PAPER – 4: CORPORATE AND ALLIED LAWS

PART – I: RELEVANT AMENDMENTS APPLICABLE FOR MAY 2021 EXAMINATION

(A) Applicability of Relevant Amendments/ Circulars/ Notifications/ Regulations etc.

For May 2021 examinations for Paper 4: Corporate and Allied Laws, the significant amendments made upto 31st October, 2020 are relevant.

Relevant publications: Students are advised to refer the following publications -

1	Study Material (Edition June 2018) containing Legislative amendments made upto 30th April, 2018.
2	RTP of May 2021 examination containing all the significant legislative amendments i.e. from 1st May 2018 to 31st October, 2020.
3	Revised chapter of FEMA due to inclusion of topics in the scope of syllabus [hosted on website at https://resource.cdn.icai.org/50863bos40319cp22.pdf]
4	Detailed announcement dated 9.7.2019 w.r.t. Inclusions/Exclusions in the scope of syllabus [hosted on the website at https://resource.cdn.icai.org/55779bos45147fold.pdf]

Relevant amendments: Given here are the relevant amendments which shall be read in line with the principal Act. These amendments are arranged chapter wise as per the study material for the convenience of the students.

SECTION A: COMPANY LAW & INSOLVENCY AND BANKRUPTCY CODE, 2016

The Companies Act, 2013 have been regularly amended by the Government vide enforcement of various amendment Act, namely Companies (Amendment) Act, 2017, the Companies (Amendment) Ordinance, 2018, the Companies (Amendment) Ordinance Act, 2019 and the Companies (Amendment) Second Ordinance, 2019, the Companies (Amendment) Act, 2019 and the Companies (Amendment) Act, 2020 and through various legislative amendments made vide Circulars and Notifications.

Following are the relevant amendments pertaining to Companies Act, 2013:-

CHAPTER 2: ACCOUNTS AND AUDIT

1. Enforcement of the *Companies* (Audit and Auditors) second Amendment Rules, 2018 vide Notification G.S.R. 432 (E) dated 7th May 2018

The Central Government makes the Companies (Audit and Auditors) second Amendment Rules, 2018 to amend the Companies (Audit and Auditors) Rules, 2014.

In the Companies (Audit and Auditors) Rules, 2014,

(i) In **rule 3** which deals with the Manner and Procedure of selection and appointment of auditors, following are the amendments:

(a) Explanation shall be omitted.

(b) proviso to sub-rule (7) shall be omitted.

(ii) In the principal rules, in **rule 10A** i.e., related to Internal Financial controls system, for the words "adequate internal financial controls system", the words "internal financial controls with reference to financial statements" shall be substituted.

(iii) In the principal rules, in **rule 14** which deals with the remuneration of the cost auditor, following are the changes-

(a) in clause (a), in sub-clause (i), for the words, "who is a cost accountant in practice", the words "who is a cost accountant" shall be substituted;

(b) in clause (b) for the words "who is a cost accountant in practice", the words "who is a cost accountant" shall be substituted.

2. Enforcement of the Companies (Accounts) Amendment Rules, 2018 vide Notification G.S.R. 725(E) dated 31st July, 2018

The Central Government makes the Companies (Accounts) Amendment Rules, 2018 to amend the Companies (Accounts) Rules, 2014.

In the Companies (Accounts) Rules, 2014,

(i) In sub-rule (5) of **Rule 8** which deals with the **Matters to be included in Board's report**, after clause (viii) the following clauses shall be inserted, namely:-

"(ix) a disclosure, as to whether maintenance of cost records as specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013, is required by the Company and accordingly such accounts and records are made and maintained,

(x) a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013,"

(ii) after sub-rule (5), the following **Sub Rule (6),** rule shall be inserted, namely:-

"(6) This rule shall not apply to One Person Company or Small Company".

(iii) after rule 8, the following **rule 8A** shall be inserted, namely:-

"8A. Matters to be included in Board's Report for One Person Company and Small Company-

(1) The Board's Report of One Person Company and Small Company shall be prepared based on the stand alone financial statement of the company, which shall be in abridged form and contain the following:-

(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;

(b) number of meetings of the Board;

(c) Directors' Responsibility Statement as referred to in sub-section (5) of section 134;

(d) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;

(e) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report;

(f) the state of the company's affairs;

(g) the financial summary or highlights;

(h) material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company;

(i) the details of directors who were appointed or have resigned during the year;

(j) the details or significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future.

(2) The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2.".

3. Enforcement of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018 vide Notification G.S.R. 865 (E) dated 19th September, 2018

The Central Government makes the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018 to amend the Companies (Corporate Social Responsibility Policy) Rules, 2014.

In Companies (Corporate Social Responsibility Policy) Rules, 2014,

(i) in rule 2 which deals with the definitions, -

(a) in sub-rule (1), in sub-clause (i) of clause (c) which defines "Corporate Social Responsibility (CSR)", after the words "relating to activities", the words ", areas or subjects" shall be inserted;

(b) in sub-rule (1), in sub-clause (ii) of clause (c), for the words "cover subjects enumerated", the words "include activities, areas or subjects specified" shall be substituted;

(c) in sub-rule (1), in clause (e) which defines "CSR Policy", for the words "company as", the words "company in areas or subjects" shall be substituted.

(ii) in rule 5 which deals with the "CSR Committees", in clause (i) of sub rule (1), for the words "an unlisted public company or a private company", the words "a company" shall be substituted.

(iii) In **rule 6** which states of **CSR Policy**, following are the changes-

(a) in sub-rule (1), in clause (a), for the words "falling within the purview of" the words "areas or subjects specified in" shall be substituted;

(b) in sub-rule (1), in second proviso to clause (b), for the words, "activities included in Schedule VII" the words "areas or subjects specified in Schedule VII" shall be substituted.

(iv) In **rule 7** i.e., "CSR Expenditure", for the words, "purview of", the words "areas or subjects, specified in" shall be substituted.

4. Constitution of NFRA

The Central Government vide Notification No. S.O. 5099(E) appoints the **1st October, 2018** as the date of constitution of National Financial Reporting Authority.

5. Enforcement of sub-sections (2), (4), (5), (10), (13), (14) and (15) of section 132 i.e., related "Constitution of National Financial Reporting Authority" of the Companies Act, 2013

The Central Government vide Notification S.O. 5385(E) appoints the **24th October, 2018** as the date on which the sub-sections (2), (4), (5), (10), (13), (14) and (15) of section 132 of the Companies Act, 2013 shall come into force.

6. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 129 (Financial statement)	In section 129 of the principal Act, for **sub-section (*3*),** the following sub-section shall be substituted, namely:— "(*3*) Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (*2*), prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (*2*): Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary

	or subsidiaries and associate company or companies in such form as may be prescribed: Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed."
Amendment of section 134 (Financial statement, Board's report, etc.)	In section 134 of the principal Act,— (a) for **sub-section (1),** the following sub-section shall be substituted, namely:— "(1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon."; (b) in **sub-section (3),—** (i) for clause (a), the following clause shall be substituted, namely:— "(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;" (ii) in clause (p), for the words "annual evaluation has been made by the Board of its own performance and that of its committees and individual directors", the words "annual evaluation of the performance of the Board, its Committees and of individual directors has been made" shall be substituted; (iii) after clause (q), the following provisos shall be inserted, namely:— "Provided that where disclosures referred to in this sub-section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report: Provided further that where the policy referred to in clause (e) or clause (o) is made available on

	company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available." (c) after sub-section (3), the following **sub-section 3A** shall be inserted, namely:— "(3A) The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by One Person Company or small company.".
Amendment of section 135 (Corporate Social Responsibility)	In section 135 of the principal Act,— (i) in **sub-section (1),—** (a) for the words "any financial year", the words "the immediately preceding financial year" shall be substituted; (b) the following proviso shall be inserted, namely:— "Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors."; (ii) in **sub-section (3),** in clause (*a*), for the words and figures "as specified in Schedule VII", the words and figures "in areas or subject, specified in Schedule VII" shall be substituted; (iii) in **sub-section (5),** for the Explanation, the following Explanation shall be substituted, namely:— 'Explanation.—For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.'
Amendment of section 137 (Copy of financial statement to be filed with Registrar).	In section 137 of the principal Act,— (i) in **sub-section (1),—** (a) the words and figures "within the time specified under section 403" shall be omitted; (b) in the second proviso, the words and figures "within the time specified under section 403" shall be omitted; (*c*) after the fourth proviso, the following proviso shall be inserted, namely:—

	'Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.'. (ii) in sub-section (2), the words and figures "within the time specified, under section 403" shall be omitted; (iii) in sub-section (3), for the words and figures "in section 403", the word "therein" shall be substituted.
Amendment of section 139 (Appointment of auditors).	In section 139 of the principal Act, in **sub-section (1),** the first proviso shall be omitted.

7. Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of enforcement
Amendment of Section 132	(a) **after sub-section (*1*),** the following sub-section shall be inserted, namely:— "(*1A*) The National Financial Reporting Authority (NFRA) shall perform its functions through such divisions as may be prescribed." (b) **after sub-section (*3*),** the following sub-sections shall be inserted, namely:— "(*3A*) Each division of the NFRA shall be presided over by the Chairperson or a full-time Member authorised by the Chairperson. (*3B*) There shall be an executive body of the NFRA consisting of the Chairperson and full-time	**15th August, 2019**

	Members of such Authority for efficient discharge of its functions under sub-section (*2*) [other than clause (*a*)] and sub-section (*4*)."; (c) **in sub-section (*4*),** in clause (*c*), for sub-clause (*B*), the following sub-clause shall be substituted, namely:— "(*B*) debarring the member or the firm from— I. being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or II. performing any valuation as provided under section 247, for a minimum period of six months or such higher period not exceeding ten years as may be determined by the NFRA."	
Amendment of section 137.	**in sub-section (3),—** (a) for the words "punishable with fine", the words "liable to a penalty" shall be substituted; (b) for the portion beginning with "punishable with imprisonment", and ending with "five lakh rupees or with both", the words "shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees" shall be substituted.	**2nd November, 2018**

Amendment of section 140.	**for sub-section (3),** the following sub-section shall be substituted, namely:— "(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.".	**2nd November, 2018**

8. **Amendment in schedule VII:** The MCA vide Notification No. G.S.R. 390(E) dated **30th May, 2019** has inserted the following item after item (xi) to Schedule VII:

(xii) disaster management, including relief, rehabilitation and reconstruction activities.

9. **Amendments in Schedule VII vide** Notification G.S.R. 776(E) dated **11th October, 2019**

The Central Government has amended the Schedule VII of the Companies Act, 2013.

In the said Schedule VII, for item (ix) and the entries relating thereto, the following item and entries shall be substituted, namely:

"(ix) Contribution to incubators funded by Central Government or State Government or any agency or Public Sector Undertaking of Central Government or State Government, and contributions to public funded Universities, Indian Institute of Technology (IITs), National Laboratories and Autonomous Bodies (established under the auspices of Indian Council of Agricultural Research (ICAR), Indian Council of Medical Research (ICMR), Council of Scientific and Industrial Research (CSIR), Department of Atomic Energy (DAE), Defence Research and Development Organisation (DRDO), Department of Biotechnology (DBT), Department of Science and Technology (DST), Ministry of Electronics and Information Technology) engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs)."

10. **Enforcement of the Companies (Accounts) Amendment Rules, 2019 vide Notification G.S.R. 803 (E) dated 22nd October, 2019 w.e.f. 1st December, 2019**

The Central Government has amended the Companies (Accounts) Rules, 2014, by the Companies (Accounts) Amendment Rules, 2019.

In the Companies (Accounts) Rules, 2014, in rule 8, in sub-rule (5), after clause (iii), the following clause shall be inserted namely:—

"(iiia) a statement regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year".

Explanation.—For the purposes of this clause, the expression "proficiency" means the proficiency of the independent director as ascertained from the online proficiency self-assessment test conducted by the institute notified under sub-section (1) of section 150.

(11) Amendments related to Schedule VII vide Notification G.S.R. 313(E) dated 26th May, 2020 w.e.f. 28th March, 2020

The Central Government has amended the Schedule VII of the Companies Act, 2013.

In Schedule VII, item (viii), after the words "Prime Minister's National Relief Fund", the words "or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)" shall be inserted.

(12) The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020 w.e.f. 24th August 2020

(1) In the Companies (Corporate Social Responsibility Policy) Rules, 2014 (hereinafter referred to as the said rules), in rule 2, in sub-rule (1), in clause (e), stating-

"CSR Policy" relates to the activities to be undertaken by the company in areas or subjects specified in Schedule VII to the Act and the expenditure thereon, excluding activities undertaken in pursuance of normal course of business of a company;

the following proviso shall be inserted-

"Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22 and 2022-23 subject to the conditions that-

(i) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act.

(ii) details of such activity shall be disclosed separately in the Annual Report on CSR included in the Board's Report".

(2) In the said rules, in rule 4, in sub-rule 1, the words "excluding activities undertaken in pursuance of its normal course of business" shall be omitted. Now it can be read as –

"The CSR activities shall be undertaken by the company, as per its stated CSR Policy, as projects or programs or activities (either new or ongoing)".

(3) In the said rules, in rule 6, in sub-rule (1), — first proviso shall be omitted; which was as follows "Provided that the CSR activities undertaken in pursuance of normal course of business of accompany."

(13) Notification dated 26th May 2020 issued by the Ministry of Corporate Affairs

The Central Government hereby makes the following further amendment to Schedule VII of the said Act, w.e.f. 28th March, 2020 namely:—

In Schedule VII, item (viii), after the words "Prime Minister's National Relief Fund", the words "or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)" shall be inserted.

It can be read as: contribution to the prime minister's national relief fund or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;

(14) Notification dated 23rd June 2020 issued by Ministry of Corporate Affairs

The Central Government hereby makes the following further amendments in Schedule VII to the said Act, namely:— In the said Schedule, in item (vi), after the words "war widows and their dependents", the words "Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows;" shall be inserted.

It can be read as: Measures for the benefit of armed forces veterans, war widows and their dependents, Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows;

(15) Notification dated 24th August 2020 issued by Ministry of Corporate Affairs

The Central Government hereby makes the following further amendments in Schedule VII to the said Act, namely:-

In the said Schedule, for item (ix) and the entries thereto, **the following item and entries shall be substituted**, namely:-

"(ix) (a) Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government; and

(b) Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defense Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs)".

CHAPTER 3: APPOINTMENT AND QUALIFATION OF DIRECTORS

1. Enforcement of the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2018 vide Notification G.S.R. 558 (E) dated 12th June 2018

The Central Government makes the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2018 to amend the Companies (Appointment and Qualification of Directors) Rules, 2014.

In the Companies (Appointment and Qualification of Directors) Rules, 2014, in the annexure, for form DIR-3 which deals with the Application for allotment of Director Identification Number, a new form shall be substituted.

2. Enforcement of the Companies (Appointment and Qualification of Directors) fourth Amendment Rules, 2018 vide Notification G.S.R. 615(E) w.e.f. 10th July, 2018

The Central Government makes the Companies (Appointment and Qualification of Directors) Fourth Amendment Rules, 2018 to amend the Companies (Appointment and Qualification of Directors) Rules, 2014.

In Companies (Appointment and Qualification of Directors) Rules, 2014,

(i) The **rule 11** (related to cancellation or surrender or deactivation of DIN) shall be renumbered as sub-rule (1) thereof and after sub-rule (1) as so renumbered, the following sub-rules shall be inserted, namely:-

"(2) The Central Government or Regional Director (Northern Region), or any officer authorised by the Central Government or Regional Director (Northern Region) shall, deactivate the Director Identification Number (DIN), of an individual who does not intimate his particulars in e-form DIR-3-KYC within stipulated time in accordance with Rule 12A.

(3) The de-activated DIN shall be re-activated only after e-form DIR-3-KYC is filed along with fee as prescribed under Companies (Registration Offices and Fees) Rules, 2014. "

(ii) after **rule 12**,the following **rule 12A** shall be inserted, namely:-

"12A Directors KYC:- Every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall, submit e-form DIR-3-KYC to the Central Government on or before 30th April of immediate next financial year.

Provided that every individual who has already been allotted a Director Identification Number (DIN) as at 31stMarch, 2018, shall submit e-form DIR-3 KYC on or before 31st August, 2018.";

3. Enforcement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2018 vide Notification G.S.R. 798 (E) dated 21st August 2018

The Central Government makes the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2018 to amend the Companies (Appointment and Qualification of Directors) Rules, 2014.

In the Companies (Appointment and Qualification of Directors) Rules, 2014,

(i) in the proviso to **rule 12A** i.e., Directors KYC, for the words and numbers "DIR-3 KYC on or before 31st August, 2018, the words and numbers "DIR-3 KYC on or before 15th September, 2018" shall be substituted.

(ii) in the Annexure, for Form No.DIR-3 KYC, a new Form shall be substituted.

4. Enforcement of the Companies (Appointment and Qualification of Directors) Sixth Amendment Rules, 2018 vide Notification G.S.R. 904(E) dated 20th September 2018

The Central Government makes the Companies (Appointment and Qualification of Directors) Sixth Amendment Rules, 2018 to amend the Companies (Appointment and Qualification of Directors) Rules, 2014.

In the Companies (Appointment and Qualification of Directors) Rules, 2014, in the proviso to **rule 12A**, for the words and figures "before 15th September, 2018," the words and figures **"before 5th October, 2018"** shall be substituted.

5. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	**Amendment**
Amendment of **section 149** (Company to have board of directors)	In section 149 of the principal Act,— (i) for **sub-section (3),** the following sub-section shall be substituted, namely:— "(*3*) Every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year: Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated"; (ii) in **sub-section (6),—** (a) in clause (c), for the words "pecuniary relationship", the words "pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed," shall be substituted;

	(b) for clause (d), the following clause shall be substituted, namely:— "(d) none of whose relatives— (i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year: Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed; (ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or (iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (*i*), (*ii*) or (*iii*);"; (*c*) in clause (*e*), in sub-clause (*i*), the following proviso shall be inserted, namely:— "Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.".
Amendment of **Section 157** (Company to inform DIN to registrar)	In section 157 of the principal Act,— (i) in **sub-section (1),** the words and figures, "within the time specified under section 403" shall be omitted; (ii) **in sub-section (2),** the words and figures, "before the expiry

	of the period specified under section 403 with additional fee", shall be omitted.
Amendment of **section 164** (Disqualifications for appointment of director")	In section 164 of the principal Act,— (i) **in sub-section (2),** the following proviso shall be inserted, namely:— "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." (ii) in **sub-section (3),** for the proviso, the following proviso shall be substituted, namely:— "Provided that the disqualifications referred to in clauses (*d*), (*e*) and (*g*) of sub-section (*1*) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification."
Amendment of **section 167** (Vacations of office of director).	In section 167 of the principal Act, in **sub-section (1),—** (i) in clause (a), the following proviso shall be inserted, namely:— "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."; (ii) in clause (f), for the proviso the following proviso shall be substituted, namely,— "Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)— (a) for thirty days from the date of conviction or order of disqualification; (b) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or (iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of."
Amendment of **Section 168** (Resignation of Director)	In section 168 of the principal Act, in **sub-section (1),** in the proviso, for the words, "director shall also forward", the words "director may also forward" shall be substituted.

6. Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of enforcement
Amendment of **section 157.**	In section 157 of the principal Act, for **sub-section (2),** the following sub-section shall be substituted, namely:— "(2) If any company fails to furnish the Director Identification Number under sub-section (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees."	**2nd November, 2018**
Substitution of new section for **section 159.**	For section 159 of the principal Act, the following **Substitution of section** shall be substituted, namely: **Penalty for default of certain provisions.** "159.If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where	**2nd November, 2018**

	the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues."	
Amendment of **section 164.**	In section 164 of the principal Act, in **sub-section (1),** after clause (h), the following clause shall be inserted, namely:— "(i) he has not complied with the provisions of sub-section (1) of section 165."	**2nd November, 2018**
Amendment of **section 165.**	In section 165 of the principal Act, in **sub-section (6),** for the portion beginning with "punishable with fine" and ending with "contravention continues", the words "liable to a penalty of five thousand rupees for each day after the first during which such contravention continues" shall be substituted.	**2nd November, 2018**

7. Enforcement of the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019 via G.S.R. 528(E) dated 25th July, 2019

The Central Government makes the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019 to amend Companies (Appointment and Qualification of Directors) Rules, 2014.

In Companies (Appointment and Qualification of Directors) Rules, 2014, in **rule 12A,-**

(i) for the words "who has been allotted", the words "who holds" shall be substituted;

(ii) for the words, letters and figures "submit e-form DIR-3-KYC to the Central Government on or before 30th June of immediate next financial year", the words, letters and figures "submit e-form DIR-3-KYC for the said financial year to the Central Government on or before 30th September of immediate next financial year" shall be substituted;

(iii) after the proviso, the following provisos shall be inserted, namely:-

"Provided further that where an individual who has already submitted e-form DIR-3 KYC in relation to any previous financial year, submits web-form DIR-3 KYC-WEB through the web service in relation to any subsequent financial year it shall be deemed to be compliance of the provisions of this rule for the said financial year:

Provided also that in case an individual desires to update his personal mobile number or the e-mail address, as the case may be, he shall update the same by submitting e-form DIR-3 KYC only.

Provided also that fee for filing e-form DIR-3 KYC or web-form DIR-3 KYC-WEB through the web service, as the case may be, shall be payable as provided in Companies (Registration Offices and Fees) Rules, 2014.".

CHAPTER 4: APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

1. Enforcement of the *Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018* vide Notification G.S.R 875(E) dated 12th September, 2018

The Central Government makes the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018 to amend the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014. This amendment has omitted the requirement of approval of the Central Government for making payment of remuneration to the Managerial personnel (in case of inadequacy of profit) and accordingly e-form MR-2 has also been amended.

In Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014,

(i) in **rule 6** which deals with the Parameters for consideration of remuneration, following are the amendments:

(a) for the heading 'application to the Central Government' the heading 'Parameters for consideration of remuneration' shall be substituted.

(b) the words 'Central Government' shall be omitted.

(ii) in **rule 7** i.e., related to Fees, sub-rule (2) shall be omitted

2. Amendment in Schedule V to the Companies Act, 2013

The Central Government vide Notification No. S.O. 4822(E) dated **12th September 2018** has amended the Schedule V to the Companies Act, 2013.

3. Amendments through the Companies (Amendment) Act, 2017

Relevant Sections	Amendment
Amendment of section **196** (Appointment of MD, WTD, Manager)	In section 196 of the principal Act,— (a) in **sub-section (3),** in clause (a), after the proviso, the following proviso shall be inserted, namely:— "Provided further that 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."; (b) in **sub-section (4),** for the words "specified in that Schedule", the words "specified in Part I of that Schedule" shall be substituted.
Amendment of Section **197** (Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits)	In section 197 of the principal Act,— (a) in **sub-section (1),—** (i) in the first proviso, the words "with the approval of the Central Government," shall be omitted; (ii) in the second proviso, after the words "general meeting,", the words "by a special resolution," shall be inserted; (iii) after the second proviso, the following proviso shall be inserted, namely:— "Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting."; (b) in **sub-section (3),** the words "and if it is not able to comply with such provisions, with the previous approval of the Central Government" shall be omitted; (c) for **sub-section (9),** the following sub-section shall be substituted, namely:— "(9) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company."; (d) in **sub-section (10),—** (i) for the words "permitted by the Central Government", the words "approved by the company by special resolution within two years from the date the sum becomes refundable" shall be substituted; (ii) the following proviso shall be inserted, namely:—

	"Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver."; (e) in **sub-section (11),** the words "and if such conditions are not being complied, the approval of the Central Government had been obtained" shall be omitted; (f) after **sub-section (15),** the following sub-sections shall be inserted, namely:— "(16) The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed. (17) On and from the commencement of the Companies (Amendment) Act, 2017, any application made to the Central Government under the provisions of this section [as it stood before such commencement], which is pending with that Government shall abate, and the company shall, within one year of such commencement, obtain the approval in accordance with the provisions of this section, as so amended."
Amendment of Section **198** (Calculations of Profits)	In section 198 of the principal Act,— (i) in **sub-section (3),—** (a) in clause (a), after the words "sold by the company", the words, letter, brackets and figures "unless the company is an investment company as referred to in clause (a) of the Explanation to section 186" shall be inserted; (b) after clause (e), the following clause (f) shall be inserted, namely:— "(f) any amount representing unrealised gains, notional gains or revaluation of assets.”;

	(ii) in **sub-section (4),** in clause (l), the words "which begins at or after the commencement of this Act" shall be omitted.
Amendment of section **200** (Central Government or company to fix limit with regard to remuneration).	In section 200 of the principal Act, the words "the Central Government or" appearing at both the places shall be omitted.
Amendment of section **201** (Forms of, and procedure in relation to, certain applications).	In section 201 of the principal Act,— (a) in **sub-section (1),** for the words "this Chapter", the word and figures "section 196" shall be substituted; (b) in **sub-section (2),** in clause (*a*), for the words "any of the sections aforesaid", the word and figures "section 196" shall be substituted.

4. Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of enforcement
Amendment of section **197.**	In section 197 of the principal Act (a) **sub-section (7)** shall be omitted; (b) for **sub-section (15),** the following sub-section shall be substituted, namely:— "(15) If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.".	**2nd November, 2018**
Amendment of section **203.**	In section 203 of the principal Act, **for sub-section (5),** the following sub-section shall be substituted, namely:— "(5) If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and	**2nd November, 2018**

	every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.".	

The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020

Vide Notification G.S.R. 13(E) dated **3rd January, 2020,** the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 has been amended with the enforcement of this amended rules 2020. It shall be applicable in respect of financial years commencing on or after 1st April, 2020.

Sl. No.	Amended law
1.	in **rule 9, in sub-rule (1),** (i) after clause (b), at the end, the word "or" shall be inserted. (ii) after clause (b), the following clause (c) shall be inserted, namely:- "(c) every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more.". (iii) following Explanation inserted, namely:- "Explanation :- For the purposes of this sub-rule, it is hereby clarified that the paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement shall be taken into account."

CHAPTER 5: MEETING OF BOARD AND ITS POWERS

1. Enforcement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2018 vide Notification G.S.R. 429 (E) dated 7th May, 2018

The Central Government makes the Companies (Meetings of Board and its Powers) Amendment Rules, 2018 to amend the Companies (Meetings of Board and its Powers) Rules, 2014.

In Companies (Meetings of Board and its Powers) Rules, 2014,

(i) in **rule 4** i.e., related the matters not to be dealt with in a meeting trough video conferencing or other audio visual means, the following proviso shall be inserted, namely:-

"Provided that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means."

(ii) In the principal rules, in **rule 6** related to the Committees to the Board, for the words "every listed company", the words "every listed public company" shall be substituted.

(iii) In the principal rules, for **rule 13** i.e. related to the **Special Resolution**, the following rule shall be substituted, namely:-

"13. Special Resolution- A resolution passed at a general meeting in terms of sub-section (3) of section 186 to give any loan or guarantee or investment or providing any security or the acquisition under sub-section (2) of section 186 shall specify the total amount up to which the Board of Directors are authorised to give such loan or guarantee, to provide such security or make such acquisition:

Provided that the company shall disclose to the members in the financial statement the full particulars in accordance with the provisions of sub-section (4) of section 186."

2. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section **173** (Meetings of Board)	In section 173 of the principal Act, in **sub-section (2)**, after the first proviso, the following proviso shall be inserted, namely:— "Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso."
Amendment of section **177** (Audit Committee).	In section 177 of the principal Act,— (i) in **sub-section (1),** for the words "every listed company", the words "every listed public company" shall be substituted; (ii) in **sub-section (4),** in clause (iv), after the proviso, the following provisos shall be inserted, namely:— "Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board: Provided also that in case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option

	of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it: Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company."
Amendment of Section **178** (Nomination and Remuneration Committee and stake holders Relationship committee)	In section 178 of the principal Act,— (i) in **sub-section (1),** for the words "every listed company", the words "every listed public company" shall be substituted; (ii) in **sub-section (2),** for the words "shall carry out evaluation of every director's performance", the words "shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance" shall be substituted; (iii) in **sub-section (4),** in clause (*c*), for the proviso, the following proviso shall be substituted, namely:— "Provided that such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report."; (iv) in **sub-section (8),** in the proviso, for the words "non-consideration of resolution of any grievance", the words "inability to resolve or consider any grievance" shall be substituted.
Substitution of new section for section **185**. (Loan to Directors)	For **section 185** of the principal Act, the following section shall be substituted, namely:— '185. (1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,— (a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or

	(b) any firm in which any such director or relative is a partner. (2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that— (a) a special resolution is passed by the company in general meeting: Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and (b) the loans are utilised by the borrowing company for its principal business activities. *Explanation.*—For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means— (a) any private company of which any such director is a director or member; (b) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or (c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company. (3) Nothing contained in sub-sections (*1*) and (*2*) shall apply to— (a) the giving of any loan to a managing or whole-time director— (i) as a part of the conditions of service extended by the company to all its employees; or (ii) pursuant to any scheme approved by the members by a special resolution; or (b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the

	due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or (c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or (d) 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: Provided that the loans made under clauses (c) and (d) are utilized by the subsidiary company for its principal business activities. (4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,— (i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; (ii) 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 five lakh rupees but which may extend to twenty-five lakh rupees; and (iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.'
Amendment of section **186** (Loan and investment by company).	In section 186 of the principal Act,— (i) in **sub-section (2),** the following Explanation shall be inserted, namely:— *'Explanation.*—For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company';

	(ii) for **sub-section (3),** the following sub-section shall be substituted, namely:— '(3) Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under sub-section (*2*), no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting: Provided that where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply: Provided further that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (4).". (iii) for **sub-section (11),** the following sub-section shall be substituted, namely:— "(11) Nothing contained in this section, except sub-section (1), shall apply— (a) to any loan made, any guarantee given or any security provided or any investment made by a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities; (b) to any investment— (i) made by an investment company; (ii) made in shares allotted in pursuance of clause (a) of sub-section (1) of section 62 or in shares allotted in pursuance of rights issues made by a body corporate; (iii) made, in respect of investment or lending activities, by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities.";

	(iv) **in the *Explanation***, in **clause (a),** after the words "other securities" the following shall be inserted, namely:— "and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent. of its total assets, or if its income derived from investment business constitutes not less than fifty per cent. as a proportion of its gross income."

3. Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of enforcement
Amendment of section 191	In section 191 of the principal Act, for **sub-section (5),** the following sub-section shall be substituted, namely:— "(5) If a director of the company makes any default in complying with the provisions of this section, such director shall be liable to a penalty of one lakh rupees.".	**2nd November, 2018**

4. Enforcement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2019 dated 11th October, 2019

The Central Government makes the Companies (Meetings of Board and its Powers) Amendment Rules, 2019to amend the Companies (Meetings of Board and its Powers) Rules, 2014.

In the Companies (Meetings of Board and its Powers) Rules, 2014, in **rule 11**, in sub-rule (2), for the words "business of financing of companies", the words "business of financing industrial enterprises" shall be substituted.

5. The Companies (Meetings of Board and its Powers) Second Amendment Rules, 2019

Vide Notification G.S.R. 857(E) dated **18th November, 2019,** the Central Government hereby makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014 to be enforced from the date of their publication in the Official Gazette.

Sl. No.	Amended law
1.	In rule 15, in sub-rule (3), in clause (a),- (a) in sub-clauses (i) and (ii), the words "**or rupees one hundred crore, whichever is lower",** shall be **omitted**

2.	In rule 15, in sub-rule (3), in clause (a),- (a) in sub-clause (iii), for the words "amounting to ten per cent or more of the net worth of the company or ten per cent or more of turnover of the company or rupees one hundred crore, whichever is lower", the words "**amounting to ten per cent or more of the turnover of the company"** shall be substituted;
3.	In rule 15, in sub-rule (3), in clause (a),- (a) in sub-clause (iv), the words **"or rupees fifty crore, whichever is lower",** shall be **omitted**

6. The Companies (Meetings of Board and its Powers) Amendment Rules, 2020

Vide notification G.S.R. 186(E) dated **19th March, 2020**, the Central Government hereby amended the Companies (Meetings of Board and its Powers) Rules, 2014 through the enforcement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 from the date of their publication in the Official Gazette.

In the Companies (Meetings of Board and its Powers) Rules, 2014, rule 4 shall be renumbered as sub-rule (1) thereof and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted, namely:-

"(2) For the period beginning from the commencement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 and ending on the 30th June, 2020, the meetings on matters referred to in sub-rule (1) may be held through video conferencing or other audio visual means in accordance with rule 3."

7. Further exemptions to Government company: Vide Notification G.S.R. 151(E) dated **2nd March, 2020**, the Central Government, in the public interest, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Corporate Affairs, number G.S.R. 463(E), dated the 5th June, 2015 which dealt with the exemptions to Government Companies:

Sl. No.	Amended law
1.	Chapter XII, **first and second proviso to sub-section (1) of section 188,** Shall not apply to – (a) a Government company in respect of contracts or arrangements entered into by it with any other Government company, or with Central Government or any State Government or any combination thereof; (b) a Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before entering into such contract or arrangement.".

CHAPTER 6: INSPECTION, INQUIRY AND INVESTIGATION

Amendments through the Companies (Amendment) Act, 2019

Relevant Section	Amendment in law	Date of Enforcement
Amendment of Section 212	(a) in **sub-section (*8*),** for the words "**If the Director, Additional Director or Assistant Director"** the words **"If any officer not below the rank of Assistant Director"** shall be substituted; (b) in **sub-section (*9*),** for the portion beginning with the words "**The Director" and ending with the word, brackets and figure "sub-section (*8*)**", the words, brackets and figure **"The officer authorised under sub-section (*8*) shall, immediately after arrest of such person under such sub-section"** shall be substituted; (c) in **sub-section (*10*),—** (i) for the words **"Judicial Magistrate",** the words "**Special Court or Judicial Magistrate"** shall be substituted; (ii) in the proviso, for the words **"Magistrate's court",** "**Special Court or Magistrate's court**" shall be substituted; (d) **New sub-section 14A inserted** after sub-section 14, namely:— **"(*14A*)** Where the report under sub-section (*11*) or sub-section (*12*) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability."	**15th August, 2019**

CHAPTER 7: COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

1. Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of Enforcement
section 238	In section 238 of the principal Act, in **sub-section (3),** for the words "punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees", the words "liable to a penalty of one lakh rupees" shall be substituted.	**2nd November, 2018**

2. Clarification under Section 232(6) of the Companies Act, 2013

A clarification has been issued by the MCA **on 21st August, 2019** regarding section 232(6). According to the clarification,

(a) The provision of section 232(6) of the Act enables the companies in question to choose and state in the scheme an 'appointed date'. This date may be a specific calendar date or may be tied to the occurrence of an event such as grant of license by a competent authority or fulfilment of any preconditions agreed upon by the parties, or meeting any other requirement as agreed upon between the parties, etc., which are relevant to the scheme.

(b) The 'appointed date' identified under the scheme shall also be deemed to be the 'acquisition date' and date of transfer of control for the purpose of conforming to accounting standards (including Ind-AS 103 Business Combinations).

(c) Where the 'appointed date' is chosen as a specific calendar date, it may precede the date of filing of the application for scheme of merger/amalgamation in NCLT. However, if the 'appointed date' is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest.

(d) The scheme may identify the 'appointed date' based on the occurrence of a trigger event which is key to the proposed scheme and agreed upon by the parties to the scheme. This event would have to be indicated in the scheme itself upon occurrence of which the scheme would become effective. However, in case of such event based date being a date subsequent to the date of filing the order with the Registrar under section 232(5), the company shall file an intimation of the same with the Registrar within 30 days of such scheme coming into force.

3. Enforcement of section 230(11) and 230(12): Government of India through Ministry of Corporate Affairs vide notification dated **3rd February, 2020**, appoints 3rd day of February, 2020 as the date on which the provisions of sub-sections (11) and (12) of section 230 of the said Act shall come into force.

CHAPTER 8: PREVENTION OF OPPRESSION AND MISMANAGEMENT

1. Enforcement of the National Company Law Tribunal (Second Amendment) Rules, 2019 vide Notification G.S.R. 351(E) dated 8th May, 2019

The Central Government makes the National Company Law Tribunal (Second Amendment) Rules, 2019 to amend the National Company Law Tribunal Rules, 2016.

In National Company Law Tribunal Rules, 2016,

In **rule 84**, after **sub-rule (2)**, the following sub-rules shall be inserted, namely: –

"(3) In case of a company having a share capital, the requisite number of member or members to file an application under sub-section (1) of section 245 shall be -

(i) (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

(ii) (a) member or members holding not less than five per cent. of the issued share capital of the company, in case of an unlisted company;

(b) member or members holding not less than two per cent. of the issued share capital of the company, in case of a listed company.

