency and Bankruptcy Code, 2016 read with rules framed thereunder, explain the requirements of issue of notice and quorum for the conduct of the meeting.

Answer:

According to section 22 of the Insolvency and Bankruptcy Code, 2016,

First Meeting of Creditors

- The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.
- The committee of creditors in the first meeting may by a majority vote of not less than sixty-six per cent. of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.
- Notice of the Meeting

The resolution professional shall give notice of each meeting of the committee of creditors to:-

(a) Members of Committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5);

(b) Members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;

(c) Operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.

Quorum for the Meeting

A meeting of committee of creditors shall quorate if members of the committee of creditors representing at least thirty three percent of the voting rights are present either in person or by video/audio means.

- If the requisite quorum for committee of creditors is not fulfilled the meeting cannot be held and the meeting shall automatically stand adjourned at the same time and place on the next day.
- The adjourned meeting shall quorate with the members of the committee attending the meeting.

As per the facts of the question and the provisions of law:

(1) The first meeting of committee of creditors was validly held within three

days of the constitution of the committee of creditors.

(2) The requisite quorum was present in the meeting as all 40 financial creditors attended the meeting.

(3) The Act requires that not less 66% of the financial creditors shall resolve to appoint resolution professional. However, in the given case 71.4% [(25/35)* 100] voted in favour of Mr. TK. Hence, the said appointment is valid.

19.MTP Apr 2019 Qn no 6(b)(ii) 3 Marks

Discuss the process of appointment of resolution professional by the Committee of creditors under the IBC, 2016.

Answer

Appointment of resolution professional by CoC

The Committee of Creditors (CoC), may, in the first meeting, by a majority vote of not less than sixty six per cent of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional

(section 22(2) of Insolvency Code, 2016).

If they decide to continue interim resolution professional, subject to a written consent from the interim resolution professional in the specified form they will inform its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority (section 22(3)(a) of Insolvency Code, 2016).

However, if they decide to replace the interim resolution professional, the CoC shall file application before the Adjudicating Authority for the appointment of Resolution Professional, along with a written consent from the proposed resolution professional in the specified form (section 22(3)(b) of Insolvency Code, 2016).

The Adjudicating Authority (NCLT) shall inform name of proposed new Resolution Professional to IBBI. The resolution professional can be appointed only with approval of Board (IBBI). Till then, the interim resolution professional will continue.

20.RTP May 2019Qn no 17

The financial creditor, Mr. Raman, was an investor and a debenture holder of 'Optionally Convertible Debenture Bond (OPDB)' payable on maturity, was issued by the M/s Asset Ltd. (corporate debtor). The zero interest OCD bonds amounted to 2 crore matured in 2016 . The liability to redeem the debentures on maturity along with a redemption premium lay on the debtor, which was not made. Mr. Raman filed the Corporate Insolvency resolution process before the NCLT. Advise in the light of the given facts, the following situations:

(i) **State whether Mr. Raman is eligible for filing of application for initiation of CIRP?**

(ii) **Do the redemption of debenture payable on the maturity date amounts to debt?**

Answer

As per Section 5(7) of the Insolvency and Bankruptcy Code, 2016, financial creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

Whereas the term Financial debt defined under Section 5(8) means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes any amount raised pursuant to the issue of bonds, notes, debentures, loan stock or any similar instrument.

As per the facts, Mr. Raman, was an investor and a debenture holder of 'Optionally Convertible Debenture Bond (OPDB)' issued by the Asset Ltd. With the debenture payable, as on the maturity date with interest, it was disbursed against consideration for the time value of the money. Thus, it can be said that debentures on maturity will come under that purview of Section 5(8)(c). Since Mr. Raman is a person to whom a financial debt is owed, he will come within the definition of Financial creditor. Being a debenture-holder and shareholder of the company he, being a creditor is entitled to claim debt amount. Therefore, as per section 7, Mr. Raman is entitled to file an application to initiate CIRP against the M/s Asset Ltd.