(4) The requisite number of depositor or depositors to file an application under sub-section (1) of section 245 shall be -

(i) (a) at least five per cent. of the total number of depositors of the company; or

(b) one hundred depositors of the company,

whichever is less; or

(ii) depositor or depositors to whom the company owes five per cent. of total deposits of the company."

2. Amendments through the Companies (Amendment) Act, 2019

Relevant Section	Amendment	Date of Enforcement
Amendment of Section **241**	(a) **in sub-section (2),** the following proviso is inserted, namely:— "Provided that the applications under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench.";	**15th August, 2019**

	(b) New insertion of sub-sections (3),(4) & (5) after **sub-section (*2*),** namely:— **"(*3*)** Where in the opinion of the Central Government there exist circumstances suggesting that—– (a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust; (b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices; (c) a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or (d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest, the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company. **(4)** The person against whom a case is referred to the Tribunal under sub-section (*3*), shall be joined as a respondent to the application. **(5)** Every application under sub-section (*3*)— (a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and	

	(b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.".	
Amend ment of Section **242**	New insertion **sub-section 4A** After sub-section (*4*), , namely:— **"(*4A*)** At the conclusion of the hearing of the case in respect of sub-section (*3*) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.".	**15th August, 2019**
Amend ment of Section **243**	(a) new insertion of **sub-section 1A & 1B** after sub-section (1)**,** shall be inserted,:— **"(1A)** The person who is not a fit and proper person pursuant to sub-section (*4A*) of section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision: Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years. **(1B)** Notwithstanding anything contained in any other provision of this Act, or any other law for the time being in force, or any contract, memorandum or articles, on the removal of a person from the office of a director or any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office."; (b) in **sub-section (*2*),** after the word, brackets and figure "sub-section (*1*)", the words, brackets, figure and letter "**or sub-section (*1A*)"** shall be inserted.	**15th August, 2019**

CHAPTER 10: WINDING UP

Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of Enforcement
Amendment of Section 272	In **sub-section (*3*),** for the words, brackets and letter "**or clause (*e*) of that sub-section"**, the words **"of that section"** shall be substituted.	**15th August, 2019**

CHAPTER 16: SPECIAL COURTS

1. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section **435.** (Establishment of Special Courts)	For section 435 of the principal Act, the following shall be substituted, namely:— 435. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary. (2) A Special Court shall consist of— (a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and (b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences, 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.".
Amendment of section **438** (Application of Code to proceedings before Special court)	In section 438 of the principal Act, for the words "deemed to be a Court of Session", the words "deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be," shall be substituted.
Amendment of section **439** (Offences to	In section 439 of the principal Act, in sub-section (2), after the words "a shareholder", the words "or a member" shall be inserted.

be non-cognizable).	
Amendment of section **440** (Transitional provisions).	In section 440 of the principal Act, for the words "Court of Session", at both the places, the words "Court of Session or the Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be" shall be substituted.

2. Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of Enforcement
Amendment of section **446B.**	In section 446B of the principal Act, for the portion beginning with "punishable with fine" and ending with "specified in such sections", the words "liable to a penalty which shall not be more than one half of the penalty specified in such sections" shall be substituted.	2nd November, 2018

CHAPTER 17: MISCELLANEOUS PROVISIONS

1. Enforcement of the Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018 vide Notification G.S.R. 559(E) dated 13th June, 2018

The Central Government makes the Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018 to amend the Companies (Registered Valuers and Valuation) Rules, 2017.

In Companies (Registered Valuers and Valuation) Rules, 2017, **in rule 19** which relates to Committee to advise on valuation matters, in sub-rule 2, after clause (g), the following clause shall be inserted, namely:-

"(h) Presidents of, the Institute of Chartered Accountants of India, the Institute of Company Secretaries of India, the Institute of Cost Accountants of India as ex-officio members.".

2. Enforcement of the Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018 vide Notification G.S.R. G.S.R. 925(E) dated 25th September, 2018

The Central Government makes the Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018 to amend the Companies (Registered Valuers and Valuation) Rules, 2017.

In the Companies (Registered Valuers and Valuation) Rules, 2017,

(i) in **rule 11** i.e., related to **Transitional Arrangement,** for the figures, letters and word "30thSeptember, 2018" occurring at both the places, the figures, letters and word "31st January, 2019" shall be substituted.

(ii) In the said **rules, in rule 14** i.e., related to **Conditions of Recognition**, in clause (f), for the words "one year", the words "two years" shall be substituted.

3. Enforcement of the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018 vide Notification G.S.R.1108 (E) dated 13th November 2018

The Central Government makes the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018 to amend the Companies (Registered Valuers and Valuation) Rules, 2017.

In the Companies (Registered Valuers and Valuation) Rules, 2017 (hereinafter referred to as "the said rules")

(i) **in rule 1, -**

(a) for the marginal heading, the following marginal heading shall be substituted, namely:-

"Short title, commencement and application";

(b) after sub-rule (2), the following sub-rule shall be inserted, namely:-

"(3) These rules shall apply for valuation in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provision of the Act or these rules.

Explanation.- It is hereby clarified that conduct of valuation under any other law other than the Act or these rules by any person shall not be affected by virtue of coming into effect of these rules.".

(ii) **In the said rules, in rule 3, in sub-rule (2), -**

(a) in clause (a), the word "not" shall be omitted;

(b) in clause (c), after the brackets and letter "(e)", the brackets and letter "(f)," shall be inserted.

(iii) **In the said rules, in rule 4,-**

(a) in clause (c), the words, brackets and letters "and having qualification mentioned at clause (a) or (b)" shall be omitted;

(b) in Explanation II, the words "and examination or training" shall be omitted;

(c) after Explanation II, the following Explanation shall be inserted, namely :-

"Explanation III.— For the purposes of this rule and Annexure IV, 'equivalent' shall mean professional and technical qualifications which are recognised by the Ministry

of Human Resources and Development as equivalent to professional and technical degree.".

(iv) In the said rules, **in rule 10**, the words "and he may conduct valuation as per these rules if required under any other law or by any other regulatory authority" shall be omitted.

(v) In the said rules, in **rule 12**, in sub-rule (1), in clause (ii), for the words "a professional institute", the words "it is a professional institute" shall be substituted.

4. Enforcement of the Companies (Adjudication of Penalties) Amendment Rules, 2019 vide Notification G.S.R. 131(E) dated 19th February, 2019

The Central Government makes the **Companies (Adjudication of Penalties) Amendment Rules, 2019** to amend the Companies (Adjudication of Penalties) Rules, 2014.

In the Companies (Adjudication of Penalties) Rules, 2014, for Rule 3, the following rule shall be substituted:

"3. Adjudication of Penalties. - (1) The Central Government may appoint any of its officers, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of the Act.

(2) Before adjudging penalty, the adjudicating officer shall issue a written notice in the specified manner, to the company, the officer 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 15 days and more than 30 days from the date of service thereon), why the penalty should not be imposed on it or him.

(3) Every notice issued under sub-rule (2), shall clearly indicate the nature of non-compliance or default under the Act alleged to have been committed or made by such company, officer in default, or any other person, the company, and each of the officers in default, or the other person. as the case may be and also draw attention to the relevant penal provisions of the Act and the maximum penalty which can be imposed on the company, and each of the officers in default, or the other person.

(4) The reply to such notice shall be filed in electronic mode only within the period as specified in the notice.

However, the adjudicating officer may, for reasons to be recorded in writing, extend the period referred to above by a further period not exceeding 15 days, if the company or officer in default or any person as the case may be, satisfies the adjudicating officer that it or he has sufficient cause for not responding to the notice within the stipulated period or the adjudicating officer has reason to believe that the company or the officer or the person has received a shorter notice and did not have reasonable time to give reply.

(5) If, after considering the reply submitted by such company, its officer, or any other person, as the case may be, the adjudicating officer is of the opinion that physical appearance is required, he shall issue a notice, within a period of 10 working days from the date of receipt of reply fixing a date for the appearance of such company, through its authorised representative, or officer of such company, or any other person, whether personally or through his authorised representative.

If any person, to whom a notice is issued under sub-rule (2), desires to make an oral representation, whether personally or through his authorised representative and has indicated the same while submitting his reply in electronic mode, the adjudicating officer shall allow such person to make such representation after fixing a date of appearance.

(6) On the date fixed for hearing and after giving a reasonable opportunity of being heard to the person concerned, the adjudicating officer may, subject to reasons to be recorded in writing, pass any order in writing as he thinks fit including an order for adjournment:

Provided that after hearing, adjudicating officer may require the concerned person to submit his reply in writing on certain other issues related to the notice under sub-rule (2), relevant for determination of the default.

(7) The adjudicating officer shall pass an order,-

(a) within 30 days of the expiry of the period referred in sub-rule (2) or of such extended period as referred therein, where physical appearance was not required under sub-rule (5);

(b) within 90 days of the date of issue of notice under sub-rule (2), where any person appeared before the adjudicating officer under sub-rule (5):

Provided that in case an order is passed after the aforementioned duration, the reasons of the delay shall be recorded by the adjudicating officer and no such order shall be invalid merely because of its passing after the expiry of such 30 days or 90 days as the case may be.

(8) Every order of the adjudicating officer shall be duly dated and signed by him and shall clearly state the reasons for requiring the physical appearance under sub-rule (5).

(9) The adjudicating officer shall send a copy of the order passed by him to the concerned company, officer who is in default or any other person or all of them and to the Central Government and a copy of the order shall also be uploaded on the website.

(10) For the purposes of this rule, the adjudicating officer shall exercise the following powers, namely:-

(a) to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case after recording reasons in writing;

(b) to order for evidence or to produce any document, which in the opinion of the adjudicating officer, may be relevant to the subject matter.

(11) If any person fails to reply or neglects or refuses to appear as required under sub-rule (5) or sub-rule (10) before the adjudicating officer, the adjudicating officer may pass an order imposing the penalty, in the absence of such person after recording the reasons for doing so.

(12) While adjudging quantum of penalty, the adjudicating officer shall have due regard to the following factors, namely:-

(a) size of the company;

(b) nature of business carried on by the company;

(c) injury to public interest;

(d) nature of the default;

(e) repetition of the default;

(f) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; and

(g) the amount of loss caused to an investor or group of investors or creditors as a result of the default:

However, in no case, the penalty imposed shall be less than the minimum penalty prescribed, if any, under the relevant section of the Act.

(13) In case a fixed sum of penalty is provided for default of a provision, the adjudicating officer shall impose that fixed sum, in case of any default therein.

(14) Penalty shall be paid through Ministry of Corporate Affairs portal only.

(15) All sums realised by way of penalties under the Act shall be credited to the Consolidated Fund of India.

5. Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of Enforcement
Amendment of section **248**	In section 248 of the principal Act, in **sub-section (1),—** (i) in clause (c), for the word and figures "section 455,", the words and figures "section 455; or" shall be substituted; (ii) after clause (c) and before the long line, the following clauses shall be inserted, namely:—	**2nd November, 2018**

	"(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or (e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.".	
Amendment of section **447.**	In section 447 of the principal Act, in the second proviso, for the words "twenty lakh rupees", the words "fifty lakh rupees" shall be substituted.	**2nd November, 2018**
Amendment of section **454**	In section 454 of the principal Act, — (i) for **sub-section (3),** the following sub-section shall be substituted, namely: — "(3) The adjudicating officer may, by an order (a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and (b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit."; (ii) in **sub-section (4),** for the words "such company and the officer who is in default", the words "such	**2nd November, 2018**

	company, the officer who is in default or any other person" shall be substituted; (iii) in **sub-section (8),—** (a) in clause (i), for the words "does not pay the penalty imposed by the adjudicating officer or the Regional Director", the words, brackets and figures "fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be," shall be substituted; (b) in clause (ii)— (i) for the words "Where an officer of a company", the words "Where an officer of a company or any other person" shall be substituted; (ii) for the words "does not pay the penalty", the words, brackets and figures "fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be," shall be substituted.	
Insertion of new section **454A.**	After section 454 of the principal Act, the following section shall be inserted, namely: **Penalty for repeated default.** "454A. Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional	**2nd November, 2018**

	Director, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act.".	

6. Amendment in Section 406: Section 406 has been substituted by the Companies (Amendment) Act, 2017, with effect from **15th August, 2019**

Section 406: (1) In this section, "Nidhi" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be.

(2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification—

(a) shall not apply to any Nidhi or Mutual Benefit Society; or

(b) shall apply to any Nidhi or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.

(3) A copy of every notification proposed to be issued under sub-section (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

(4) In reckoning any such period of thirty days as is referred to in sub-section (3), no account shall be taken of any period during which the House referred to in sub-section (3) is prorogued or adjourned for more than four consecutive days.

(5) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.

7. Enforcement of the Nidhi (Amendment) Rules, 2019 via G.S.R. 467(E) dated 15th August, 2019

The Central Government makes the Nidhi (Amendment) Rules, 2019 to amend Nidhi Rules, 2014. In the Nidhi rules, 2014 (hereinafter referred to as "said rules"):

Sl. No.	Nidhi rules, 2014	Amendment vide Nidhi (Amendment) Rules, 2019
1.	In **rule 2**, after clause (c)	Insertion of clause (d), namely:- "(d) every company declared as Nidhi or Mutual Benefit Society under sub-section (1) of section 406 of the Act".

2.	In **rule 3,** after clause (d)	Following clause (da) is inserted:- '(da) "*Nidhi*" means a company which has been incorporated as a *Nidhi* with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with the rules made by the Central Government for regulation of such class of companies.'
3.	**After rule 3**	New rule 3A is inserted:- "3A. Declaration of Nidhis.— The Central Government, on receipt of application (in Form NDH-4 along with fee thereon) of a public company for declaring it as Nidhi and on being satisfied that the company meets the requirements under these rules, shall notify the company as a Nidhi in the Official Gazette: Provided that a Nidhi incorporated under the Act on or after the commencement of the Nidhi (Amendment) Rules, 2019 shall file Form NDH-4 within sixty days from the date of expiry of:- (a) one year from the date of its incorporation; or (b) the period up to which extension of time has been granted by the Regional Director under sub-rule (3) of rule 5: Provided further that nothing in the first proviso shall prevent a Nidhi from filing Form NDH-4 before the period referred therein: Provided also that that in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment)."
4.	**In rule 4**	(i) in sub-rule (1), the words, **"to be incorporated under the Act"** shall be omitted; (ii) in sub-rule (5), the words **"Company incorporated as a"** shall be omitted.

5.	**In rule 5** (i) in sub-rule (1), for the words **"from the commencement of these rules"**, (ii) in sub-rule (3), **before the Explanation,** (iii) in sub-rule (4), after the words, brackets and figure **"contained in sub-rule (1)",**	(i) the words **"from the date of its incorporation"** shall be substituted; (ii) the following **proviso** shall be inserted, namely:- "Provided that the Regional Director may extend the period upto one year from the date of receipt of application.". (iii) the words, brackets and figures "and gets itself declared under sub-section (1) of section 406" shall be inserted.
6.	In **rule 7,** in sub-rule (1), after the words "**shall issue"**	the words **"fully paid up"** shall be inserted.
7.	In **rule 12** (i) in sub-rule (1) after clause (b) (ii) in sub-rule (2), in clause (a), for the words **"Registrar of Companies",**	(i) the following **clause (ba) shall be inserted** namely:- "(ba) The date of declaration or notification as Nidhi";"; (ii) the **words "Bench of the National Company Law Tribunal"** shall be substituted.
8.	In the said rules, in **rule 23**, in sub-rule (2),- (i) for the words **"concerned Regional Director",** (ii) for the words **"such Regional Director",** (iii) in the proviso, for the words **"Regional Director",**	(i) the words, **"Central Government"** shall be substituted; (ii) the words, **"Central Government"** shall be substituted; (iii) the words, **"Central Government"** shall be substituted.

9.	**After rule 23**	following rules 23A & 23B shall be inserted, namely:- **23A. Compliance with rule 3A by certain Nidhis**:- Every company referred to in clause (b) of rule 2 and every Nidhi incorporated under the Act, before the commencement of Nidhi (Amendment) Rules, 2019, shall also get itself declared as such in accordance with rule 3A within a period of one year from the date of its incorporation or within a period of six months from the date of commencement of Nidhi (Amendment) Rules, 2019, whichever is later: Provided that in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment). **23B. Companies declared as Nidhis under previous company law to file Form NDH-4:-** Every company referred in clause (a) of rule 2 shall file Form NDH-4 along with fees as per the Companies (Registration Offices and Fees) Rules, 2014 for updating its status: Provided that no fees shall be charged under this rule for filing Form NDH-4, in case it is filed within six month of the commencement of Nidhi (Amendment) Rules, 2019: Provided further that, in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment).

8. The Nidhi (Second Amendment) Rules, 2020

Vide Notification G.S.R. 114(E) dated **14th February, 2020**, to further amend the Nidhi Rules, 2014, said Rule have come into force on the date of their publication in the Official Gazette.

Sl. No.	Nidhi rules, 2014	Amendment vide Nidhi (Amendment) Rules, 2019
1.	in rule 23A, for the words **"six months"**	the words **"nine months"** shall be substituted

9. Ministry of Corporate Affairs issued Corrigendum vide notification G.S.R. 150(E) dated 2nd March, 2020

W.r.t. to the notification [1]G.S.R. 114(E) of the Government of India, dated the 14th February, 2020, for "**rule 23A**" **read "rule 23A and first proviso to rule 23B"**.

CHAPTER 19: INSOLVENCY AND BANKRUPTCY CODE, 2016

(I) The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018

Vide Notification dated 17th August, 2018, Ministry of Law and Justice here by amended the Insolvency and Bankruptcy Code, 2016 through the enforcement of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018. With the enforcement of this Amendment Act, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 have been repealed. This amendment Act is effective from **6th June, 2018.**

Following are the relevant amendments:

(1) In **section 3(12),** in the Insolvency and Bankruptcy Code, 2016 (Principal Act), for the word "repaid", the word "paid" shall be substituted.

(2) In **section 5** of the principal Act,

(i) after clause (5) i.e., after the definition of Corporate applicant, the following **clause 5A** shall be inserted, namely:—

'(5A) "corporate guarantor" means a corporate person who is the surety in a contract of guarantee to a corporate debtor;'

(ii) in **clause (8)** prescribing the term **"Financial Debt"** in the Code, in sub-clause (f), the following Explanation shall be inserted, namely:—

'Explanation.—For the purposes of this sub-clause,—

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;

(iii) in **clause (12) i**.e., as to the **"Insolvency commencement date",** the following proviso shall be inserted, namely:—

[1] Given above in Point no. 8

"Provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or section 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority;";

(iv) **after clause (24),** the following clause shall be inserted, namely:—

'(24A) "related party", in relation to an individual, means—

(a) a person who is a relative of the individual or a relative of the spouse of the individual;

(b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;

(c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;

(d) a private company in which the individual is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) a public company in which the individual is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

(f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;

(g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;

(h) a person on whose advice, directions or instructions, the individual is accustomed to act;

(i) a company, where the individual or the individual along with its related party, own more than fifty per cent. of the share capital of the company or controls the appointment of the board of directors of the company.

Explanation.—For the purposes of this clause,—

(a) "relative", with reference to any person, means anyone who is related to another, in the following manner, namely:—

(i) members of a Hindu Undivided Family,

(ii) husband,

(iii) wife,

(iv) father,

(v) mother,

(vi) son,

(vii) daughter,

(viii) son's daughter and son,

(ix) daughter's daughter and son,

(x) grandson's daughter and son,

(xi) granddaughter's daughter and son,

(xii) brother,

(xiii) sister,

(xiv) brother's son and daughter,

(xv) sister's son and daughter,

(xvi) father's father and mother,

(xvii) mother's father and mother,

(xviii) father's brother and sister,

(xix) mother's brother and sister, and

(b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included;'

(3) In **section 7(1)** of the principal Act which deals with the initiation of CIRP by financial creditor, for the words "other financial creditors", the words "other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government," shall be substituted.

(4) In **section 8(2)** of the principal Act which deals with the Insolvency resolution by operational creditor, following are the amendments—

(i) in **clause (a),** for the words "if any, and", the words "if any, or" shall be substituted;

(ii) in **clause (b),** for the word "repayment", the word "payment" shall be substituted;

In the Explanation, for the word "repayment", the word "payment" shall be substituted.

(5) In **section 9(3)** of the principal Act, which states of the provision related to the filing of an application for initiation of corporate insolvency resolution process by operational creditor—

(i) in **clause (c),** for the words "by the corporate debtor; and", the words "by the corporate debtor, if available;" shall be substituted;

(ii) for **clause (d),** the following clauses shall be substituted, namely:—

"(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.";

(6) in **section 9(5)** of the principle Code which deals with the provision related to the filing of an application for initiation of corporate insolvency resolution process by operational creditor —

(a) in **clause (i), in sub-clause (b),** for the word "repayment", the word "payment" shall be substituted;

(b) in **clause (ii), in sub-clause (b),** for the word "repayment", the word "payment" shall be substituted.

(7) **Section 10 (3)** of the principal Act, deals with the initiation of corporate insolvency resolution process by corporate applicant, shall be substituted with the following-

"(3) The corporate applicant shall, along with the application, furnish—

(a) the information relating to its books of account and such other documents for such period as may be specified;

(b) the information relating to the resolution professional proposed to be appointed as an interim resolution professional; and

(c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.";

(8) In **Section 10 (4)** related to the initiation of corporate insolvency resolution process by corporate applicant**,** following amendments have been made—

(i) in **clause (a),** after the words "if it is complete", the words "and no disciplinary proceeding is pending against the proposed resolution professional" shall be inserted;

(ii) in **clause (b),** after the words "if it is incomplete", the words "or any disciplinary proceeding is pending against the proposed resolution professional" shall be inserted.

(9) In **section 12(2)** of the principal Act, related to the time limit for completion of corporate insolvency resolution process, for the word "seventy-five", the word "sixty-six" shall be substituted.

(10) **After section 12** of the principal Act, the section 12A shall be inserted-

"**12A. Withdrawal of application admitted under section 7, 9, or 10:** The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified."

(11) S**ection 14(3)** of the principal Act which deals with the moratorium, shall be substituted, with the following—

"(3) The provisions of **sub-section (1)** shall not apply to—

(a) such transaction as may be notified by the Central Government in consultation with any financial regulator;

(b) a surety in a contract of guarantee to a corporate debtor.".

(12) In **section 15(1)(c)** of the principal Act which deals with the provisions related to the public announcement, for the word "claims", the words "claims, as may be specified" shall be substituted.

(13) In **section 16(5)** of the principal Act which is related to the appointment and tenure of interim resolution professional, for the words "shall not exceed thirty days from date of his appointment", the words and figures "shall continue till the date of appointment of the resolution professional under section 22" shall be substituted.

(14) In **section 17(2)(d)** of the principal Act which deals with the management of affairs of corporate debtor by IRP, for the words "may be specified.", the words "may be specified; and" shall be substituted;

(15) **After section 17(2)(d)** which deals with the management of affairs of corporate debtor by IRP**,** the following **section 17(2)(e),** shall be inserted,

"(*e*) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor."

(16) In **section 21** of the principal Act, which deals with the committee of creditors, following are the relevant amendments —

(i) **in sub-section (2), — in the proviso**, for the words "related party to whom a corporate debtor owes a financial debt", the words, brackets, figures and letter "financial creditor or the authorised representative of the financial creditor referred to in sub-section (*6*) or sub-section (*6A*) or sub-section (*5*) of section 24, if it is a related party of the corporate debtor," shall be substituted;

(ii) after this proviso under sub-section (*2*), the following **proviso is inserted**-

"Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.";

(iii) **Insertion of new sub-section 6(A) & 6(B)** after sub-section (*6*)-

"(6A) Where a financial debt—

(a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;

(b) is owed to a class of creditors exceeding the number as maybe specified, other than the creditors covered under clause (*a*) or sub-section (*6*), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;

(c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors,

and such authorised representative under clause (*a*) or clause (*b*) or clause (*c*) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

(6B) The remuneration payable to the authorised representative—

(i) under clauses (*a*) and (*c*) of sub-section (*6A*), if any, shall be as per the terms of the financial debt or the relevant documentation; and

(ii) under clause (*b*) of sub-section (*6A*) shall be as specified which shall form part of the insolvency resolution process costs.";

(iv) for **sub-sections (7) and (8),** the following sub-sections shall be substituted, namely:—

"(7) The Board may specify the manner of voting and the determining of the voting share in respect of financial debts covered under sub-sections (*6*) and (6A).

(8) Save as otherwise provided in this Code, all decisions of the committee of creditors shall be taken by a vote of not less than fifty-one per cent. of voting share of the financial creditors:

Provided that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and shall comprise of such persons to exercise such functions in such manner as may be specified."

(17) In **section 22(2)** of the principal Act, for the word, "seventy-five", the word "sixty-six" shall be substituted;

(18) In **section 23(1)** of the principal Act, the following proviso shall be inserted-

"Provided that the resolution professional shall, if the resolution plan under sub-section (*6*) of section 30 has been submitted, continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period until an order is passed by the Adjudicating Authority under section 31."

(19) In **section 24(3)** of the principal Act, in clause (*a*), for the words "Committee of creditors", the words, brackets, figures and letter "committee of creditors, including the authorised representatives referred to in sub-sections (*6*) and (*6A*) of section 21 and sub-section (*5*)" shall be substituted;

(20) **Insertion of new section 25A** which deals with the Rights and duties of authorised representative of financial creditors.

'25A. (1) **Right to participate and Vote on behalf of FC:** The authorised representative (AR) under section 21(6) & 21(6A) or section 24(5) shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor(FC) he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.

Duty of AR to circulate agenda & minutes to FC: It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.

AR to act on instruction of FC: The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:

Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.

To ensure recording of instruction by IRP/RP: The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.

(21) **Amendment in section 27(2)** of the principal Act which deals with the Replacement of Resolution Professional (RP) by Committee of creditors (CoC): This sub-section is substituted with the following provision-

"The committee of creditors may, at a meeting, by a vote of sixty-six per cent. of voting shares, resolve to replace the resolution professional appointed under section 22 with

another resolution professional, subject to a written consent from the proposed resolution professional in the specified form."

(22) Amendment in **section 28(3)** of the principal Act which deals with the approval of committee of creditors for certain actions, for the word, "seventy-five", the word "sixty-six" shall be substituted.

(23) **Amendment in Section 29 A**, dealt with the persons not eligible to be resolution applicant came into enforcement on 23rd day of November 2017 through the enforcement of Insolvency and Bankruptcy Code (Amendment) Act, 2018 vide notification dated 19th January, 2018.

(i) in clause (c),—

(a) for the words "has an account,", the words "at the time of submission of the resolution plan has an account," shall be substituted;

(b) after the words and figures "the Banking Regulation Act, 1949", the words "or the guidelines of a financial sector regulator issued under any other law for the time being in force," shall be inserted;

(c) after the proviso, the following shall be inserted, namely:—'Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

The expression **"related party"** here shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;

(ii) for clause (d), the following clause shall be substituted, namely:—

"(d) has been convicted for any offence punishable with imprisonment—

(i) for two years or more under any Act specified under the Twelfth Schedule; or

(ii) for seven years or more under any other law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;"

(iii) in clause (e), the following proviso shall be inserted, namely:—

"Provided that this clause shall not apply in relation to a connected person referred to in clause (*iii*) of *Explanation* I;";

(iv) in clause (g), the following proviso shall be inserted, namely:—

"Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;"

(v) in clause (h), —

(a) for the words "an enforceable guarantee", the words "a guarantee" shall be substituted;

(b) after the words "under this Code", the words "and such guarantee has been invoked by the creditor and remains unpaid in full or part" shall be inserted;

(vi) in clause (i), for the words "has been", the word "is" shall be substituted;

(vii) the Explanation occurring after clause (j) shall be numbered as *Explanation* I, and in *Explanation* I as so numbered, for the proviso, the following provisos shall be substituted, namely:—

'Provided that nothing in clause (*iii*) of *Explanation* I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;';

(viii) after **Explanation I** as so numbered, the following Explanation shall be inserted, namely:—

'Explanation II—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central

Government may, in consultation with the financial sector regulator, notify in this behalf, namely:—

(a) a scheduled bank;

(b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;

(c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999.

(d) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(e) an Alternate Investment Fund registered with the Securities and Exchange Board of India;

(f) such categories of persons as may be notified by the Central Government.'.

(24) **Amendment in section 30:** The said section deals with the submission of resolution plan. Following are the amendments-

(i) in **sub-section (1),** after the words "resolution plan", the words, figures and letter "along with an affidavit stating that he is eligible under section 29A" shall be inserted;

(ii) in **sub-section (2),—**

(a) in clauses (*a*) and (*b*), for the word "repayment" at both the places where it occurs, the word "payment" shall be substituted;

(b) after clause (*f*), the following *Explanation* shall be inserted, namely:—

"Explanation.—For the purposes of clause (*e*), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.";

(iii) in **sub-section (4),—**

(a) for the word "seventy-five", the word "sixty-six" shall be substituted;

(b) after the third proviso, the following proviso shall be inserted,

namely:—

"Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018."

25. **Amendment in section 31** of the principal Act, which deals with the approval of resolution plan—

(a) in **sub-section (1)**, the following proviso shall be inserted, namely:—

"Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation."

(b) after **sub-section (3)**, the following sub-section shall be inserted namely:—

"(*4*) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (*1*), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (*1*) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors."

26. Amendment made in **section 33(2)** of the principal Act. This section deals with the initiation of liquidation process. Amendments made is that after the words "decision of the committee of creditors", the words "approved by not less than sixty-six per cent. of the voting share" shall be inserted.

27. In **section 34** of the principal Act, which states of appointment of liquidator and fee to be paid, following amendments are made—

a. in **sub-section (1)**, for the words and figures "Chapter II shall", the words and figures "Chapter II shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form," shall be substituted;

b. in **sub-section (4)**,—

i. in clause (*b*), for the words "in writing", the words "in writing; or" shall be substituted;

ii. after clause (*b*), the following clause shall be inserted, namely:—

"(*c*) the resolution professional fails to submit written consent under sub-section (*1*).";

c. in **sub-section (*5*),** for the word, brackets and letter "clause (*a*)", the words, brackets and letters "clauses (*a*) and (*c*)" shall be substituted;

d. in **sub-section (6),** after the words "another insolvency professional", the words "along with written consent from the insolvency professional in the specified form," shall be inserted.

28. In **section 42** of the principal Act, which deals with the provisions related to the appeal against the decision of liquidator, after the words "of the liquidator", the words "accepting or" shall be inserted.

29. In **section 45(1)** of the principal Act, which deals with the Avoidance of undervalued transactions, the words and figures "of section 43" shall be omitted.

(II) Usage of the word **"any other person on behalf of the financial creditor**, as may be notified by the Central Government" **under section 7(1)** of the IBC has been clarified by notification issued by Ministry of Corporate Affairs. **Vide Notification S.O. 1091(E), dated 27th February, 2019**, the Central Government hereby notifies following persons who may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority, on behalf of the financial creditor: -

(i) a guardian;

(ii) an executor or administrator of an estate of a financial creditor;

(iii) a trustee (including a debenture trustee); and

(v) a person duly authorised by the Board of Directors of a Company.

(III) The Insolvency and Bankruptcy Code (Amendment) Act, 2019

Ministry of Corporate Affairs vide Notification S.O. 2953(E) dated **16th August, 2019**, in exercise of the powers conferred by sub-section (2) of section 1 of **the Insolvency and Bankruptcy Code (Amendment) Act, 2019**, the Central Government hereby appoints the date of publication of this notification in the Official Gazette as the date on which the provisions of the said Act shall come into force.

Following are the relevant amendments:

(i) In **section 5(26)** pertaining to the definition "resolution plan", following explanation is added.

"Explanation.—For the removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger;"

(ii) **In section 7(4)** of the Code, following proviso shall be inserted:

"Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same."

(iii) In section 12which deals with the Time-limit for completion of insolvency resolution process. – Following provisos have been added after the proviso to section 3:

"Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019".

(iv) **In section 25A** after sub-section 3, following sub-section shall be added:

"(3A) Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent, of the voting share of the financial creditors he represents, who have cast their vote:

Provided that for a vote to be cast in respect of an application under section 12 A, the authorised representative shall cast his vote in accordance with the provisions of sub-section (3).**"**

(v) **In section 30(2)(b),** the following shall be substituted:

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than—

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (7) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.—For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.—For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor—

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;"

(vi) **In section 31(1)** of the Code, after the words "members, creditors," the following words shall be inserted:

"including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,"

(vii) **In section 33(2),** following explanation shall be added:

"Explanation.—For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (7) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum."

IV. The Insolvency and Bankruptcy Code (Amendment) Act, 2020

Ministry of law and justice notified on 13th March, 2020, the Insolvency and Bankruptcy Code (Amendment) Act, 2020 w.e.f. **28th day of December, 2019**. With the enforcement of this Amendment Act, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019 was hereby repealed.

Following are the relevant amendments:

1. In **section 5** of the Insolvency and Bankruptcy Code, 2016 (here after referred to as the principal Act),—

Sl. No.	Amended Law
1.	in **clause (12),** the given proviso- [2]"Provided that where the interim resolution professional is not appointed

[2] Proviso was Ins. by Act No. 26 of 2018, sec. 3 (w.e.f. 6-6-2018)

	in the order admitting application under section 7, 9 or 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority" shall be omitted.
2.	in **clause (15),** after the words "during the insolvency resolution process period "occurring at the end the words "and such other debt as may be notified" shall be inserted.
3.	In **section 7** of the principal Act, in sub-section (*1*), before the *Explanation*, the following provisos inserted— "Provided that for the financial creditors, referred to in clauses (*a*) and (*b*) of sub-section (*6A*) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less: Provided further that for financial creditors who are allottees under real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less: Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission."
4.	In **section 11** of the principal Act, the *Explanation* shall be numbered as *Explanation* I and after *Explanation* I as so numbered, the following *Explanation* shall be inserted, namely:— "*Explanation* II—For the purposes of this section, it is hereby clarified that nothing in this section shall prevent a corporate debt or referred to in clauses (*a*) to(*d*) from initiating corporate insolvency resolution process against another corporate debtor."
5.	In **section 14** of the principal Act,— (a) in **sub-section (1**), the following Explanation inserted, namely:— "Explanation.—For the purposes of this sub-section, it is here by clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or

	a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;"; (b) after **sub-section (2),** the following sub-section 2A shall be inserted, namely:— "(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified."; (c) in **sub-section (3),** for clause (a), namely- "(a) such transaction as may be notified by the Central Government in consultation with any financial regulator;" the following clause shall be substituted, namely:— "(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;"
6.	In **section 16 in sub-section (*1*),** for the words" within fourteen days from the insolvency commencement date" The words "on the insolvency commencement date" shall be substituted.
7.	In **section 21, in sub-section (*2*)**, in the second proviso, after the words "convertible into equity shares" the words "or completion of such transactions as may be prescribed," shall be inserted.
8.	In **section 29A** of the principal Act- (i) in clause (c), in the second proviso, in Explanation I, after the words, "convertible into equity shares", the words "or completion of such transactions as may be prescribed," shall be inserted; (ii) in clause (j), in Explanation I, in the second proviso, after the words "convertible into equity shares", the words "or completion of such transactions as may be prescribed," shall be inserted.

9.	After **section 32** of the principal Act, the following section 32A shall be inserted, namely:— "32A. **(*1*)** Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not— (a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or (b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court: **Provided that** if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled: **Provided further** that every person who was a "designated partner" as defined in clause(*j*) of section2 of the Limited Liability Partnership Act ,2008, or an "officer who is in default", as defined in clause (*60*) of section 2 of the Companies Act,2013, or was in any manner incharge of, or responsible to the corporate debt or for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section. **(2)** No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not—

	(i) A promoter or in the management or control of the corporate debtor or a related party of such a person; or (ii) A person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court. ***Explanation.***—For the purposes of this sub-section, it is hereby clarified that,— (i) An action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor; (ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable. **(3)** Subject to the provisions contained in sub-sections (*1*) and (*2*), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process."

V. Enhancement in the limit of amount of default: Ministry of Corporate Affairs vide notification S.O. 1205(E) dated 24th March, 2020, in exercise of the powers conferred by the proviso to section 4 of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby specifies one crore rupees as the minimum amount of default for the purposes of the said section.