21.RTP Nov 2019 Question no. 3

Mr. Satya, file a petition for default of non –payment of the debt against Mr. X. The amount in default claimed by petitioner was ` 30 lakh. Mr. X (Respondent) pleaded before the adjudicating authority that the amount of claim was not belonging to the applicant/petitioner. Mr. Satya, asserted that he himself with his son owns ` 26 Lakh to the respondent. Though nowhere in the petition and the supportive documents, he admitted that he himself with his Son owns ` 26 Lakh to the respondent. Considering the above facts in the light of the Insolvency and Bankruptcy Code, state the ac tion that will be taken by the Adjudicating Authority-

(a) NCLT will admit the application of Mr. Satya, as he jointly with his son owned the debt to the Mr. X, so he is a valid petitioner.

(b) NCLT will admit the application filed by Mr. Satya on behalf of his son.

(c) NCLT will reject the application considering that no default has occurred against Mr. Satya, and his stand as a financial creditor is not proved in the petition.

(d) NCLT will dismiss the application on the ground of non- existence of dispute against Mr. Satya.

Answer: (C)

22.RTP Nov 2019 Qn no 4

How many times Corporate Insolvency Resolution Process period can be extended?

(a) **shall not be granted more than once**

(b) **shall be granted more than once**

(c) **shall be granted more than twice on the reasonable cause**

(c) **cannot be granted at all**

Answer: (a)

23.RTP Nov 2019 Qn no 14

Creative India Limited owes a sum of ` 2,80,000 to S, who assigns this debt to his two creditors, Mr. R – to the extent of ` 1,40,000 and Mr. M - to the extent of `1,40,000.

Mr. M makes a demand for his money from the company by giving a legal notice. The company could not meet Mr. M's demand or otherwise satisfy him till the expiry of four weeks from the date of notice. Mr. M, therefore, moves to NCLT with an application for initiation of Insolvency and Bankruptcy Code, 2016, decide whether an application filed by Mr. M can be accepted by NCLT.

Answer

Financial creditor can initiate corporate insolvency resolution process himself or jointly with other financial creditors against corporate debtor on default of payment of debt of ` 1,00,000 or more. Assignee of financial debt is also financial creditor as per section 5(7) of the IBC, 2016. Mr. M's application can be accepted by NCLT if company fails to pay debt within stipulated time. Application should be supported with a copy of the assignment or transfer agreement and other relevant documents as may be required to demonstrate the assignment or transfer.

24.Nov 2019 Qn no 5(C) 6 Marks

In view of the deep recession prevailing in, the market for the past three years, M/s. Infra Limited (Corporate Debtor), which was facing the brunt of financial crisis, could not pay salaries and wages to its workmen and employees for the past 6 months. The workmen and the employees, who are the members of a recognized Trade Union "Infra Labor Federation", made a complaint in this regard. Thereafter, the Trade Union approached and urged the Management of the Company in person and through representations in writing to settle the arrears of wages and salaries due to its members. The Corporate Debtor neither disputed nor took any actions to settle the amount. Under the circumstances, Infra Labor Federation filed an application before the Adjudicating Authority

i.e. with the National Company Law Tribunal for initiating a Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016.

In the light of the provisions of the Insolvency and Bankruptcy Code, 2016, examine the following:

(i) **Validity of the Application.**

What will be the "Initiation date" for initiating the Corporate Insolvency Resolution Process?

Answer

Workmen & Employees as Operational Creditor: The Insolvency and Bankruptcy Code, 2016 considers all employees and workmen as operational creditors.

As per section 5(20) of the Code, *"Operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;"*

Whereas Operational Debt as per Section 5 (21) of the Code *means a claim in respect of the provision of goods or services* including employment *or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority."*

Accordingly, if there is any dues arising in the course of employment, then that will be considered as an operational debt and the person to whom such operational debt is owed shall be treated as the Operational Creditor. Therefore, workmen & employees shall be treated as Operational Creditor of the Corporate Debtor.

The term "person" as defined under section 3(23) of the IBC, 2016 includes "any other entity established under any statute". A trade union, when registered under the Trade Union Act, 1926 would come within the purview of any other entity "established" under the statute.

Filing of an application by Operational Creditor: Application can be filed by the Operational Creditor in the NCLT if there is a debt, in compliance with sections 8 & 9 of the Code.