VI. Ministry of Corporate Affairs Vide Notification S.O. 4126(E) dated **15th November, 2019**, in exercise of the powers conferred by sub-section (3) of section 1 of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby appoints the **1st day of December, 2019** as the date on which clause (e) of section 2 of the Code in so far as they relate to personal guarantors to corporate debtors, shall come into force.

VII. The Insolvency and Bankruptcy Code (Second Amendment) Act, 2020

This an Act further to amend the Insolvency and Bankruptcy Code, 2016 w.e.f. the 5th day of June, 2020. The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 is hereby repealed through the enforcement of this second amendment Act, 2020.

Insertion of Section 10A which deals Suspension of Initiation of Corporate Insolvency resolution process.

"10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months corporate insolvency or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation.—For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020."

VIII. Ministry of Corporate Affairs vide Notification dated 24th September, 2020 with notification No. S.O. 3265(E)., in exercise of the powers conferred by section 10A of the Insolvency and Bankruptcy Code, 2016 as inserted by section 2 of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2020, the Central Government hereby notifies further period of three months from the 25th September, 2020 for the purposes of the said section.

PART II: ALLIED LAWS

CHAPTER 20: SEBI ACT, 1992

1. Enforcement of the Banning of Unregulated Deposit Schemes Ordinance, 2019

Banning of Unregulated Deposit Schemes Ordinance, 2019 dated **21st February, 2019** has substituted Clause (e) of sub-section (4) of Section 11 of the SEBI Act, 1992 which is as follows:

(e) 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 there under:

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.

2. Amendments through Finance Act, 2018 w.e.f. 8.3.2019

1. In the Securities And Exchange Board of India Act, 1992 (hereafter in this Part referred to as the principal Act), **in section 11** which deals with the Functions of Board,—

   (i) **after sub-section (4),** the following sub-section shall be inserted, namely:—

   "(4A) Without prejudice to the provisions contained in sub-sections (1), (2), (2A), (3) and (4), section 11B and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.";

   (ii) **in sub-section (5),** after the words and figures "the Depositories Act, 1996", the words, figures, letters and brackets shall be inserted, namely:—

   "or under a settlement made under section 15JB or section 23JA of the Securities Contracts (Regulation) Act, 1956 or section 19-IA of the Depositories Act, 1996,".

2. **In section 11B**, of the principal Act,—

   (a) in the marginal heading, after the word ''directions'', the words ''and levy penalty'' shall be inserted;

   (b) **section 11B** shall be numbered as sub-section (1) thereof and after subsection (1) as so renumbered, the following sub-section shall be inserted, namely:—

   "(2) Without prejudice to the provisions contained in sub-section (1), sub-section (4A) of section 11 and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.''.

3. In the principal Act, in **section 15A** which deals with the Penalty for failure to furnish information, return, etc.,—

   (i) **in clause (a),** after the words "fails to furnish the same", the words "or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents" shall be inserted;

   (ii) **in clause (b),** after the words "furnish the same within the time specified therefor in the regulations", the words "or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents" shall be inserted.

4. In the principal Act**, after section 15E**, the following sections shall be inserted, namely:—

"15EA. Where any person fails to comply with the regulations made by the Board in respect of alternative investment funds, infrastructure investment trusts and real estate investment trusts or fails to comply with the directions issued by the Board, such person shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees or three times the amount of gains made out of such failure, whichever is higher.

15EB. Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.".

5. In the principal Act, in **section 15F** which deals with the Penalty for default in case of stock brokers, in **clause (b),** for the words "he sponsors or carries on any such collective investment scheme including mutual funds", the words "such failure continues" shall be substituted.

6. In the principal Act, in **section 15-I** which deals with the Power to adjudicate, in sub-section (1),—

   (i) after the figures and letter "15E,", the figures and letters "15EA, 15EB," shall be inserted;

   (ii) for the word "shall" the word "may" shall be substituted.

7. In the principal Act, in **section 15J**,—

   (a) for the marginal heading, the following marginal heading shall be substituted, namely:— "Factors to be taken into account while adjudging quantum of penalty.";

   (b) after the words, figures and letter "section 15-I, the adjudicating officer", the figures, letters and words "15-I or section 11 or section 11B, the Board or the adjudicating officer" shall be substituted;

   (c) in the Explanation, the words "of an adjudicating officer" shall be omitted.

8. In the principal Act, in **section 15JB** which deals with the Settlement of administrative and civil proceedings, after sub-section (4), the following subsection shall be inserted, namely:—

"(5) All settlement amounts, excluding the disgorgement amount and legal costs, realised under this Act shall be credited to the Consolidated Fund of India.".

9. In the principal Act, in **section 24** which states about the Offences,—

   (i) after the words "adjudicating officer" at both the places where they occur, the words "or the Board" shall be inserted;

   (ii) in sub-section (2), the words "of his" shall be omitted.

10. In the principal Act, in **section 27** which deals with the Contravention by companies,—

   (i) for the marginal heading, the following marginal heading shall be substituted, namely:— "Contravention by companies.";

   (ii) in sub-section (1), for the words "an offence under this Act,", the words "a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder" shall be substituted;

   (iii) for the word "offence", wherever it occurs, the word "contravention" shall be substituted. 189. In the principal Act, in section 28A, in sub-section (1), for the words "by the adjudicating officer", the words "under this Act" shall be substituted.

11. In the principal Act, **after section 28A** which deals with recovery of money, the following section shall be inserted, namely:—

'28B. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased: Provided that, in case of any penalty payable under this Act, a legal representative shall be liable only in case the penalty has been imposed before the death of the deceased person.

(2) For the purposes of sub-section (1),—

   (a) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, initiated against the deceased before his death, shall be deemed to have been initiated against the legal representative, and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased and all the provisions of this Act shall apply accordingly;

   (b) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, which could have been initiated against the deceased if he had survived, may be initiated against the legal representative and all the provisions of this Act shall apply accordingly.

(3) Every legal representative shall be personally liable for any sum payable by him in his capacity as legal representative if, while his liability for such sum remains undischarged, he creates a charge on or disposes of or parts with any assets of

the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with. Amendment of section 15JB. Amendment of section 24. Amendment of section 27. Amendment of section 28A. Insertion of new section 28B. Continuance of proceedings.

(4) The liability of a legal representative under this section shall be limited to the extent to which the estate of the deceased is capable of meeting the liability. Explanation.—For the purposes of this section "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.'.

3. Inserted by Finance (No. 2) Act, 2019, w.e.f. 20-1-2020.

(i) In **section 15C** of the principal Act, which deals with the Penalty for failure to redress investors' grievances after the words "after having been called upon by the Board in writing", the words "including by any means of electronic communication" shall be inserted.

(ii) In **section 15F** of the principal Act, which deals with the Penalty for default in case of stock brokers in sub-clause (*a*), after the words "one lakh rupees but which may extend to", the words "one crore rupees" shall be inserted.

(iii) After **section 15HA** of the principal Act, the following section shall be inserted, namely:—

'**15HAA**. Penalty for alteration destruction, etc., of records and failure to protect the electronic database of Board

Any person, who—

(a) knowingly alters, destroys, mutilates, conceals, falsifies, or makes a false entry in any information, record, document (including electronic records), which is required under this Act or any rules or regulations made thereunder, so as to impede, obstruct, or influence the investigation, inquiry, audit, inspection or proper administration of any matter within the jurisdiction of the Board.

Explanation.—For the purposes of this clause, a person shall be deemed to have altered, concealed or destroyed such information, record or document, in case he knowingly fails to immediately report the matter to the Board or fails to preserve the same till such information continues to be relevant to any

investigation, inquiry, audit, inspection or proceeding, which may be initiated by the Board and conclusion thereof;

(b) without being authorised to do so, access or tries to access, or denies of access or modifies access parameters, to the regulatory data in the database;

(c) without being authorised to do so, downloads, extracts, copies, or reproduces in any form the regulatory data maintained in the system database;

(d) knowingly introduces any computer virus or other computer contaminant into the system database and brings out a trading halt;

(e) without authorisation disrupts the functioning of system database;

(f) knowingly damages, destroys, deletes, alters, diminishes in value or utility, or affects by any means, the regulatory data in the system database; or

(g) knowingly provides any assistance to or causes any other person to do any of the acts specified in clauses (a) to (f), shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to ten crore rupees or three times the amount of profits made out of such act, whichever is higher.

Explanation.—In this section, the expressions "computer contaminant", "computer virus" and "damage" shall have the meanings respectively assigned to them under section 43 of the Information Technology Act, 2000.

CHAPTER 21: The Securities Contracts (Regulation) Act, 1956

Vide Finance Act, 2018, w.e.f. 8.3.2019 following Changes are made in the SCRA-

(i) In the Securities Contracts (Regulation) Act, 1956 (hereafter in this Part referred to as the principal Act), **section 12A** shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:-

"(2) Without prejudice to the provisions of sub-section (1) and section 23-I, the Securities and Exchange Board of India may, by an order, for reasons to be recorded in writing, levy penalty under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G, 23GA and 23H after holding an inquiry in the prescribed manner.".

(ii) In **section 23** of the principal Act, in sub-section (1), in the long line, after the words "Adjudicating officer", the words "or the Securities and Exchange Board of India" shall be inserted.

(iii) In **section 23A** of the principal Act, in sub-clause (a), after the words "bye-laws of the recognised stock exchange", the words "or who furnishes false, incorrect or incomplete information, document, books, return or report" shall be inserted.

(iv) In **section 23E** of the principal Act, after the words "mutual fund", the words "or real estate investment trust or infrastructure investment trust or alternative investment fund", shall be inserted.

(v) In **section 23G** of the principal Act, after the words "periodical returns", the words "or furnishes false, incorrect or incomplete periodical returns" shall be inserted.

(vi) After **section 23G** of the principal Act, the following section shall be inserted, namely:- "23GA. Where a stock exchange or a clearing corporation fails to conduct its business with its members or any issuer or its agent or any person associated with the securities markets in accordance with the rules or regulations made by the Securities and Exchange Board of India and the directions issued by it under this Act, the stock exchange or the clearing corporations, as the case may be, shall be liable to penalty which shall not be less than five crore rupees but which may extend to twenty-five crore rupees or three times the amount of gains made out of such failure, whichever is higher.".

(vii) In **section 23-I** of the principal Act, in sub-section (1), for the word "shall", the word "may" shall be substituted.

(viii) In **section 23J** of the principal Act,-

(a) for the marginal heading, the following marginal heading shall be substituted, namely:- "Factors to be taken into account while adjudging quantum of penalty.";

(b) for the word, figures and letter "section 23-I" the words, figures and letters "section 12A or section 23-I" shall be substituted.

(c) for the words "the adjudicating officer", the words "the Securities and Exchange Board of India or the adjudicating officer" shall be substituted.

(ix) In **section 23JA** of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:-

"(5) All settlement amounts, excluding the disgorgement amount and legal costs, realised under this Act shall be credited to the Consolidated Fund of India.".

(x) In **section 23JB** of the principal Act, in sub-section (1), for the words "by the adjudicating officer", the words "under this Act" shall be substituted.

(xi) After **section 23JB** of the principal Act, the following section shall be inserted, namely:-

'23JC. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased: Provided that, in case of any penalty payable under this Act, a legal representative shall be liable only in case the penalty has been imposed before the death of the deceased person.

(2) For the purposes of sub-section (1),- (a) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, initiated against the deceased before his death shall be deemed to have been initiated against the legal representative, and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased and all the provisions of this Act shall apply accordingly; (b) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, which could have been initiated against the

deceased if he had survived, may be initiated against the legal representative and all the provisions of this Act shall apply accordingly.

(3) Every legal representative shall be personally liable for any sum payable by him in his capacity as legal representative if, while his liability for such sum remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(4) The liability of a legal representative under this section shall, be limited to the extent to which the estate of the deceased is capable of meeting the liability. Explanation.-For the purposes of this section "Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.'.

(xii) In **section 23M** of the principal Act,-

(1) after the words "adjudicating officer" at both the places where they occur, the words "or the Securities and Exchange Board of India" shall be inserted;

(2) in sub-section (2), for the words, "any of his direction or orders" the words "the direction or order" shall be substituted.

(xiii) In **section 24** of the principal Act,-

(a) for the marginal heading, the following marginal heading shall be substituted:- "Contravention by companies;";

(b) in sub-section (1), for the words "an offence", the words "a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder" shall be substituted;

(c) in sub-section (2), for the words "an offence under this Act", the words "a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder" shall be substituted;

(d) for the word "offence", wherever it occurs, the word "contravention" shall be substituted.

CHAPTER 22: The Foreign Exchange and Management Act, 1999

(1) Foreign Exchange Management (Permissible Capital Account Transactions) (Amendment) Regulations, 2019

Reserve Bank of India makes the amendment in the FEM (Permissible Capital Account Transactions) Regulations, 2000 through the enforcement of **the Foreign Exchange Management (Permissible Capital Account Transactions) (Amendment) Regulations, 2019** w.e.f. **26-2-2019**. Following are the relevant amendments -

(i) In the Para 2 (Definitions) – After the clause (d), clause (da) is added:

"(da) 'Derivative' means a financial contract, to be settled at a future date, whose value is derived from one or more financial, or non-financial variables."

(ii) **In schedule I** (classes of capital account transactions of persons resident in India) of FEM (Permissible Capital Account Transactions) Regulations, 2000, for the existing clause (k), the following shall be substituted:

"(k) Undertake derivative contracts"

(iii) **In the schedule II** (classes of capital account transactions of persons resident outside India) of FEM (Permissible Capital Account Transactions) Regulations, 2000, after the existing clause (g), the following shall be added:

"(**h) Undertake derivative contracts**"

(2) Amendment in Section 6 of the Foreign Exchange Management Act, 1999 vide Finance Act, 2015 w.e.f 15.10.2019.

(1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.

(2) The Reserve Bank may, in consultation with the Central Government, specify—

(a) any class or classes of capital account transactions, involving debt instruments, which are permissible;

(b) the limit up to which foreign exchange shall be admissible for such transactions;

(c) any conditions which may be placed on such transactions:

[Provided that the Reserve Bank or the Central Government shall not impose any restrictions on the drawal of foreign exchange for payment due on account of amortisation of loans or for depreciation of direct investments in the ordinary course of business.

(2A) The Central Government may, in consultation with the Reserve Bank, prescribe—

(a) any class or classes of capital account transactions, not involving debt instruments, which are permissible;

(b) the limit up to which foreign exchange shall be admissible for such transactions; and

(c) any conditions which may be placed on such transactions.

(3) [***]

(4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency,

security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

(5) 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.

(6) Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

(7) For the purposes of this section, the term "debt instruments" shall mean, such instruments as may be determined by the Central Government in consultation with the Reserve Bank.

(3) Amendments in External Commercial Borrowings

Vide FED Master Direction No.5/2018-19, amendments have been made in the Transactions on account of External Commercial Borrowings (ECB) . **Here is the updated master direction –external commercial borrowings.**

Within the contours of the Regulations, Reserve Bank of India also issues directions to Authorised Persons under Section 11 of the Foreign Exchange Management Act (FEMA), 1999. These directions lay down the modalities as to how the foreign exchange business has to be conducted by the Authorised Persons with their customers/constituents with a view to implementing the regulations framed.

Index

6.1	Loan Registration Number
6.2	Changes in terms and conditions of ECB
6.3	Monthly reporting of actual transactions
6.4	Late Submission Fee for delay in reporting
6.5	Standard Operating Procedure for Untraceable Entities
7	Powers delegated to AD Category I banks to deal with ECB cases
7.1	Change of the AD Category I bank
7.2	Cancellation of LRN
7.3	Refinancing of existing ECB
7.4	Conversion of ECB into equity
7.5	Security for raising ECB
7.6	Additional Requirements
8	Special Dispensations under the ECB framework
8.1	ECB facility for Oil Marketing Companies
8.2	ECB facility for Start-ups
9	Borrowing by Entities under Investigation
10	ECB by entities under restructuring/ ECB facility for refinancing stressed assets
11	Dissemination of information
12	Compliance with the guidelines

Introduction: External Commercial Borrowings are commercial loans raised by eligible resident entities from recognised non-resident entities and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc. The parameters given below apply in totality and not on a standalone basis.

2.1. ECB Framework: The framework for raising loans through ECB (hereinafter referred to as the ECB Framework) comprises the following two options:

Sr. No.	Parameters	FCY denominated ECB	INR denominated ECB
i	Currency of borrowing	Any freely convertible Foreign Currency	Indian Rupee (INR)
ii	Forms of ECB	Loans including bank loans; floating/ fixed rate notes/ bonds/ debentures (other than fully and compulsorily convertible instruments);	Loans including bank loans; floating/ fixed rate notes/bonds/ debentures/ preference shares (other than fully and compulsorily

		Trade credits beyond 3 years; FCCBs; FCEBs and Financial Lease.	convertible instruments); Trade credits beyond 3 years; and Financial Lease. Also, plain vanilla Rupee denominated bonds issued overseas, which can be either placed privately or listed on exchanges as per host country regulations.
iii	Eligible borrowers	All entities eligible to receive FDI. Further, the following entities are also eligible to raise ECB: i. Port Trusts; ii. Units in SEZ; iii. SIDBI; and iv. EXIM Bank of India.	(a) All entities eligible to raise FCY ECB; and (b) Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/ trusts/cooperatives and Non-Government Organisations.
iv	Recognised lenders	The lender should be resident of FATF or IOSCO compliant country, including on transfer of ECB. However, (a) Multilateral and Regional Financial Institutions where India is a member country will also be considered as recognised lenders; (b) Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad; and (c) Foreign branches / subsidiaries of Indian banks are permitted as recognised lenders only for FCY ECB (except FCCBs and FCEBs).	
		Foreign branches / subsidiaries of Indian banks, subject to applicable prudential norms, can participate as arrangers/underwriters/market-makers/traders for Rupee denominated Bonds issued overseas. However, underwriting by foreign branches/subsidiaries of Indian banks for issuances by Indian banks will not be allowed.	
V	Minimum Average	MAMP for ECB will be 3 years. Call and put options, if any, shall not be exercisable prior to completion of minimum	

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<td>Maturity Period (MAMP)</td>
<td>average maturity. However, for the specific categories mentioned below, the MAMP will be as prescribed therein:
<table>
<tr><th>Sr.No.</th><th>Category</th><th>MAMP</th></tr>
<tr><td>(a)</td><td>ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year.</td><td>1 year</td></tr>
<tr><td>(b)</td><td>ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans</td><td>5 years</td></tr>
<tr><td>[3](c)</td><td>ECB raised for
(i) working capital purposes or general corporate purposes
(ii) on-lending by NBFCs for working capital purposes or general corporate purposes</td><td>10 years</td></tr>
<tr><td>(d)</td><td>ECB raised for
(i) repayment of Rupee loans availed domestically for capital expenditure
(ii) on-lending by NBFCs for the same purpose</td><td>7 years</td></tr>
<tr><td>(e)</td><td>ECB raised for
(i) repayment of Rupee loans availed domestically for purposes other than capital expenditure
(ii) on-lending by NBFCs for the same purpose</td><td>10 years</td></tr>
<tr><td colspan="3">for the categories mentioned at (b) to (e) –
(i) ECB cannot be raised from foreign branches / subsidiaries of Indian banks
(ii) the prescribed MAMP will have to be strictly complied with under all circumstances.</td></tr>
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[3]Inserted vide A.P.(DIR Series) Circular No. 04 dated July 30, 2019.

vi	All-in-cost ceiling per annum	Benchmark rate plus 450 bps spread.	
vii	Other costs	Prepayment charge/ Penal interest, if any, for default or breach of covenants, should not be more than 2 per cent over and above the	
		contracted rate of interest on the outstanding principal amount and will be outside the all-in-cost ceiling.	
Viii	End-uses (Negative list)	The negative list, for which the ECB proceeds cannot be utilised, would include the following: (a) Real estate activities. (b) Investment in capital market. (c) Equity investment. (d) [4]Working capital purposes, except in case of ECB mentioned at v(b) and v(c) above. (e) General corporate purposes, except in case of ECB mentioned at v(b) and v(c) above. (f) Repayment of Rupee loans, except in case of ECB mentioned at v(d) and v(e) above. (g) On-lending to entities for the above activities, except in case of ECB raised by NBFCs as given at v(c), v(d) and v(e) above.	
ix	Exchange rate	Change of currency of FCY ECB into INR ECB can be at the exchange rate prevailing on the date of the agreement for such change between the parties concerned or at an exchange rate, which is less than the rate prevailing on the date of the agreement, if consented to by the ECB lender.	For conversion to Rupee, the exchange rate shall be the rate prevailing on the date of settlement.