Prior to filling the application before NCLT, an employee has to comply with the procedure of sending the demand notice to the Corporate Debtor. If the Corporate Debtor has not paid the amount of debt even after sending the demand notice, neither intimated to the operational creditor about the existence of any regarding the dispute pertaining to the due debts.

After the expiry of ten days, if the operational creditor does not receive his payment or the confirmation of a dispute that existed even before the demand notice was sent, he may file

an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

The date of filing of the application before the NCLT will be the initiation date for initiating the Corporate Insolvency Resolution Process (Section 5(11)).

Accordingly, in the light of the given provisions, following are the answers:

(i) Application filed by trade union, Infra Labor Federation on behalf of the workmen & employees in the said instance is valid as operational debt had been being legally assigned to the trade union in terms of section 5(20) of the Code and is included in the definition in section 3(23) of IBC, 2016.

(ii) Trade union, Infra Labour Federation may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process after expiry of 10 days from the date of serving demand notice to the M/s Infra Ltd and the date of filing of the application before the NCLT will be the date of initiation.

25.Nov 2019 Qn no 6(d) 3 Marks

The Committee of Creditors of M/s XYZ Limited proposes to appoint Mr. Ajit, an Insolvency Professional, as Insolvency Resolution Professional in the matter of corporate insolvency process of M/s XYZ Limited. Mr. Ajit was a promoter of M/s ABC Limited which is a holding company of M/s XYZ Limited. Examine and decide whether Mr. Ajit is eligible for appointment as an Insolvency Resolution Professional under the Provisions of Insolvency and Bankruptcy Code, 2016.

Answer

As per Regulation 3 of *Insolvency and Bankruptcy (Insolvency Resolution process for corporate persons) Regulation, 2016*, an insolvency professional shall be eligible for appointment as a resolution professional for a corporate insolvency resolution process if he and all partners and directors of the insolvency professional entity of which he is partner or director, are independent of the corporate debtor.

In the given instance, Committee of Creditors of M/s XYZ Ltd. proposed to appoint Mr. Ajit, as IRP in the matter of corporate insolvency resolution process of M/s XYZ Ltd. However, Mr. Ajit was a promoter of M/s ABC Ltd. which is a holding company of M/s XYZ Ltd.

Accordingly, Mr. Ajit, is a related party of the corporate debtor. Therefore, Mr. Ajit is not eligible for appointment as an insolvency resolution professional in terms of the said legal provisions of the Code.

26.MTP Nov 2019 Qn no 5(b) 6 Marks

X Ltd. was intending to initiate voluntarily liquidation proceedings. A declaration was made on affidavit of the some of the directors of the X Ltd. verifying full inquiry of the affairs of the company. They declared that the company will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation.

Analyse the given situation and comment whether X Ltd can initiate voluntary liquidation proceeding in compliance with the conditions given in the Insolvency and Bankruptcy Code, 2016. What are the required documents to be accompanied with the declaration?
Also, state the consequences, where if the articles fixed the period of duration for which company may be continued and that period expires.

Answer

Section 59 of the Insolvency & Bankruptcy Code, 2016 empowers a corporate person intending to liquidate itself voluntarily if it has not committed any default, to initiate voluntary liquidation proceedings under the provisions of this Code.

Any corporate person registered as a company shall meet the following conditions to initiate a voluntary liquidation process:-

(a) A declaration from majority of the directors of the company verified by an affidavit stating

i. That they have made a full inquiry into the affairs of the company and have formed an opinion that either the company has no debts or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and

ii. That the company is not being liquidated to defraud any person.

(b) The declaration shall be accompanied with the following documents, namely:

i. Audited financial statements and a record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;

ii. A report of the valuation of the assets of the company, if any, prepared by a registered valuer.

(c) After making the declaration the corporate debtor shall within four weeks -

i. Pass a special resolution at a general meeting stating that the company should be liquidated voluntarily and insolvency professional to act as the liquidator may be appointed.

ii. Pass a resolution at a general meeting stating that the company be liquidated voluntarily as a result of expiry of the period of its duration (fixed by its articles or on the occurrence of any event in respect of which the articles provide that the companyshall be dissolved, if any) and appointing an insolvency professional to act as the liquidator.