[4] Substituted vide A.P.(DIR Series) Circular No. 04 dated July 30, 2019. Prior to substitution it read as below:

(a) Working capital purposes except from foreign equity holder.

(b) General corporate purposes except from foreign equity holder.

(c) Repayment of Rupee loans except from foreign equity holder.

(d) On-lending to entities for the above activities.

x	Hedging provision	The entities raising ECB are required to follow the guidelines for hedging issued, if any, by the concerned sectoral or prudential regulator in respect of foreign currency exposure. Infrastructure space companies shall have a Board approved risk management policy. Further, such companies are required to mandatorily hedge 70 per cent of their ECB exposure in case the average maturity of the ECB is	Overseas investors are eligible to hedge their exposure in Rupee through permitted derivative products with AD Category I banks in India. The investors can also access the domestic market through branches / subsidiaries of Indian banks abroad or branches of foreign banks with Indian presence on a back to back basis.
		less than 5 years. The designated AD Category-I bank shall verify that 70 per cent hedging requirement is complied with during the currency of the ECB and report the position to RBI through Form ECB 2. The following operational aspects with respect to hedging should be ensured: **a. Coverage:** The ECB borrower will be required to cover the principal as well as the coupon through financial hedges. The financial hedge for all exposures on account of ECB should start from the time of each such exposure (i.e. the day the liability is created in the books of the borrower). **b. Tenor and rollover:** A minimum tenor of one year for the financial hedge would	

		be required with periodic rollover, duly ensuring that the exposure on account of ECB is not unhedged at any point during the currency of the ECB. **c. Natural Hedge:** Natural hedge, in lieu of financial hedge, will be considered only to the extent of offsetting projected cash flows / revenues in matching currency, net of all other projected outflows. For this purpose, an ECB may be considered naturally hedged if the offsetting exposure has the maturity/cash flow within the same accounting. Any other arrangements/ structures, where revenues are indexed to foreign currency will not be considered as a natural hedge.	
xi	Change of currency of borrowing	Change of currency of ECB from one freely convertible foreign currency to any other freely convertible foreign currency as well as to INR is freely permitted.	Change of currency from INR to any freely convertible foreign currency is not permitted.

Note: The ECB framework is not applicable in respect of investments in Non-Convertible Debentures in India made by Registered Foreign Portfolio Investors. [5]Lending and borrowing under the ECB framework by Indian banks and their branches/subsidiaries outside India will be subject to prudential guidelines issued by the Department of Banking Regulation of the Reserve Bank. Further, other entities raising ECB are required to follow the guidelines issued, if any, by the concerned sectoral or prudential regulator.

2.2. Limit and leverage: Under the aforesaid framework, all eligible borrowers can raise ECB up to USD 750 million or equivalent per financial year under the automatic route. Further, in case of FCY denominated ECB raised from direct foreign equity holder, ECB liability-

[5] Inserted vide A.P. (DIR Series) Circular No. 17 dated January 16, 2019.

equity ratio for ECB raised under the automatic route cannot exceed 7:1. However, this ratio will not be applicable if the outstanding amount of all ECB, including the proposed one, is up to USD 5 million or its equivalent. Further, the borrowing entities will also be governed by the guidelines on debt equity ratio, issued, if any, by the sectoral or prudential regulator concerned.

3. Issuance of Guarantee, etc. by Indian banks and Financial Institutions: Issuance of any type of guarantee by Indian banks, All India Financial Institutions and NBFCs relating to ECB is not permitted. Further, financial intermediaries (viz., Indian banks, All India Financial Institutions, or NBFCs) shall not invest in FCCBs/ FCEBs in any manner whatsoever.

4. **Parking of ECB proceeds:** ECB proceeds are permitted to be parked abroad as well as domestically in the manner given below:

4.1 **Parking of ECB proceeds abroad**: ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilisation. Till utilisation, these funds can be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's; (b) Treasury bills and other monetary instruments of one-year maturity having minimum rating as indicated above and (c) deposits with foreign branches/subsidiaries of Indian banks abroad.

4.2 **Parking of ECB proceeds domestically:** ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months cumulatively. These term deposits should be kept in unencumbered position.

5. **Procedure of raising ECB:** All ECB can be raised under the automatic route if they conform to the parameters prescribed under this framework**.** For approval route cases, the borrowers may approach the RBI with an application in prescribed format (Form ECB) for examination through their AD Category I bank. Such cases shall be considered keeping in view the overall guidelines, macroeconomic situation and merits of the specific proposals. ECB proposals received in the Reserve Bank above certain threshold limit (refixed from time to time) would be placed before the Empowered Committee set up by the Reserve Bank. The Empowered Committee will have external as well as internal members and the Reserve Bank will take a final decision in the cases taking into account recommendation of the Empowered Committee. Entities desirous to raise ECB under the automatic route may approach an AD Category I bank with their proposal along with duly filled in Form ECB.

6. **Reporting Requirements:** Borrowings under ECB Framework are subject to following reporting requirements apart from any other specific reporting required under the framework:

6.1 Loan Registration Number (LRN): Any draw-down in respect of an ECB should happen only after obtaining the LRN from the Reserve Bank. To obtain the LRN, borrowers are required to submit duly certified Form ECB, which also contains terms and conditions of the ECB, in duplicate to the designated AD Category I bank. In turn, the AD Category I bank will forward one copy to the Director, Reserve Bank of India, Department of Statistics and Information Management, External Commercial Borrowings Division, Bandra-Kurla Complex, Mumbai – 400 051 (Contact numbers 022-26572513 and 022-26573612). Copies of loan agreement for raising ECB are not required to be submitted to the Reserve Bank.

6.2 Changes in terms and conditions of ECB: Changes in ECB parameters in consonance with the ECB norms, including reduced repayment by mutual agreement between the lender and borrower, should be reported to the DSIM through revised Form ECB at the earliest, in any case not later than 7 days from the changes effected. While submitting revised Form ECB the changes should be specifically mentioned in the communication.

6.3 Monthly Reporting of actual transactions: The borrowers are required to report actual ECB transactions through Form ECB 2 Return through the AD Category I bank on monthly basis so as to reach DSIM within seven working days from the close of month to which it relates.

Changes, if any, in ECB parameters should also be incorporated in Form ECB 2 Return.

6.4 Late Submission Fee (LSF) for delay in reporting:

6.4.1 Any borrower, who is otherwise in compliance of ECB guidelines, can regularise the delay in reporting of drawdown of ECB proceeds before obtaining LRN or delay in submission of Form ECB 2 returns, by payment of late submission fees as detailed in the following matrix:

Sr. No.	Type of Return/Form	Period of delay	Applicable LSF
1	Form ECB 2	Up to 30 calendar days from due date of submission	INR 5,000
2	Form ECB 2/Form ECB	Up to three years from due date of submission/date of drawdown	INR 50,000 per year
3	Form ECB 2/Form ECB	Beyond three years from due date of submission/date of drawdown	INR 100,000 per year

6.4.2 The borrower, through its AD bank, may pay the LSF by way of demand draft in favour of "Reserve Bank of India" or any other mode specified by the Reserve Bank. Such payment should be accompanied with the requisite return(s). Form ECB and Form ECB 2 returns reporting contraventions will be treated separately. Non-payment of LSF will be treated as

contravention of reporting provision and shall be subject to compounding or adjudication as provided in FEMA 1999 or regulations/rules framed thereunder.

6.5 Standard Operating Procedure (SOP) for Untraceable Entities: The following SOP has to be followed by designated AD Category-I banks in case of untraceable entities who are found to be in contravention of reporting provisions for ECB by failing to submit prescribed return(s) under the ECB framework, either physically or electronically, for past eight quarters or more.

i. Definition: Any borrower who has raised ECB will be treated as 'untraceable entity', if entity/ auditor(s)/ director(s)/ promoter(s) of entity are not reachable/ responsive/ reply in negative over email/letters/phone for a period of not less than two quarters with documented communication/ reminders numbering 6 or more and it fulfills both of the following conditions:

(a) Entity not found to be operative at the registered office address as per records available with the AD Bank or not found to be operative during the visit by the officials of the AD Bank or any other agencies authorised by the AD bank for the purpose;

(b) Entities have not submitted Statutory Auditor's Certificate for last two years or more;

ii. Action: The followings actions are to be undertaken in respect of 'untraceable entities':

(a) File Revised Form ECB, if required, and last Form ECB 2 Return without certification from company with 'UNTRACEABLE ENTITY' written in bold on top. The outstanding amount will be treated as written-off from external debt liability of the country but may be retained by the lender in its books for recovery through judicial/ non-judicial means;

(b) No fresh ECB application by the entity should be examined/processed by the AD bank;

(c) Directorate of Enforcement should be informed whenever any entity is designated

(d) 'UNTRACEABLE ENTITY'; and

(e) No inward remittance or debt servicing will be permitted under auto route.

7. Powers delegated to AD Category I banks to deal with ECB cases: The designated AD Category I banks can approve any requests from the borrowers for changes in respect of ECB, except for FCCBs/FCEBs, duly ensuring that the changed conditions, including change in name of borrower/lender, transfer of ECB and any other parameters, comply with extant ECB norms and are with the consent of lender(s). Further, the following can also be undertaken under the automatic route:

7.1 Change of the AD Category I bank: AD Category I bank can be changed subject to obtaining no objection certificate from the existing AD Category I bank.

7.2 Cancellation of LRN: The designated AD Category I banks may directly approach DSIM for cancellation of LRN for ECB contracted, subject to ensuring that no draw down against the said LRN has taken place and the monthly ECB-2 returns till date in respect of the allotted LRN have been submitted to DSIM.

7.3 Refinancing of existing ECB: Refinancing of existing ECB by fresh ECB provided the outstanding maturity of the original borrowing (weighted outstanding maturity in case of multiple borrowings) is not reduced and all-in-cost of fresh ECB is lower than the all-in-cost (weighted average cost in case of multiple borrowings) of existing ECB. Further, refinancing of ECB raised under the previous ECB frameworks may also be permitted, subject to additionally ensuring that the borrower is eligible to raise ECB under the extant framework. Raising of fresh ECB to part refinance the existing ECB is also permitted subject to same conditions. Indian banks are permitted to participate in refinancing of existing ECB, only for highly rated corporate (AAA) and for Maharatna/ Navratna public sector undertakings.

7.4 Conversion of ECB into equity: Conversion of ECB, including those which are matured but unpaid, into equity is permitted subject to the following conditions:

(i) The activity of the borrowing company is covered under the automatic route for FDI or Government approval is received, wherever applicable, for foreign equity participation as per extant FDI policy.

(ii) The conversion, which should be with the lender's consent and without any additional cost, should not result in contravention of eligibility and breach of applicable sector cap on the foreign equity holding under FDI policy;

(iii) Applicable pricing guidelines for shares are complied with; iv. In case of partial or full conversion of ECB into equity, the reporting to the Reserve Bank will be as under:

(a) For partial conversion, the converted portion is to be reported in Form FC-GPR prescribed for reporting of FDI flows, while monthly reporting to DSIM in Form ECB 2 Return will be with suitable remarks, viz., "ECB partially converted to equity".

(b) For full conversion, the entire portion is to be reported in Form FC-GPR, while reporting to DSIM in Form ECB 2 Return should be done with remarks "ECB fully converted to equity". Subsequent filing of Form ECB 2 Return is not required.

(c) For conversion of ECB into equity in phases, reporting through Form FC-GPR and Form ECB 2 Return will also be in phases.

(iv) If the borrower concerned has availed of other credit facilities from the Indian banking system, including foreign branches/subsidiaries of Indian banks, the applicable

prudential guidelines issued by the Department of Banking Regulation of Reserve Bank, including guidelines on restructuring are complied with;

(v) Consent of other lenders, if any, to the same borrower is available or atleast information regarding conversions is exchanged with other lenders of the borrower.

(vi) For conversion of ECB dues into equity, the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion or any lesser rate can be applied with a mutual agreement with the ECB lender. It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only.

7.5. Security for raising ECB: AD Category I banks are permitted to allow creation/cancellation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised/ raised by the borrower, subject to satisfying themselves that:

i. the underlying ECB is in compliance with the extant ECB guidelines,

ii. there exists a security clause in the Loan Agreement requiring the ECB borrower to create/cancel charge, in favour of overseas lender/security trustee, on immovable assets/movable assets/financial securities/issuance of corporate and/or personal guarantee, and

iii. No objection certificate, as applicable, from the existing lenders in India has been obtained in case of creation of charge.

Once the aforesaid stipulations are met, the AD Category I bank may permit creation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees, during the currency of the ECB with security co-terminating with underlying ECB, subject to the following:

iv **Creation of Charge on Immovable Assets:** The arrangement shall be subject to the following:

(a) Such security shall be subject to provisions contained in the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2017, as amended from time to time.

(b) The permission should not be construed as a permission to acquire immovable asset (property) in India, by the overseas lender/ security trustee.

(c) In the event of enforcement / invocation of the charge, the immovable asset/ property will have to be sold only to a person resident in India and the sale proceeds shall be repatriated to liquidate the outstanding ECB.

v **Creation of Charge on Movable Assets:** In the event of enforcement/ invocation of the charge, the claim of the lender, whether the lender takes over the movable asset

or otherwise, will be restricted to the outstanding claim against the ECB. Encumbered movable assets may also be taken out of the country subject to getting 'No Objection Certificate' from domestic lender/s, if any.

vi **Creation of Charge over Financial Securities:** The arrangements may be permitted subject to the following:

(a) Pledge of shares of the borrowing company held by the promoters as well as in domestic associate companies of the borrower is permitted. Pledge on other financial securities, viz. bonds and debentures, Government Securities, Government Savings Certificates, deposit receipts of securities and units of the Unit Trust of India or of any mutual funds, standing in the name of ECB borrower/promoter, is also permitted.

(b) In addition, security interest over all current and future loan assets and all current assets including cash and cash equivalents, including Rupee accounts of the borrower with ADs in India, standing in the name of the borrower/promoter, can be used as security for ECB. The Rupee accounts of the borrower/promoter can also be in the form of escrow arrangement or debt service reserve account.

(c) In case of invocation of pledge, transfer of financial securities shall be in accordance with the extant FDI/FII policy including provisions relating to sectoral cap and pricing as applicable read with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017, as amended from time to time.

vii **Issue of Corporate or Personal Guarantee:** The arrangement shall be subject to the following:

(a) A copy of Board Resolution for the issue of corporate guarantee for the company issuing such guarantee, specifying name of the officials authorised to execute such guarantees on behalf of the company or in individual capacity should be obtained.

(b) Specific requests from individuals to issue personal guarantee indicating details of the ECB should be obtained.

(c) Such security shall be subject to provisions contained in the Foreign Exchange Management (Guarantees) Regulations, 2000, as amended from time to time.

(d) ECB can be credit enhanced / guaranteed / insured by overseas party/ parties only if it/ they fulfil/s the criteria of recognised lender under extant ECB guidelines.

7.6. Additional Requirements: While exercising the delegated powers, the AD Category I banks should ensure that:

i. The changes permitted are in conformity with the applicable ceilings / guidelines and the ECB continues to be in compliance with applicable guidelines. It should also be

ensured that if the ECB borrower has availed of credit facilities from the Indian banking system, including foreign branches/subsidiaries of Indian banks, any extension of tenure of ECB (whether matured or not) shall be subject to applicable prudential guidelines issued by Department of Banking Regulation of Reserve Bank including guidelines on restructuring.

ii. The changes in the terms and conditions of ECB allowed by the ADs under the powers delegated and / or changes approved by the Reserve Bank should be reported to the DSIM as given at paragraph 6.2 above. Further, these changes should also get reflected in the Form ECB 2 returns appropriately.

8. Special Dispensations under the ECB framework:

8.1 ECB facility for Oil Marketing Companies: Notwithstanding the provisions contained in paragraph 2.1 (viii), 2.1 (x) and 2.2 above, Public Sector Oil Marketing Companies (OMCs) can raise ECB for working capital purposes with minimum average maturity period of 3 years from all recognised lenders under the automatic route without mandatory hedging and individual limit requirements. The overall ceiling for such ECB shall be USD 10 billion or equivalent. However, OMCs should have a Board approved forex mark to market procedure and prudent risk management policy, for such ECB. All other provisions under the ECB framework will be applicable to such ECB.