Here, in the given situations, according to the above provisions, a declaration made with an affidavit of the some of the directors of the X Ltd. verifying that companyhave made full inquiry of the affairs of the company, is not in compliance, as the majority was the requirement for initiation of the voluntary liquidation proceedings. And the further

declaration that the company is not being liquidated to defraud any person is not given in the affidavit. The documents to be accompanied with declaration shall be as per the point (b) given above in the stated provision.

Where if the articles fixed the period of duration of continuation of the Company and that period expires, X Ltd. after making declaration, shall within 4 weeks pass a resolution at a general meeting stating that the company be liquidated voluntarily as a result of expiry of the period of its duration as fixed by its articles and appointing an insolvency professional to act as the liquidator.

27.MTP Nov 2019 Qn no 6(b)(i) 3 Marks

Wisdom Ltd. commits a default against the debt taken from the financial creditor, Mr. F. He initiated the corporate insolvency resolution process against the Wisdom Ltd. as the company defaulted in the payment of financial debt of Rs. 2 lakh. In the mean time, Mr. X, another financial creditor, thereof files an application for initiating corporate insolvency resolution process with the Adjudicating Authority. Examine with reference to the validity as to the filing of an application by Mr. X for initiation of corporate insolvency resolution process?

Answer

In the given problem, on commission of default by the Wisdom Ltd. against Mr. F, entitled him to file an application for initiating corporate insolvency resolution process before adjudicating authority. Further, Mr. X another financial creditor also moved an application for initiation of insolvency resolution process against the Wisdom Ltd.

According to the section 6 of the Code, where any corporate debtor commits a default, a financial creditor, Operational creditor or the Corporate debtor itself may initiate insolvenc y resolution process against such corporate debtor.

As per the facts given in the question default has been committed only against Mr. F and not against Mr. X. So Mr. F is prima facie entitled to file an application for initiation of the CIRP.

Further, section 7 of the Code specifies financial creditor either by itself jointly wi th other financial creditor may file an application only when default has occurred. Since in the given case, default has occurred only against Mr. F and so further no application for initiation of CIRP can be initiated by Mr. X, however he being a creditor, is entitled under the Code to raise his claim in this case against the Wisdom Ltd. in compliance with the Insolvency and Bankruptcy Code, 2016.

28.RTP May 2020 Question no 14

ABZ Ltd. an unlisted company with total assets of ` one crore as per financial statement as on 31st March, 2018, defaulted in the payment of the financial debt against the financial creditor Mr. X. Mr. X filed an application for initiation of insolvency process

against ABZ Ltd. under the fast track corporate insolvency resolution process on 31st May 2019. Discuss the relevancy for disposal through the mechanism of the fast track corporate insolvency resolution process and the legal position of holding of fast track corporate insolvency resolution process by Mr. X in the term of the IBC, 2016. Compute the time period for completion of fast track process in the said situation.

Answer

Relevancy : Fast track corporate insolvency resolution process is a speedy process for corporate insolvency resolution for small corporates.

As per section 55 of the IBC, 2016, it is applicable to following corporate debtors - (a) a corporate debtor with assets and income below a level as may be notified by the Central Government; or (b) a corporate debtor with such class of creditors or such amount of debt as may be notified by the Central Government; or (c) such other category of corporate persons as may be notified by the Central Government.

Applicability of the provisions - The provisions are applicable to - (a) small company under section 2(85) of Companies Act (b) a start-up (other than partnership firm)[as defined by Ministry of Commerce and Industry notification No. GSR 501(E) dated 23 -5-2017] (c) an unlisted company with total assets not exceeding ` one crore as per financial statement immediately preceding the financial year [SO 1911(E) dated 14-6-2017].

Time period for completion of fast track process

The fast track corporate insolvency resolution process shall be completed within a period of 90 days from the insolvency commencement date. It can be extended by Adjudicating Authority by further 45 days, if resolution passed at a meeting of the committee of creditors and supported by a vote of seventy five per cent of the voting shares [section 56(3) of Insolvency Code, 2016].

According to the provisions, fast track corporate insolvency resolution process shall be completed by 29th of August 2019. On further extension uptil by 13th of October, 2019 in compliance with above provision.