8.2 ECB facility for Startups: AD Category-I banks are permitted to allow Startups to raise ECB under the automatic route as per the following framework:

i. Eligibility: An entity recognised as a Startup by the Central Government as on date of raising ECB.

ii. Maturity: Minimum average maturity period will be 3 years.

iii. Recognised lender: Lender / investor shall be a resident of a FATF compliant country. However, foreign branches/subsidiaries of Indian banks and overseas entity in which Indian entity has made overseas direct investment as per the extant Overseas Direct Investment Policy will not be considered as recognised lenders under this framework.

iv Forms: The borrowing can be in form of loans or non-convertible, optionally convertible or partially convertible preference shares.

v Currency: The borrowing should be denominated in any freely convertible currency or in Indian Rupees (INR) or a combination thereof. In case of borrowing in INR, the nonresident lender, should mobilise INR through swaps/outright sale undertaken through an AD Category-I bank in India.

vi Amount: The borrowing per Startup will be limited to USD 3 million or equivalent per financial year either in INR or any convertible foreign currency or a combination of both.

vii All-in-cost: Shall be mutually agreed between the borrower and the lender.

viii **End uses:** For any expenditure in connection with the business of the borrower.

ix **Conversion into equity:** Conversion into equity is freely permitted subject to Regulations applicable for foreign investment in Startups.

x **Security:** The choice of security to be provided to the lender is left to the borrowing entity. Security can be in the nature of movable, immovable, intangible assets (including patents, intellectual property rights), financial securities, etc. and shall comply with foreign direct investment / foreign portfolio investment / or any other norms applicable for foreign lenders / entities holding such securities. Further, issuance of corporate or personal guarantee is allowed. Guarantee issued by a nonresident(s) is allowed only if such parties qualify as lender under ECB for Startups. However, issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by Indian banks, all India Financial Institutions and NBFCs is not permitted.

xi **Hedging:** The overseas lender, in case of INR denominated ECB, will be eligible to hedge its INR exposure through permitted derivative products with AD Category – I banks in India. The lender can also access the domestic market through branches/ subsidiaries of Indian banks abroad or branches of foreign bank with Indian presence on a back to back basis.

Note: Startups raising ECB in foreign currency, whether having natural hedge or not, are exposed to currency risk due to exchange rate movements and hence are advised to ensure that they have an appropriate risk management policy to manage potential risk arising out of ECB.

xii **Conversion rate:** In case of borrowing in INR, the foreign currency - INR conversion will be at the market rate as on the date of agreement.

xiii **Other Provisions:** Other provisions like parking of ECB proceeds, reporting arrangements, powers delegated to AD banks, borrowing by entities under investigation, conversion of ECB into equity will be as included in the ECB framework. However, provisions on leverage ratio and ECB liability: Equity ratio will not be applicable. Further, the Start-ups as defined above [8.2. (i)] as well as other start-ups which do not comply with the aforesaid definition but are eligible to receive FDI, can also raise ECB under the general ECB route/framework.

9. **Borrowing by Entities under Investigation:** All entities against which investigation / adjudication / appeal by the law enforcing agencies for violation of any of the provisions of the Regulations under FEMA pending, may raise ECB as per the applicable norms, if they are otherwise eligible, notwithstanding the pending investigations / adjudications / appeals, without prejudice to the outcome of such investigations / adjudications / appeals. The borrowing entity shall inform about pendency of such investigation / adjudication / appeal to the AD Category-I bank / RBI as the case may be. Accordingly, in case of all applications where the borrowing entity has indicated about the pending investigations / adjudications /

appeals, the AD Category I Banks / Reserve Bank while approving the proposal shall intimate the agencies concerned by endorsing a copy of the approval letter.

10. ECB by entities under restructuring/ ECB facility for refinancing stressed assets:

10.1 An entity which is under a restructuring scheme/ corporate insolvency resolution process can raise ECB only if specifically permitted under the resolution plan.

10.2 [6]Eligible corporate borrowers who have availed Rupee loans domestically for capital expenditure in manufacturing and infrastructure sector and which have been classified as SMA-2 or NPA can avail ECB for repayment of these loans under any one time settlement with lenders. Lender banks are also permitted to sell, through assignment, such loans to eligible ECB lenders, provided, the resultant external commercial borrowing complies with all-in-cost, minimum average maturity period and other relevant norms of the ECB framework. Foreign branches/ overseas subsidiaries of Indian banks are not eligible to lend for the above purposes. The applicable MAMP will have to be strictly complied with under all circumstances.

10.3 Eligible borrowers under the ECB framework, who are participating in the Corporate Insolvency Resolution Process under Insolvency and Bankruptcy Code, 2016 as resolution applicants, can raise ECB from all recognised lenders, except foreign branches/subsidiaries of Indian banks, for repayment of Rupee term loans of the target company. Such ECB will be considered under the approval route, procedure of which is given at paragraph No. 5 above.

11. Dissemination of information: For providing greater transparency, information with regard to the name of the borrower, amount, purpose and maturity of ECB under both Automatic and Approval routes are put on the RBI's website, on a monthly basis, with a lag of one month to which it relates.

12. Compliance with the guidelines: The primary responsibility for ensuring that the borrowing is in compliance with the applicable guidelines is that of the borrower concerned. Any contravention of the applicable provisions of ECB guidelines will invite penal action under the FEMA. The designated AD Category I bank is also expected to ensure compliance with applicable ECB guidelines by their constituents.

CHAPTER 23: THE COMPETITION ACT, 2002

The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2019, 13th August, 2019

Vide notification no. F.No. CCI/CD/Amend/Comb. Regl./2019, the Competition Commission of India hereby makes the following regulations further to amend the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, namely:—

[6] Inserted vide A.P.(DIR Series) Circular No. 04 dated July 30, 2019.

(1) These regulations may be called the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2019 w.e.f**. 15th day of August, 2019**.

(2) In **regulation 5** of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, the following regulation shall be inserted, namely:-

"5A. Notice for approval of combinations under Green Channel.-

(1) For the category of combination mentioned in Schedule III, the parties to such combination may, at their option, give notice in Form I pursuant to regulation 5 along with the declaration specified in Schedule IV.

(2) Upon filing of a notice under sub-regulation (1) and acknowledgement thereof, the proposed combination shall be deemed to have been approved by the Commission under sub-section (1) of section 31 of the Act:

Provided that where the Commission finds that the combination does not fall under Schedule III and/or the declaration filed pursuant to sub-regulation (1) is incorrect, the notice given and the approval granted under this regulation shall be void *ab initio* and the Commission shall deal with the combination in accordance with the provisions contained in the Act:

Provided further that the Commission shall give to the parties to the combination an opportunity of being heard before arriving at a finding that the combination does not fall under Schedule III and/or the declaration filed pursuant to sub-regulation (1) is incorrect.";

(3) in **regulation 13,** of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, following are the amendments-

(a) for sub-regulation (1A), the following sub-regulation shall be substituted, namely: -

"(1A) A summary of the combination, not containing any confidential information, in not more than 1000 words, comprising details regarding: (a) name of the parties to the combination; (b) the nature and purpose of the combination; (c) the products, services and business(es) of the parties to the combination; and (d) the respective markets in which the parties to the combination operate, shall be filed for the purpose of publishing the same on the website of the Commission.";

(b) sub-regulation (1B) shall be omitted;

CHAPTER 25: PREVENTION OF MONEY LAUNDERING ACT, 2002

(I) Amendment in section 8 vide Finance Act, 2019, w.r.e.f. 20-3-2019.

Sub-section (3) dealing with the computation of period of attachment/retention of property / record seized / frozen during investigation, is amended as follows:

(3) 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 made under section 5(1) or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record 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 sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court.

Explanation.—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.

(II) Amendment in section 12 vide Aadhaar and Other Laws (Amendment) Act, 2019, w.e.f. 25-7-2019

Clause (c) & (d) of section 12(1) have been omitted by the Aadhaar and Other Laws (Amendment) Act, 2019, w.e.f. **25-7-2019**.

Prior to their omission, clauses (*c*) and (*d*) read as under:

"(c) verify the identity of its clients in such manner and subject to such conditions, as may be prescribed;

(d) identify the beneficial owner, if any, of such of its clients, as may be prescribed;"

(III) Insertion of Section 11A vide the Aadhaar and Other Laws (Amendment) Act, 2019, w.e.f. 25-7-2019

Verification of identity by reporting entity.

11A. (1) Every reporting entity shall verify the identity of its clients and the beneficial owner, by—

(a) authentication under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 if the reporting entity is a banking company; or

(b) offline verification under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016; or

(c) use of passport issued under section 4 of the Passports Act, 1967; or

(d) use of any other officially valid document or modes of identification as may be notified by the Central Government in this behalf:

Provided that the Central Government may, if satisfied that a reporting entity other than banking company, complies with such standards of privacy and security under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, and it is necessary and expedient to do so, by notification, permit such entity to perform authentication under clause (a):

Provided further that no notification under the first proviso shall be issued without consultation with the Unique Identification Authority of India established under sub-section (1) of section 11 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 and the appropriate regulator.

(2) If any reporting entity performs authentication under clause (a) of sub-section (1), to verify the identity of its client or the beneficial owner it shall make the other modes of identification under clauses (b), (c) and (d) of sub-section (1) also available to such client or the beneficial owner.

(3) The use of modes of identification under sub-section (1) shall be a voluntary choice of every client or beneficial owner who is sought to be identified and no client or beneficial owner shall be denied services for not having an Aadhaar number.

(4) If, for identification of a client or beneficial owner, authentication or offline verification under clause (a) or clause (b) of sub-section (1) is used, neither his core biometric information nor his Aadhaar number shall be stored.

(5) Nothing in this section shall prevent the Central Government from notifying additional safeguards on any reporting entity in respect of verification of the identity of its client or beneficial owner.

Explanation.—The expressions "Aadhaar number" and "core biometric information" shall have the same meanings as are respectively assigned to them in clauses (a) and (j) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.'.

PART – II: QUESTIONS AND ANSWERS

DIVISION A: CASE SCENARIO BASED MCQS/ INDEPENDENT MULTIPLE CHOICE QUESTIONS

Case scenario 1

Balfor Ltd., is an unlisted company, having total 70 members, with a paid up capital of ₹ 42 Lacs, having turnover of ₹ 200 crore, as per the audited financial statements for the year ended on 31st March, 2020.

5 members holding in total 4% stake in the company, met in person to discuss about the oppression and mismanagement going on in Balfor Ltd. and to do something about it. One of the members, Mr. Ravi, suggested that we five should file a joint class action application to the Tribunal to get a resolution in this matter, to which another member, Mr. Jay, told that he is in contact with 3 other members of the company, holding in total 3% stake, who are also finding the activities going on in the company to be unjust. So, five plus three other members i.e. 8 members in total, will be able to file an application to the Tribunal under Section 244 of the Companies Act, 2013.

The application of complaint for oppression and mismanagement was filed to the Tribunal on 4th June, 2020 with the consent of aforesaid 8 members of the company. The said application provided the details of an agreement made by Balfor Ltd. with Mr. Dev, a relative of director of Balfor Ltd., Mr. Raj, with respect to continuous supply of raw materials to Balfor Ltd., for which Mr. Raj, had received certain commission from Mr. Dev, in cash, for offering the contract to him. Also, another director, Mr. Jayesh, had improperly transferred a property of Balfor Ltd. on 6th March, 2020, to Mr. Prakash.

The Tribunal on receipt of such application, made an order, directing investigation into the affairs of Balfor Ltd. Also, the agreement made with Mr. Dev was ordered to be terminated after giving notice to Mr. Dev and obtaining his consent. However, no compensation was ordered to be paid to Mr. Dev for such cancellation of agreement. The contract with respect to property transferred by Mr. Jayesh was also ordered to be set aside, as it would have been deemed to be a fraudulent preference, in case such transaction was made by an individual in his insolvency.

Simultaneously, the Central Government ordered for the investigation into the affairs of Balfor Ltd., on receipt of the order from the Tribunal and the task of such investigation was assigned to the Serious Fraud Investigation Office. The Director of Serious Fraud Investigation Office, on getting such order from the Central Government, designated 3 inspectors for such investigation and soon, the investigation got started by the designated persons.

One of the Investigating officers, Mr. Vaibhav issued summons to 2 employees of Balfor Ltd., Mr. Karan and Mr. Arjun, respectively, as well as, to Mr. Daya, an employee of Kafor Ltd., an associate company of Balfor Ltd., after taking the requisite approvals.

The aforesaid persons attended at the place at which they were summoned by Mr. Vaibhav and were examined on oath, one after the other. During the said examination, Mr. Vaibhav, took

down notes in writing and he read over the notes taken by him, to all the persons examined, after the end of examination. After hearing the said notes, Mr. Karan and Mr. Arjun, signed the document on which such notes were written but Mr. Daya, refused to sign such document without any reasonable cause for the same, on the same day, but then he thought there would be no issue in signing and so he signed the same after 20 days.

Mr. Vaibhav, forwarded the notes taken by him to the Assistant Director of Serious Fraud Investigation Office, Mr. Ramanuj, and on the basis of such notes, he derived that Mr. Arjun has committed an offence under section 447 of the Companies Act, 2013 which Mr. Ramanuj reconfirmed with Mr. Vaibhav, via email.

Mr. Ramanuj, accordingly, passed an order for arrest of Mr. Arjun, after recording in writing the reasons for such arrest and he immediately forwarded the copy of order of such arrest to the concerned authority along with the document containing notes taken by Mr. Vaibhav at the time of examination of Mr. Arjun, which indicated that he has committed an offence under section 447 of the Companies Act, 2013.

Balfor Ltd., on coming to know of such arrest of Mr. Arjun, wanted to give termination to him and also wanted to demote Mr. Karan to position of junior assistant from his position of senior assistant in the company, during the pendency of investigation and for that purpose it made an application to the Tribunal for the same on 10th October, 2020.

In response to the said application from Balfor Ltd., the Tribunal passed an order on 26th October, 2020 allowing the termination to be given to Mr. Arjun but it objected to the decision of the company for reduction in rank of Mr. Karan from his current position, against which Balfor Ltd. filed an application with the Appellate Tribunal on 15th November, 2020.

Multiple Choice Questions

1. State in the light of the given facts, whether the five members holding in total 4% stake in Balfor Ltd., or the eight members, holding in total 7% stake in Balfor Ltd., were eligible for filing application for class action or/ and under section 244, respectively of the Companies Act, 2013?

   (a) For filing application for class action, 5 members were eligible and also for filing application u/s 244 of the Companies Act, 2013, 8 members were eligible.

   (b) For filing application for class action, 5 members were not eligible and also for filing application u/s 244 of the Companies Act, 2013, 8 members were not eligible.

   (c) For filing application for class action, 5 members were eligible but for filing application u/s 244 of the Companies Act, 2013, 8 members were not eligible.

   (d) For filing application for class action, 5 members were not eligible but for filing application u/s 244 of the Companies Act, 2013, 8 members were eligible.

2. Whether the decision of Tribunal can be considered as valid with respect to termination of agreement made by Balfor Ltd. with Mr. Dev as well as setting aside the contract of transfer of property, respectively?

   (a) The decision of tribunal for termination of agreement made by Balfor Ltd. with Mr. Dev can be considered as valid. Also, the decision of setting aside the contract of transfer of property, can be considered as valid as such transfer was made within 6 months before the date of making application to the tribunal.

   (b) The decision of tribunal for termination of agreement made by Balfor Ltd. with Mr. Dev cannot be considered as valid as no compensation was ordered to be paid to Mr. Dev. Also, the decision of setting aside the contract of transfer of property, cannot be considered as valid as such transfer was not made within 90 days before the date of making application to the tribunal.

   (c) The decision of tribunal for termination of agreement made by Balfor Ltd. with Mr. Dev can be considered as valid. Also, the decision of setting aside the contract of transfer of property, can be considered as valid as such transfer was made within 3 months before the date of making application to the tribunal.

   (d) The decision of tribunal for termination of agreement made by Balfor Ltd. with Mr. Dev cannot be considered as valid as no compensation was ordered to be paid to Mr. Dev. However, the decision of setting aside the contract of transfer of property, can be considered as valid as such transfer was made within 3 months before the date of making application to the tribunal.

3. Prior approval of which authority would have been sufficient for Mr. Vaibhav for examining Mr. Daya on oath, and how much maximum amount of fine could be levied on Mr. Daya for refusing to sign the document containing the notes taken down by Mr. Vaibhav?

   (a) Prior approval of Director of Serious Fraud Investigation Office would have been sufficient for Mr. Vaibhav and maximum amount of fine that could be levied on Mr. Daya is ₹ 1,00,000.

   (b) Prior approval of Central Government would have been sufficient for Mr. Vaibhav and maximum amount of fine that could be levied on Mr. Daya is ₹ 40,000.

   (c) Prior approval of Director of Serious Fraud Investigation Office would have been sufficient for Mr. Vaibhav and maximum amount of fine that could be levied on Mr. Daya is ₹ 1,40,000.

   (d) Prior approval of Central Government would have been sufficient for Mr. Vaibhav and no fine that could be levied on Mr. Daya as he has signed the said document within 30 days of being examined on oath.

4. Whether Mr. Ramanuj was having the authority to exercise power to make an order of arrest of Mr. Arjun on the basis of notes of examination received from Mr. Vaibhav and to which authority, Mr. Ramanuj would have forwarded the copy of arrest order along with the document containing notes?

   (a) No, as such notes can't be considered as a material or evidence in his possession to be used against Mr. Arjun and Mr. Ramanuj would have forwarded the copy of arrest order along with the document containing notes to the Serious Fraud Investigation Office.

   (b) Yes, as such notes constitute valid evidence to be used against Mr. Arjun and Mr. Ramanuj would have forwarded the copy of arrest order along with the document containing notes to the Central Government.

   (c) No, as such notes can't be considered as a material or evidence in Mr. Ramanuj's possession to be used against Mr. Arjun and Mr. Ramanuj would have forwarded the copy of arrest order along with the document containing notes to NCLT.

   (d) Yes, as such notes constitute valid evidence to be used against Mr. Arjun and Mr. Ramanuj would have forwarded the copy of arrest order along with the document containing notes to the Serious Fraud Investigation Office.

5. What was the last date available with Tribunal to give response to the application made by Balfor Ltd. with respect to its employees as well as with Balfor Ltd. to file appeal with the Appellate Tribunal?