29.RTP May 2020 Question no 19

Mr. Mediator was proposed to be appointed as a resolution professional for the corporate insolvency resolution process initiated against BMR Ltd. Mr. R, a relative of director of BMR Ltd. is a partner in the insolvency professional entity in which Mr. Mediator is partner. In the light of the given facts, examine the nature of the proposal of the appointment of Mr. Mediator for the conduct of the CIRP as per the Insolvency and Bankruptcy Code, 2016.

Answer

As per Regulation 3 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, an insolvency professional shall be eligible to be appointed as a resolution professional for a corporate insolvency resolution process of a corporate debtor if he, and all partners and directors of the insolvency

professional entity of which he is a partner or director, are independent of the corporate debtor.

Explanation– A person shall be considered independent of the corporate debtor, if he:

(a) is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013, where the corporate debtor is a company;

(b) is not a related party of the corporate debtor; or

(c) is not an employee or proprietor or a partner:

(i) of a firm of auditors or secretarial auditors in practice or cost auditors of the corporate debtor in the last three financial years.

(ii) of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to five per cent or more of the gross turnover of such firm, in the last three financial years.

As per the given facts, Mr. Mediator was proposed to be appointed as a resolution professional for the insolvency resolution process initiated against BMR Ltd.

Whereas, Mr. R, a relative of director of BMR Ltd. is a partner in the insolvency professional entity in which Mr. Mediator is partner.

Since, Mr. R is the partner in Insolvency Professional Entity in which Mr. Mediator is also a partner, so, Mr. Mediator is not eligible for appointment as Resolution Professional as he is not independent of the corporate debtor, because Mr. R is relative of Director of BMR Ltd. (Corporate Debtors).

30. RAB Bank Limited, a banking company, has defaulted in the payment of dues to their catering contractor. Can the contractor, as an operational creditor initiate insolvency process against the bank-

(a) Yes, operational creditors are entitled

(b) No, financial service providers are excluded

(c) Yes, banking companies are covered under this code

(d) No, catering is an excluded service under the Code

Answer: b) **Hint:** [No, financial service providers are excluded as per the explanation to section 1 of the I&B Code, 2016

31.The time line of 180 days for the Corporate Insolvency Resolution process commences from the

a) Date of Debt

b) Date of preferring the application

c) Date of admission of application by NCLT

d) **90 days after the debt is due**

Answer: c) **Hint :** Refer Section 5(14) & 5(12) of the Code.

32.Ruby Ltd. filed an application to the NCLT stating that corporate insolvency resolution process against him, cannot be completed within the 90 days under the fast track insolvency resolution process. Considering application and on being satisfied, NCLT ordered to extend the period of such process by 30 days. Later, again Ruby Ltd. initiated an application for further extension of time period of insolvency process by 15 days. Decide in the given situation, whether NCLT, can extend timelines by further 15 days.

a) **Yes, because extension of duration in toto, is not exceeding 45 days.**

b) **Yes , depends of the facts , if it is justified , NCLT may extend the timelines.**

c) **No, extension of the fast track insolvency resolution process shall not granted more than once.**

d) (a) & (b)

Answer: c) **Hint:** As per section 56 of the I&B Code, 2016, the extension of the fast track corporate insolvency resolution process under this section shall not be granted more than once.

33.Whether an operational creditor can assign or legally transfer any operational debt to a financial creditor:

a) **Yes. However, the transferee shall be considered as an operational creditor to such extent of transfer.**

b) **Yes but the transferee shall be considered as a financial creditor in relation to such transfer**

c) **No. An operational creditor cannot assign or legally transfer any operational debt to a financial creditor.**

d) **No. An operational creditor can assign or legally transfer an operational debt only to an operational creditor.**

Answer: a) **Hint:** Refer Section 21(5) of the Insolvency and Bankruptcy Code.

34.shall be responsible for carrying out the entire Corporate Insolvency resolution process and managing the operations of the corporate debtor during the process.

a) **Committee of creditors**

b) **Adjudicating Authority**

c) **Insolvency professionals**

d) **Resolution Professional**

Answer: d) **Hint:** As per section 23 of the IBC.

35.ABC and Co, the tax consultants of X Limited for which an interim resolution professional – Mr. A, has been appointed under the Corporate Insolvency resolution process has refused to furnish information to Mr. A on the grounds of client confidentiality. Are they right?

a) **Yes, they are right**

b) **No, the Code provides powers to the IRP to access all information from various parties**

c) **Partly right, they can do so only after consent of the directors**

d) **Mr. A is not right in even asking for this information**

Answer: b) **Hint:** No, because as Per Section 17 of the I&B Code, the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional

36.Mr. Satya, file a petition for default of non –payment of the debt against Mr. X. The amount in default claimed by petitioner was ` 30 lakh. Mr. X (Respondent) pleaded before the adjudicating authority that the amount of claim was not belonging to the applicant. Mr. Satya, asserted that he himself with his son owns ` 26 Lakh to the respondent. Though nowhere in the petition he admitted that he himself with his Son owns ` 26 Lakh to the respondent. Considering the above facts in the light of the Insolvency and Bankruptcy Code, state the action to be taken by the Adjudicating Authority-

a) **NCLT will admit the application of Mr. Satya, as he jointly with his son owned the debt to the Mr. X, so he is a valid petitioner.**

b) **NCLT will admit the application filed by Mr. Satya on behalf of his son.**

c) **NCLT will reject the application considering that no default has occurred against Mr. Satya, and his stand as a financial creditor is not proved in the petition.**

d) **NCLT will dismiss the application on the ground of non-clarity as to existence of dispute.**

Answer: c) **Hint:** Refer section 7(5) of the IBC.

37.Person who has provided goods or services and the payment for same is due from the corporate debtor, is a:

(a) **Financial Creditor**

(b) **Operational creditor**

(c) **Corporate applicant**

(d) Both (a) & (b)

Answer: b) **Hint:** As per the IBC, an Operational Creditor means a person to whom an Operational debt is owed. Operational creditor refers to anyone who has provided goods or services and the payment for same is due from the corporate debtor

38. When will the provisions of insolvency and liquidation of corporate persons be applicable on a corporate person?

Answer The provisions relating to the insolvency and liquidation of corporate debtors shall be applicable only when the amount of the default is one lakh rupees or more. However, the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.

39. What is the Insolvency Resolution Process for financial creditors?

Answer A financial creditor either itself or along with other financial creditors may lodge an application before the Adjudicating Authority (National Company Law Tribunal) for initiating corporate insolvency resolution process against a corporate debtor who commits a default in payment of its dues.

The financial creditor shall along with the application give evidence in support of the default committed by the corporate debtor. He shall also give the name of the interim resolution professional.

Where the Adjudicating Authority is satisfied that a default has occurred and the application by the financial creditor is complete and there is no disciplinary proceedings pending against the proposed resolution professional, it may admit such application made by the financial creditor. Otherwise, the application may be rejected. However, the applicant may rectify the defect within seven days of receipt of notice of rejection from the Adjudicating Authority.

40. What is the Insolvency Resolution Process for operational creditors?

Answer

On the occurrence of default, an operational creditor shall first send a demand notice and a copy of invoice to the corporate debtor.

The corporate debtor shall within a period of ten days of receipt of demand notice notify the operational creditor about the existence of a dispute, if there is any and record of pendency of any suit or arbitration proceedings. He shall also provide the details of repayment of unpaid operational debt in case the debt has or is being paid.

After the expiry of ten days, if the operational creditor does not receive his payment or the confirmation of a dispute that existed even before the demand notice was sent, he may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

The Adjudicating Authority shall within fourteen days of receipt of the application, admit or reject the application. However, before rejecting the application, an opportunity shall be given to the applicant to rectify the defect within seven days of receipt of rejection.

41. What are the eligibility criteria for appointment of an Insolvency Professional as a Resolution Professional for a corporate insolvency resolution process?

Answer

As per Regulation 3 of Insolvency and Bankruptcy (Insolvency Resolution) Regulation, 2016, an insolvency professional shall be eligible for appointment as a resolution professional for a corporate insolvency resolution process if he and all partners and directors of the insolvency professional entity of which he is partner or director are independent of the corporate debtor i.e.,

- He is eligible to be appointed as an independent director on the board of the corporate debtor u/s 149 of the Companies Act, 2013, where the corporate debtor is a company.
- He is not a related party of the corporate debtor.
- He is not an employee or proprietor or a partner of a firm of auditors or company secretaries in practice or cost auditors of the corporate debtor in the last three financial years.