   (a) 10th November, 2020 and 26th November, 2020, respectively.

   (b) 9th November, 2020 and 25th November, 2020, respectively.

   (c) 10th November, 2020 and 25th December, 2020, respectively.

   (d) 9th November, 2020 and 26th November, 2020, respectively.

Case scenario 2

Shri Hari Textiles Limited was incorporated in the year 2010. Its Registered Office is situated in Connaught Place, New Delhi. It has filed its audited annual financial statements for the financial year 2019-20 well within time with the jurisdictional Registrar of Companies. The Registrar inspected the statements and after reviewing them, felt the need to seek clarifications on certain matters. Accordingly, a written notice was sent by the Registrar to the company and its officials directing them to comply with the notice within thirty days of its receipt. However, the company and its officials failed to reply within the time specified in the notice.

The Registrar initiated the inquiry and proceeded further for inspecting all the documents of the company. While conducting the inquiry, the Registrar on prudent grounds believed that some of the documents and other vital information in relation to the company would be destroyed or altered by the official of the company. With a view to safeguard the documents, the Registrar obtained an order from the Special Court and thereafter, seized all such material.

While inspecting some of the documents, the Registrar came to know that the Board of Directors had passed a resolution in a Board Meeting held on 10-04-2019 and thereby, increased the remuneration payable to the directors including two whole-time directors and Managing Director to 12% of the net profits of the company which was a sharp increase of 5% from the preceding financial year.

Prior to the inquiry, two directors of the company, namely, Mr. X and Mr. D got retired. The Registrar found from the inspection of the documents that they were involved in certain dealings which included selling of the assets of the company. On the basis of such information gathered from the inspected documents, the Registrar sought some clarifications from both of them regarding the dubious transactions. However, both Mr. X and Mr. D refused to appear before him showing their non-availability in the town and also represented through a common representative that they were no more a part of the Board of Directors of Shri Hari Textiles Limited.

After the completion of inspection and inquiry, the Registrar submitted a written report to the Central Government in respect of his findings against the company. The reports mentioned that there were major discrepancies in the assets and liabilities as well as profit and loss statements filed by the company.

On receipt of report from the Registrar, the Central Government considered it necessary to investigate the affairs of the company by the Serious Fraud Investigation Office (SFIO). Accordingly, by an order, SFIO was directed to conduct the investigation of Shri Hari Textiles Limited and submit its report within the stipulated time. As instructed by the Central Government, SFIO authorised some of its inspectors to investigate the affairs of the company. The team deputed by the SFIO included experts in the field of cost accounting, financial accounting, taxation, law and forensic auditing.

While inspecting the company, the team of SFIO came to know that the Income-tax authorities had already initiated investigation against Shri Hari Textiles Limited.

Multiple Choice Questions

6. Shri Hari Textiles Limited and its officials failed to submit any reply to the written notice issued by the Registrar within the time specified in the notice. How much fine can be imposed for such failure?

   (a) The Company and every defaulting officer shall be punishable with a fine up to ₹ 1,00,000 and in case of continuing failure, with an additional fine up to ₹ 500 for every day after the first during which the failure continues.

   (b) The Company and every defaulting officer shall be punishable with a fine up to ₹ 1,50,000 and in case of continuing failure, with an additional fine up to ₹ 1,000 for every day after the first during which the failure continues.

   (c) The Company and every defaulting officer shall be punishable with a fine up to ₹ 1,00,000 and in case of continuing failure, with an additional fine up to ₹ 5,000 for every day after the first during which the failure continues.

(d) The Company and every defaulting officer shall be punishable with a fine up to ₹ 2,00,000 and in case of continuing failure, with an additional fine up to ₹ 5,000 for every day after the first during which the failure continues.

7. From the case scenario, it is observed that the Registrar seized certain important documents in the course of inquiry. After inspection what procedure is to followed pertaining to such documents?

(a) The Registrar is required to submit such documents in the Special Court which permitted seizure.

(b) The Registrar is required to forward all such documents along with the inquiry report to the Central Government.

(c) The Registrar is required to return such documents back to the company after making, if considered necessary, the copies of them.

(d) The Registrar is required to retain such documents until further instruction is received from the Special Court.

8. What is the requisite requirement for increasing the remuneration of directors including whole-time directors and Managing Director to 12% so that it shall be in accordance with the relevant provisions of the Companies, Act, 2013?

(a) Board Resolution increasing the remuneration to 12% needs to be authorised at the General Meeting and thereafter, duly sanctioned by the ROC.

(b) Board Resolution increasing the remuneration to 12% needs to be authorised at the General Meeting and thereafter, duly sanctioned by the Tribunal.

(c) Board Resolution increasing the remuneration to 12% needs to be authorised at the General Meeting subject to Schedule V.

(d) Board Resolution increasing the remuneration to 12% needs to be authorised at the General Meeting and thereafter, duly sanctioned by the Central Government through Regional Director.

9. The case scenario states that the Registrar of Companies had called ex-directors of the company for examining them during the inquiry. Is the Registrar empowered to call the ex-directors:

(a) The Registrar cannot call ex-directors of the company, without the order of the court.

(b) The Registrar may, by issuing a written notice, call the ex-directors for seeking the requisite information.

(c) In case the Registrar is appointed by the Central Government to conduct investigation, then only he can call ex-directors of the company.

(d) Except the Tribunal, no other authority is empowered to call ex-directors of a company for any examination.

10. According to the case scenario, while inspecting the company, the team of SFIO came to know that the Income-tax authorities had already initiated investigation against the company. From the given options, choose the correct one that indicates as to how amidst such a situation SFIO will be continuing with the investigation.

    (a) SFIO has to put its investigation on hold so long as the company is being investigated by Income-tax authorities.

    (b) SFIO will proceed with its investigation on the basis of report submitted by Income-tax authorities.

    (c) SFIO will proceed with its investigation while Income-tax authorities shall keep on hold its investigation.

    (d) SFIO will simultaneously continue its investigation along with the Income-tax authorities.

INDEPENDENT MCQS [Questions 11-22]

11. ABC Ltd. incorporated in India want to register as an ARC to commence the business of asset reconstruction. The company made all the arrangement required for the realisation of the financial assets acquired for the purpose of reconstruction of the assets and shall be able to pay periodical returns on respective due dates on the investments made in the company. The directors are well qualified and had nearly 25 years of experience in finance, 10 years of experience in reconstruction and securitisation of assets. The company has also complied with all the requirement of regulations and guidelines issued by Reserve Bank of India. The details of the profits made during the past 3 years are 2016-17 ₹ 200 Cr. (Loss), 2017-2018 ₹ 500 Cr. (Profit), 2018-2019 ₹ 700Cr. (Profit).

    (a) The ARC can be registered and certificate be issued by RBI, but RBI may not prescribe any further conditions.

    (b) The ARC can be registered and certificate be issued by RBI, but RBI may prescribe any further conditions.

    (c) The ARC registration cannot be made.

    (d) RBI has no power to register ARC, as ARC's are governed by SARFAESI Act, 2002.

12. Proceedings under Prevention of Money Laundering Act, 2002 were initiated against Mr. Suraj. Through an order, property of Mr. Suraj has been attached under section 8. Mr. Suraj preferred an appeal to the Appellate Tribunal. Mr. Suraj is adjudicated an insolvent during the pendency of the appeal. What will happen to the proceedings initiated under PMLA in the given case?

    (a) Proceedings will be dispensed with

    (b) His legal representatives will continue proceedings before the Appellate Tribunal

(c) The official assignee or the official receiver, as the case may be, continue the appeal before the Appellate Tribunal.

(d) Creditors will continue the proceedings before the Appellate Tribunal

13. Who shall determine the amount of claim due to a creditor?

(a) Committee of creditors

(b) Resolution professional.

(c) Adjudicating Authority.

(d) Corporate debtor.

14. Can an Adjudicating Authority order the liquidation of a corporate debtor even after approving the resolution plan:

(a) Yes, if the resolution plan is contravened.

(b) The Adjudicating Authority may order the liquidation of a corporate debtor even after approving the resolution plan on receiving an application from a third party who is unaffected by such liquidation

(c) Yes, the Adjudicating Authority may order for the liquidation of a corporate debtor if the committee of creditor does not approve the resolution plan after its approval by the Adjudicating Authority

(d) No, the Adjudicating Authority cannot order the liquidation of a corporate debtor after approving the resolution plan.

15. What is the periodicity of submission of report by company liquidator with respect to the progress of winding up of the company to the Tribunal:

(a) Monthly

(b) Bi-monthly

(c) Quarterly

(d) Half yearly

16. Mr. X, a resident of India planned a tour of 15 days to visit Paris to meet his niece living there. While returning to India, Mr. X was carrying with him INR 30,000. Her niece told him that limit is marked on bringing Indian currency notes at the time of return to India. Identify the correct limit:

(a) INR 2000

(b) INR 5000

(c) INR 10,000

(d) INR 25,000

17. In the case of financing of a financial asset by more than one secured creditors, there secured creditor shall be entitled to exercise any of the rights conferred on him is agreed upon by the secured creditors representing ---------in order to make such an action binding on all the secured creditors.

(a) Less 70% in value of the amount outstanding as on a record date

(b) Not less than 60% in value of the amount outstanding as on a record date

(c) At least 75% in value of the amount outstanding as on a record date

(d) Not less than 75% in value of the amount outstanding as on a record date

Descriptive Questions [Questions 18- 26]

18. Dharma Ltd. in the light of prospective developments in the infrastructure of company decided to have borrowing on long term basis from financial Institutions. In the Board Meeting held on 15th September, 2020, following proposal of borrowing ₹ 2,00,00,000 from Financial institutions on long-term basis was presented for consideration. As per the given information, in the light of relevant provisions of the Companies Act, 2013, examine the eligibility of the amount up to which the Board can borrow from Financial institution and state on the validity of the said proposal.

Following were the Balance Sheets of last three years of Dharma Ltd., containing following facts and figure of financial information:

Particulars	As at 31.03.2018 ₹	As at 31.03.2019 ₹	As at 31.03.2020 ₹
Paid up capital	60,00,000	60,00,000	85,00,000
General Reserve	50,00,000	52,50,000	60,00,000
Credit Balance in Profit & Loss Account	6,00,000	8,50,000	20,00,000
Securities Premium	3,00,000	3,00,000	3,00,000
Secured Loans	20,00,000	25,00,000	40,00,000

19. Mr. Shariff who was a Key Managerial Personal (Manager) of XYZ Ltd. retired on 12th May 2020. On examination of the final accounts of the company for the year ended on 31st March 2020, 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. Shariff. In the light of the Companies Act, 2013,

examine the situation and advice on the act of Registrar seeking explanation from Mr. Shariff.

20. One-fourth of the subscribed capital of AMC Limited was held by the Government of Rajasthan. Mr. Neeraj, a Chartered Accountant, was appointed as an auditor of the Company at the Annual General Meeting held on 30 April, 2019 by an ordinary resolution. Mr. Sanjay, a shareholder of the Company, objects to the manner of appointment of Mr. Neeraj on the ground of violation of the Companies Act, 2013. Decide whether the objection of Mr. Sanjay is tenable? Also examine the consequences of the above appointment under the said Act.

21. Mr. Ingenious, who is 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.

22. A foreign tourist comes to India and he purchases an antique from a shop. He would like to pay US$ 30 to the shopkeeper. Comment in the light of the FEMA, whether shopkeeper is permitted to accept foreign currency?

23. Comment upon nature of offence committed under the Prevention of Money Laundering Act? In the case, a spouse sold their property in 1.75 crore to Mr. Y. In lieu of the sale, they obtained amount 1 crore through RTGS in his account and rest amount of 75 lakh in cash which he transferred to wife's offshore bank account. Examine the liability of the spouse in the given case in the light of the PMLA, 2002. Also state whether they will be liable to be released on bail.

24. XYZ Limited is an unlisted company having a paid-up share capital of twenty crore rupees as on 31st March, 2020 and a turnover of one hundred fifty crore rupees during the year ended 31st March, 2020. 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?

25. Examine with reference to the relevant provisions of the Competition Act, 2002 the following:

    (i) Whether a Government Department supplying water for irrigation to the Agriculturists after levying charges for water supplied (and not a water tax) can be considered as an 'Enterprise'.

    (ii) Whether a person purchasing goods not for personal use, but for resale can be considered as a 'consumer.'

26. The Board of Directors of Future Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board passed a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

    Examining the provisions of the Companies Act, 2013, state whether the act of directors is in violation of the provisions of the Act and if so, state the consequences that shall follow for the above violative act.

SUGGESTED ANSWER

DIVISION A: CASE SCENARIO BASED MCQS/ INDEPENDENT MULTIPLE CHOICE QUESTIONS

Answers Keys to MCQs

Question No.	Answer
1.	(a)
2.	(c)
3.	(c)
4.	(d)
5.	(b)
6.	(a)
7.	(c)
8.	(c)
9.	(b)
10.	(c)
11.	(c)
12.	(c)
13.	(b)
14.	(a)
15.	(c)
16.	(d)
17.	(b)

DIV B: Descriptive Questions [Questions 18- 26]

18. **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 taken in a meeting held on 15th September, 2020, the figures relevant for this purpose are the figures as per the Balance Sheet as at 31.03.2020. According to the above provisions, the eligibility of Board of Directors of Dharma Ltd. to borrow up to an amount is calculated as follows:

Particulars	₹
Paid up Capital	85,00,000
General Reserve (being free reserve)	60,00,000
Credit Balance in Profit & Loss Account (to be treated as free reserve)	20,00,000
Securities Premium	3,00,000
Aggregate of paid-up capital, free reserves and securities premium	1,68,00,000
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	1,68,00,000
Less: Amount already borrowed as secured loans	40,00,000
Amount up to which the Board of Directors can further borrow	1,28,00,000

Dharma Ltd. is entitled to borrow ₹1,28,00,000 through board of directors. As in the given case, proposal of borrowing was ₹ 2,00,00,000 which is more than eligibility to borrow, therefore, Dharma Ltd, have to seek approval of shareholders in general meeting. As the proposal of borrowing ₹ 2,00,00,000 from Financial institutions on long-term basis was presented for consideration in Board Meeting without approval of shareholders in general meeting, therefore said proposal is invalid.

19. 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. Shariff, the ex-manager of the company can be called upon for such information/explanation which was related to their period of service.

20. As per Section 2(45) of the Companies Act, 2013, the holding of 25% shares of AMC Ltd. by the Government of Rajasthan does not make it a government company. Hence, it will be treated as a non-government company.

Under section 139 of the Companies Act, 2013, the appointment of an auditor by a company vests generally with the members of the company except in the case of the first auditors and in the filling up of the casual vacancy not caused by the resignation of the auditor, in which case, the power to appoint the auditor vests with the Board of Directors. The appointment by the members is by way of an ordinary resolution only and no exceptions have been made in the Act whereby a special resolution is required for the appointment of the auditors.

Therefore, the contention of Mr. Sanjay is not tenable. The appointment is valid under the Companies Act, 2013.

21. **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 enter 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. Ingenious has been penalised under the above mentioned provision. Two remedies are available to Mr. Ingenious in this matter:-

(i) **Appeal to the Securities Appellate Tribunal:** Section 15T of the SEBI Act, states that 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.

22. As per section 3 of the FEMA, save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall receive otherwise than through an authorised person, any payment by order or on behalf of any person resident outside India in any manner.

Where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorised person.

Here, in the given case, the foreign tourist wanted to pay foreign currency in cash on purchase of antiques to shopkeeper which as per section 3, is not permissible to any person to receive any payment by order or on behalf of any person resident outside India in any manner except received through an authorised person. Therefore, the Shopkeeper cannot accept cash as it will be a receipt otherwise than through Authorised Person except where the shopkeeper have taken a money changers license to accept foreign currency.

23. Nature of offence committed under the Act: Section 45 of the PMLA, 2002, provides that the offences under the Act shall be cognizable and non-bailable. Person accused of an offence under this Act shall not 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.

Exceptions: 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 Special Court so directs.

As per the said section the spouse is liable for commission of an offence of money laundering by transferring an unaccounted money obtained through sale of their property to an offshore bank account of his wife with an intent to evade tax. As the husband and his wife, i.e., the spouse jointly acted in the commission of the act of money-laundering of a sum less than one crore rupees, so the wife may be released on bail, if the Special Court so directs. Whereas the Husband shall be released on bail on his own bond only on compliance with stated provision.

24. (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:

(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 company having a paid-up capital of ₹ 20 crores as on 31st March, 2020 and a turnover of ₹ 150 crores during the year ended 31st March, 2020. 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 atleast 5 directors (1/3 of 13 is 4.33 rounded as 5) as independent directors.

25. **Enterprise:** The term 'enterprise' is defined in section 2(h) of Competition Act, 2002. Accordingly, 'enterprise' means a person or a department of the Government, who or which is engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services of any kind. But the term does not include any activity of the Government relatable to sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

Certain specific activities of Government departments like dealing with atomic energy, etc. and sovereign functions of the Government (like police, defence, etc.) are excluded from the purview of the said terms. Hence, a Government department engaged in the activity of providing service in the form of supply of water for irrigation to the agriculturists after levying charges can be considered as an 'enterprise' within the meaning of section 2(h) of Competition Act, 2002.

Consumer: The term 'consumer' is defined in section 2(f) of Competition Act, 2002. Accordingly, 'consumer' means any person who buys any goods for a consideration, which has been paid or promised or partly paid and partly promised, whether such purchase of goods is for resale or for any commercial purpose or for personal use.

Hence, it is not necessary that a person must purchase the goods for personal use in order to be considered as a 'consumer' under Competition Act, 2002. Even a person purchasing goods for resale or for any commercial purpose will also be considered as a 'consumer' within the meaning of Section 2(f) of Competition Act, 2002.

26. According to Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

Further, according to Section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any entitled shareholder, every director of the company shall, if he is knowingly a party to the default, be liable for punishment.

In the present case, the Board of Directors of Future Fashions Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. Thereafter, the directors at another meeting of the Board decided by passing a board resolution for diverting the total dividend to be paid to the shareholders for purchase of certain short-term investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

1. Since, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.
2. The Board of Directors of Future Fashions Limited has violated section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to its decision to divert the total dividend to be paid to shareholders for purchase of certain short-term investments in the name of the company.

Consequences: The following are the consequences for violation of the above provisions:

(a) Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of two years and shall also be liable for a minimum fine of rupees one thousand for every day during which such default continues.

(b) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.