He is not an employee or proprietor or a partner of a legal or consulting firm that has or had any transaction with the corporate debtor amounting to five per cent or more of the gross turnover of such firm in the last three financial years

42. What is the procedure of Insolvency Resolution Process for a Corporate Applicant?

Answer

Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

The corporate applicant shall furnish the information relating to books of account and other documents and a resolution professional shall be appointed as interim resolution professional.

The Adjudicating Authority may either accept or reject the application within fourteen days of receipt of application. However, applicant should be allowed to rectify the defect within seven days of receipt of notice of such rejection.

43. Is there any time limit for completion of the Insolvency Resolution Process?

Answer

Section 12 of the Code states that any Insolvency Resolution Process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate the process.

However, the National Company Law Tribunal (NCLT) may on an application made by the resolution professional, under a resolution passed by the Committee of Creditors, by a vote of 75% of voting shares, after consideration provide one extension which shall not extend more than 90 days.

44. What is the effect of order of moratorium?

Answer

Moratorium has been explained in Section 14 of the Code, during the moratorium period the following acts shall be prohibited:

(a) The institution of suits or continuation of any pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the SARFAESI Act, 2002

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

45. What is a Resolution plan?

Answer

A resolution plan is a proposal agreed to by the Debtors and Creditors of an entity in a collective mechanism to propose a time bound solution to resolve the situation of insolvency.

As per Section 30, the Insolvency Resolution Professional (IRP) within the prescribed time i.e. 180 days or in case of extension 270 days, where Fast Track Resolution within 90 days or in case of extension 135 days, is required to submit the Resolution Plan to Adjudicating Authority (NCLT) prepared by the Resolution applicant on the basis of information

memorandum.

The Resolution Plan should provide for:

(i) payment of insolvency resolution costs;

(ii) repayment of the debts to operational creditors;

(iii) management of affairs of the Company after approval of the resolution plan;

(iv) implementation and supervision of the resolution plan;

(v) does not contravene provisions of the law for the time being in force; and

(vi) conforms to such other requirement as may be specified by the Board.

46. When can a corporate person initiate voluntary liquidation process?

Answer

Section 59 of the Code empowers a corporate person intending to liquidate itself voluntarily if it has not committed any default to initiate voluntary liquidation proceedings under the provisions of this Code.

Any corporate person registered as a company shall meet the following conditions to initiate a voluntary liquidation process:-

(a) A declaration from majority of the directors of the company verified by an affidavit stating

i. That they have made a full inquiry into the affairs of the company and have formed an opinion that either the company has no debts or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and

ii. That the company is not being liquidated to defraud any person.

(b) The declaration shall be accompanied with the following documents, namely:

i. Audited financial statements and a record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;

ii. A report of the valuation of the assets of the company, if any, prepared by a registered valuer.

(c) After making the declaration the corporate debtor shall within four weeks -

i. Pass a special resolution at a general meeting stating that the company should be liquidated voluntarily and insolvency professional to act as the liquidator may be appointed.

Pass a resolution at a general meeting stating that the company be liquidated voluntarily as a result of expiry of the period of its duration (fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, if any) and appointing an insolvency professional to act as the liquidator

47. Mr. Ram, an operational creditor filed an application for corporate insolvency resolution process. He does not proposed for appointment of an interim resolution professional in the application. State the provisions given by the Code in the given situation. State the term of such appointed IRP

Answer

Appointment of IRP: As per Section16 of the Code where the application for corporate insolvency resolution process is made by an operational creditor and no proposal for an interim resolution professional is made in the said application. The Adjudicating Authority

shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional.

The Board shall recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending, within ten days of the receipt of a reference from the Adjudicating Authority.

Period of appointment of IRP: The term of the interim resolution professional shall continue from his appointment till the date of appointment of the resolution professional by CoC in first meeting of CoC under section 22 of the Insolvency & Bankruptcy Code, 2016.

48. **RTP Nov 2020 Q No 11**

State under which given situation, a lender can avail the benefits of SARFAESI Act -

(i) An insolvency application has been launched against the borrower

(ii) The borrower is under BIFR

(iii) A winding up petition has been made against the borrower

(iv) A criminal proceeding has been launched by the lender against the borrower

(a) In situations (i) & (iii)

(b) In situations (ii) & (iv)

(c) In situations (ii), (iii) & (iv)

(d) In all the given situations (i), (ii), (iii) & (iv)

Answer: c)

49. MX Limited was admitted in the Corporate Insolvency Resolution Process (CIRP) under section 7 of the Insolvency and Bankruptcy Code (Code). The Resolution Professional (RP) of the MX Limited (Corporate Debtor) conducted the Committee of Creditors (CoC) meeting but the same was adjourned due to lack of quorum. Accordingly, in the adjourned meeting, a resolution was passed by the CoC members present, representing 51% of the voting rights for liquidation of the Corporate Debtor before the expiry of the Corporate Insolvency Resolution Process (CIRP). You as a qualified Chartered Accountant in the team of RP is required to advise RP whether the resolution of liquidation passed is valid in law considering the provisions of the Insolvency and Bankruptcy Code.

(a) The resolution passed for liquidation is not valid in law as it has not been approved by minimum of 90% of the voting shares of the financial creditors.

(b) The resolution passed for liquidation is not valid in law as it has not been approved by minimum of 66% of the voting shares of the financial creditors.

(c) The resolution passed for liquidation is not valid in law as it cannot be passed before the expiry of the CIRP.

(d) The resolution passed for liquidation is valid in law as it has been passed by 51% of the voting shares of the financial creditors

Answer: b)

50 .RTP Nov'2020 Q no 22

Quality Rubber Limited, a supplier of raw materials filed a petition before the NCLT for the recovery of ` 10,00,000 against Smart Latex Limited. Smart Latex Limited, the Corporate Debtor, has other financial creditors to the extent of ` 1,50,00,000 and they also joined together and filed petitions to NCLT. The Corporate Debtor has a total of 40 financial creditors and 2 operational creditors. Further, all the financial creditors are having equal voting rights/shares.

Notice was issued on 1st August, 2019 for the conduct of the first meeting to be held on 5 th August, 2019 at a common venue. The meeting was attended by all 40 financial creditors and 2 operational creditors. A resolution was passed to appoint Mr. Naveen as a Resolution Professional. 25 of the financial creditors voted in favour of the resolution and 10 voted against the resolution and 5 financial creditors and 2 operational creditors abstained from voting.

Decide in terms of the given information whether the resolution passed to appoint Mr. Naveen is valid? In the light of the provisions of Insolvency and Bankruptcy Code, 2016 read with rules framed thereunder, explain the requirements of valid quorum for the conduct of the meeting.

Answer

According to section 22 of the Insolvency and Bankruptcy Code, 2016, the first meeting of the committee of creditors shall be held within seven days of the constitutio n of the committee of creditors. The committee of creditors in the first meeting may by a majority vote of not less than sixty-six percent of the voting share of the financial creditors, either resolve to appoint the interim

resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

A meeting of committee of creditors shall quorate if members of the committee of creditors representing at least thirty three percent of the voting rights are present either in person or by video/audio means.

The adjourned meeting shall quorate with the members of the committee attending the meeting.

As per the facts of the question and the provisions of law, the requisite quorum was present in the meeting as all 40 financial creditors attended the meeting and 5 abstained from voting.

The Act requires that not less 66% of the financial creditors shall resolve to appoint resolution professional. However, in the given case 71.4% [(25/35)* 100] voted in favour of Mr. Naveen. Hence, the said appointment is valid.

51 What is the significance of the Corporate Insolvency Resolution Commencement Date?

ANSWER:

The commencement date of the corporate insolvency resolution is the beginning of moratorium or a calm period till the completion of the corporate insolvency resolution process during which all suits and legal proceedings etc. against the Corporate Debtor are held in abeyance to give time to the entity to resolve its status

52 Can a resolution professional act as a liquidator?

ANSWER:

Yes, under section 34 (1), where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under chapter II shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority, may act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority.