



Paper 13- Corporate Laws and Compliance

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Full Marks: 100

Time allowed:3 hours

Section A

1. Answer all questions mentioned below. Mark the correct answer (only indicate A or B or C or D) and give justification. [2 × 10 = 20]

Multiple choice question

- (i) According to Section 35 of the 1956 Act, a Certificate of Incorporation given by the Registrar in respect of any association shall be _____.
- (a) conclusive evidence
 - (b) conclusive evidence
 - (c) conclusive evidence
 - (d) None of the above
- (ii) The Companies Act, 2013 specified 'Small Shareholder' as a shareholder holding shares of nominal value of not more than:
- (a) Rs. 15,000
 - (b) Rs. 20,000
 - (c) Rs. 25,000
 - (d) Rs. 30,000
- (iii) The trustee for depositors shall call a meeting of all the depositors on:
- (a) requisition in writing signed by at least one-tenth of the depositors in value for the time being outstanding.
 - (b) the happening of any event, which constitutes a default or which, in the opinion of the trustee for depositors, affects the interest of the depositors.
 - (c) Both (a) and (b)
 - (d) None of the above
- (iv) Payment of Commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian Company is
- (a) Permissible
 - (b) Prohibited
 - (c) Forwarded
 - (d) Restricted
- (v) The process of money laundering generally involves three stages. Which is the second stage?
- (a) Placement
 - (b) Layering
 - (c) Integration

(d)Contribution

(vi)A minor can be nominated as a nominee in Life Insurance Policy by its

- (a)Drawer
- (b)Agent
- (c)Holder
- (d)Corporation

(vii) Which of the following is not the type of unfair competition?

- (a)Collusive price fixing
- (b)Creation of barriers to entry
- (c)Tie in purchase
- (d)Predatory pricing

(viii)Internal Auditor shall be _____.

- (a) a chartered accountant
- (b) a cost accountant
- (c) such other professional as may be decided by the Board to conduct internal audit of the functions
- (d) All of the above

(ix)According to Section 2 (49) of the Companies Act, 2013 ' _____ ' means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company.

- (a) Interested director
- (b) Independent director
- (c) Corporate director
- (d) Managing director

(x) The Chairman of the Insurance Regulatory and Development Authority shall hold office for a term of _____ from the date on which he enters upon his office and should be eligible for reappointment.

- (a)3 years
- (b)4 years
- (c)5 years
- (d)6 years

Answer:1

(i)	a	As per Companies Act, Certificate may be considered as Conclusive Evidence. The Certificate of Incorporation is conclusive evidence that everything is in order as regards registration and that the company has come in to existence from the earliest moment of the day of incorporation
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		stated therein with rights & liabilities of a natural person, competent to enter into contracts [Jubilee Cotton Mills Ltd. v. Lewis (1924) A.C. 958.]
(ii)	b	According to Section 151 of the Companies Act, 2013, "small shareholder" means a shareholder holding shares of nominal value of not more than Rs 20,000 or such other sum as may be prescribed, hence, answer is (ii).
(iii)	c	Since the trustees are duty bound to take care of the interest of the deposit holders, they may call a meeting of the deposit holder on their requisition. In case default, the meeting also needs to be called.
(iv)	b	According to the rules, drawal of foreign exchange for certain transactions are prohibited. In respect of certain transactions drawal of foreign exchange is permissible with the prior approval of Central Government. Payment of Commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian Company is prohibited.
(v)	b	Layering is the second stage of money laundering
(vi)	c	A minor can be nominated as a nominee in life insurance policy by its holder.
(vii)	c	Tie in purchase is not the type of unfair competition.
(viii)	d	As per section 2(40) of the Companies Act, 2013, an Internal Auditor shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company. Here, the term Chartered Accountant shall mean a Chartered Accountant whether engaged in practice or not.
(ix)	a	This definition is given in section 2 (49) of the Companies Act, 2013.
(x)	c	The Chairman of the Insurance Regulatory and Development Authority shall hold office for a term of five years from the date on which he enters upon his office and should be eligible for reappointment. Maximum age of Chairman to be 65 year: [First Proviso to section 5(1)]. No person shall hold office as such Chairman after he has attained the age of 65 years.

Section B

Answer any Five Question [16 X 5 =80]

- 2. (a)(i)** Explain the procedure for conversion of LLPs into Private or Public Limited Companies **5**
- (ii)** BET Ltd. incurred loss in business up to current quarter of financial year 2017-18. The company has declared dividend at the rate of 11%, 16% and 18% respectively in the immediate preceding three years. In spite of the loss, the Board of Directors of the company have decided to declare interim dividend @ 15% for the current financial year. Examine the decision of BET Ltd. stating the provisions of declaration of interim dividend under the Companies Act, 2013. **3**
- (b)** Can any Board of Directors of a company pass some resolutions through circulation? If yes, what are the Provisions and Rules in connection to it. **8**

Answer: 2(a)(i)

The LLP Act, 2008 does not provide any facility for conversion of a LLP into a private limited company. As per Section 366 of the Companies Act, 2013 the 'company' includes any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force which applied for registration of companies. However, the Companies Act, 2013, provides for registration of LLP as a Company. The Government of India have framed the Companies (Authorised to Register) Rules, 2014 and the LLP could be converted into a Public or Private company in accordance with those rules.

Such LLPs should have seven or more partners on the date of conversion.

The Act further states that, on conversion of a firm/private company/ unlisted public company into LLP, any approval, permit or license issued to the firm/private company/unlisted company under any other Act shall, subject to the provisions of such other Act under which such approval, permit or license was issued, be transferred in the name of converted entity viz., LLP. Since Stamp Duty is the subject reserved for the States, the LLP Act does not contain any provision for treatment of stamp duty issues. The stamp duty payable will depend upon the relevant Stamp Act prescribed by the State Government/ Union Territory.

(ii) Interim Dividend: According to section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

However, in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

In the instant case, interim dividend by BET Ltd. shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years [i.e. $(11+16+18)/3=45/3=15\%$]. Therefore, decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable.

(b) Yes

Passing of resolution by circulation (Section 175)

The Act requires certain business to be approved only at meetings of the Board. However, other business that require urgent decisions can be approved by means of Resolution passed by circulation. Resolution passed by circulation shall be deemed to be passed at a duly convened Meeting of the Board and have equal authority.

Section 175 of the Act provides for Passing of resolution by circulation. According to this section:

(a) The Act allows the Board of directors to pass resolution by circulation also. No resolution shall be deemed to have been duly passed by the Board or by a Committee thereof by circulation unless:

- (1) The resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or members of the Committee, as the case may be,
- (2) at their addresses registered with the company in India,
- (3) by hand delivery or by post or by courier, or through such electronic means as may be prescribed, and has been approved by a majority of the directors or members, who are entitled to vote on the resolution.

If at least 1/3rd of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.

(b) A resolution that has been passed by circulation shall have to be necessarily be noted in the next meeting of board or the committee, as the case may be, and made part of the minutes of such meeting.

(c) According to Secretarial Standards, not more than seven days from the date of circulation

of draft resolution shall be given to the Directors to respond.

- 3(a)(i) Write a short note on Insolvency Professional Agencies. 3**
(ii) Assets which will not form part of liquidation assets as per Insolvency and Bankruptcy Code, 2016 5
(b) How can the directors be removed from the office before expiry of their term? 8

Answer: 3(a)(i)

Insolvency Professional Agencies

Work relating to insolvency resolution is expected to be handled by 'Insolvency Professionals'. These professionals are required to be registered with 'Insolvency Professional Agency'. "Insolvency Professional Agency" means any person registered with the Board under Section 201 of Insolvency and Bankruptcy Code, 2016 as an insolvency professional agency - Section 3(20) of Insolvency and Bankruptcy Code, 2016. The Insolvency Professional Agencies will develop professional standards, code of ethics and be first level regulator for insolvency professional members. This will lead to development of a competitive industry for such professionals.

(ii) Assets which will not form part of liquidation assets –

As per Section 36(4) of Insolvency and Bankruptcy Code, 2016, the following shall not be included in the liquidation estate assets. These shall not be used for recovery in the liquidation. (a) assets owned by a third party which are in possession of the corporate debtor, including - (i) assets held in trust for any third party (ii) bailment contracts (iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund (iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets and (v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator. (b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions. (c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter. (d) assets of any Indian or foreign subsidiary of the corporate debtor, or (e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

3(b) Section 169 of the Companies Act, 2013 came into force partially 4 from 1st April, 2014 which provides the provisions for removal of directors. According to this section:

(i) A company may, by ordinary resolution, remove a director other than a director appointed by the Tribunal under section 242 of the Act, before the expiry of the period of his office after giving him a reasonable opportunity of being heard. [Section 169(1)]. Independent director appointed for the second term can be removed by the special resolution.

(ii) It is further provided that the directors appointed on the principle of proportional representation under section 163 cannot be removed by an ordinary resolution as aforesaid. {Proviso to section 169(1)}.

(iii) A special notice shall be required of any resolution, to remove a director under section 169 or to appoint somebody in place of a director so removed, at the meeting at which he is removed. [Section 169 (2)].

(iv) On receipt of the notice of a resolution to remove a director under section 169, the

company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting. [Section 169(3)].

(v)The vacancy resulting from the aforesaid removal if he had been appointed by the company in general meeting or by the Board, may be filled in by the appointment of another director at the same meeting at which the director is removed, provided special notice of the proposed appointment has been given under section 169(2). [Section 169(5)].

(vi)A director so appointed shall hold office for the remaining period for which the director who has been removed would have held office if he had not been removed. [Section 169(6)].

(vii)If the vacancy is not filled in the same meeting as above, then it may be filled as a casual vacancy in accordance with the provisions of this Act provided that the director who was so removed from office shall not be reappointed as a director. [Section 169(7)].

(viii)Nothing in this section shall be taken to deprive a person removed under this section of his rights to compensation or damages payable to him in respect of the premature termination of the directorship, or terms of his appointment as director or of any appointment terminating with that as a director.[Section 169(8)(a)].

(ix)Nothing in this section shall be derogating from any power to remove a director under any other provisions of this Act. [Section 169(8)(b)]

4(a) Discuss the powers of Central Government to Provide for amalgamation in the public interest. 8

(b)Explain the term of office of President,Chairperson and Members of the NCLT and NCLAT. 8

Answer: 4(a)

Section 237 (1) states that when the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution, with such property, powers, rights, interests, authorities and privileges, and with such liabilities, duties and obligations, as may be specified in the order.

Continuation of legal proceedings Section 237 (2) states that the order under Sub-Section (1) may also provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company and such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation.

Interest or rights of members, creditors, debenture holders not to be affected As per Section 237 (3), every member or creditor, including a debenture holder, of each of the transferor companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the transferee company as he had in the company of which he was originally a member or creditor, and in case the interest or rights of such member or creditor in or against the transferee company are less than his interest in or rights against the original company, he shall be entitled to compensation to that extent, which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the Official Gazette, and the compensation so assessed shall be paid to the member or creditor concerned by the

transferee company.

4(b) Section 413 of the Act contains the provisions as to Term of office of President, Chairperson and other Members NCLT and NCLAT. According to this Section:

(a) The President and every other Member of the Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of five years.

(b) A Member of the Tribunal shall hold office as such until he attains:

(1) the age of sixty seven years (in the case of the President).

(2) the age of sixty five years (in the case of any other Member). Provided that a person who has not completed fifty years of age shall not be eligible for appointment as Member.

Provided further that the Member may retain his lien with his parent cadre or Ministry or Department, as the case may be, while holding office as such for a period not exceeding one year.

(c) The chairperson or a Member of the Appellate Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of five years.

(d) A Member of the Appellate Tribunal shall hold office as such until he attains:

(1) the age of seventy years (in the case of the Chairperson).

(2) the age of sixty seven years (in the case of any other Member).

Provided that a person who has not completed fifty years of age shall not be eligible for appointment as Member. Provided further that the Member may retain his lien with his parent cadre or Ministry or Department, as the case may be, while holding office as such for a period not exceeding one year.

5(a) Discuss the provisions as to Prohibition of Manipulative and Deceptive Devices, Insider Trading and Substantial Acquisition of Securities or Control under SEBI Act, 1992. 8

(b) Explain the provisions as to Prohibition of certain agreements under Chapter II of Competition Act, 2002 8

Answer: 5(a)

Securities and Exchange Board of India has prohibited insider trading, substantial acquisition of securities or control. Insider trading can be defined as securities trading by insiders based on material non-public information in violation of a fiduciary or similar duty of trust and confidence to the company issuing the security to the company's shareholders or to the source of information. The main benefit of the insider trading goes to the insider. An insider can be the directors, officers, shareholders holding substantial number of shares, persons who are not employed by the corporation but receive confidential information from a corporation while providing services to the corporation like professional advisors, lawyers, investment bankers. In other words, the knowledge of unpublished price sensitive information in hands of persons connected to the companies which put them in an advantageous position over others who lack it, such information can be used to make gains by buying shares at a cheaper rate anticipating that it might rise and it can be used to insulate themselves against losses by selling shares before the prices fall down, such kind of transaction entered into by persons having access to any unpublished information is called Insider Trading.

Consequently, SEBI banned insider trading and laid down the SEBI (Prohibition of Insider Trading) Regulation 1992. With a view to do away with the lacunae and inadequacies of the 1992 Regulations, SEBI has revamped the entire framework governing insider trading in India. Recently, SEBI (Prohibition of Insider Trading) Regulations, 2015 were notified vide notification dated 15th January, 2015. The regulations came into effect from May 15th, 2015.

Similarly, substantial acquisition of shares and take-overs has also been prohibited by SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

Section 12A of the Act provides that: No person shall directly or indirectly:

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made there under.

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange.

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made there under.

(d) engage in insider trading.

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made there under.

(f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act.

5(b) Prohibition of certain agreements

(a) Chapter II of the Competition Act, 2002 deals with Prohibition of certain Agreements along with Abuse of Dominant Position and Regulation of Combinations.

An anti-competitive agreement is an agreement having appreciable adverse effect on competition. Anti-competitive agreements include, but are not limited to:

- (1) agreement to limit production and/or supply.
- (2) agreement to allocate markets.
- (3) agreement to fix price.
- (4) bid rigging or collusive bidding.
- (5) conditional purchase/sale (tie-in arrangement).
- (6) exclusive supply/distribution arrangement.
- (7) resale price maintenance. and
- (8) refusal to deal.

(b) Section 3(1) of the Competition Act provides that no enterprise or association of enterprises

or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition. Section 3(2) further declares that any anti-competitive agreement within the meaning of sub-Section 3(1) shall be void. Under the law, the whole agreement is construed as void if it contains anti-competitive clauses having appreciable adverse effect on competition. Section 3(3) provides that following kinds of agreements entered into between enterprises or association of enterprises or persons or associations of persons or person or enterprise or practice carried on, or decision taken by any association of enterprises or association of persons, including cartels, engaged in identical or similar goods or services which:

- (1) directly or indirectly determines purchase or sale prices.
- (2) limits or controls production, supply, markets, technical development, investment or provision of services.
- (3) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way, and
- (4) directly or indirectly results in bid rigging or collusive bidding. shall be presumed to have an appreciable adverse effect on the competition and onus to prove otherwise lies on the defendant. The explanation appended to the Section 3 defines the term 'bid rigging' as any agreement between enterprises or persons which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding. Efficiency enhancing joint ventures entered into by parties engaged in identical or similar goods or services, shall not be presumed to have appreciable adverse effect on competition but judged by rule of reason. The term 'cartel' used in the Section is the most severe form of entering into 'anti competitive agreements' and has been defined in Section 2(c). Bid rigging takes place when bidders collude and keep the bid amount at a pre-determined level. Such pre-determination is by way of intentional manipulation by the members of the bidding group. Bidders could be actual or potential ones, but they collude and act in concert.

- 6(a) Modes of Payment allowed for receiving Foreign Direct Investment in an Indian Company-FEMA,1999** **8**
- (b) Explain the powers and functions of IRDA.** **8**

Answer:6(a)

An Indian company issuing shares / convertible debentures under FDI Scheme to a person resident outside India shall receive the amount of consideration required to be paid for such shares / convertible debentures by:

- (a) inward remittance through normal banking channels.
- (b) debit to NRE / FCNR account of a person concerned maintained with an AD Category-I bank.
- (c) conversion of royalty/lump sum/technical know-how fee due for payment or conversion of ECB, shall be treated as consideration for issue of shares.
- (d) conversion of import payables / pre incorporation expenses / share swap can be treated as consideration for issue of shares with the approval of FIPB.
- (e) debit to non-interest bearing Escrow account in Indian Rupees in India which is opened with the approval from AD Category-I bank and is maintained with the AD Category-I bank on behalf of residents and non-residents towards payment of share purchase consideration.

If the shares or convertible debentures are not issued within 180 days from the date of receipt

of the inward remittance or date of debit to NRE / FCNR (B)/Escrow account, the amount shall be refunded. Further, Reserve Bank may on an application made to it and for sufficient reasons permit an Indian Company to refund / allot shares for the amount of consideration received towards issue of security if such amount is outstanding beyond the period of 180 days from the date of receipt.

(b) The Authority shall have the duty to regulate, control, promote and ensure healthy development of insurance and re-insurance business. The powers and functions of the Authority includes inter-alia:

- (a) Issue, modify, cancel, etc, of Registration certificate to the applicant.
- (b) Safeguarding the interests of the policyholders like insurable interests, settlement of claim, surrender value of the policy, etc.
- (c) Specifying code of conduct of the Surveyors.
- (d) Determining qualifications and training aspect of agents and intermediary.
- (e) Levying fees and charges for their work.
- (f) Conducting investigations and enquiries relating to issues concerning insurance business.
- (g) Regulating and controlling business not controlled by Tariff Advisory committee under section 64 of Insurance Act 1938.
- (h) Regulatory investment funds by the Insurance Companies.
- (i) Regulating maintenance of margin of solvency.
- (j) Adjudicating and settling disputes between intermediaries and insurers.
- (k) Supervising the functioning of Tariff Advisory Committee.

7(a) The Financial Reporting Council (FRC) is responsible for high standards of Corporate Governance. Explain this statement along with the aims of FRC **8**
(b) Write a short notes on CSR and sustainability **8**

Answer:7 (a)

Financial Reporting Council

The Financial Reporting Council (FRC) has six operating bodies: the Accounting Standards Board (ASB), the Auditing Practices Board (APB) the Board for Actuarial Standards (BAS), the Professional oversight Board, the Financial Reporting Review Panel (FRRP) and the Accountancy and Actuarial Discipline Board (AADB).The importance placed on corporate governance is evidenced by the fact that, in March 2004, the FRC set up a new committee to lead its work on corporate governance. Overall, the FRC is responsible for promoting high standards of corporate governance. It aims to do so by:

- maintaining an effective Combined Code on Corporate Governance and promoting its widespread application;
 - ensuring that related guidance, such as that an internal control, is current and relevant;
 - influencing EU and Global Corporate Governance Developments;
 - helping to promote boardroom professionalism and diversity;
 - encouraging constructive interaction between company boards and institutional shareholders.
- The FRC has carried out several consultative reviews of the Combined Code which led to the amended Combined Code in 2006, and subsequently in 2008. The latest review took place in 2008. The frequency of the reviews are both an indicator of the FRC's responsibility for corporate governance of UK companies which involves leading public debate in the areas and its response to the global financial crisis which has, in turn, affected confidence in aspects of corporate governance

7(b) Sustainability (Corporate Sustainability) is derived from the concept of sustainable development which is defined by the Brundtland Commission as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. Corporate sustainability essentially refers to the role that companies can play in meeting the agenda of sustainable development and entails a balanced approach to economic progress, social progress and environmental stewardship.

CSR in India tends to focus on what is done with profits after they are made. On the other hand, sustainability is about factoring the social and environmental impacts of conducting business, that is, how profits are made. Hence, much of the Indian practice of CSR is an important component of sustainability or responsible business, which is a larger idea, a fact that is evident from various sustainability frameworks. An interesting case in point is the National Voluntary Guidelines (NVGs) for social, environmental and economic responsibilities of business issued by the Ministry of Corporate Affairs in June 2011. Principle eight relating to inclusive development encompasses most of the aspects covered by the CSR clause of the Companies Act, 2013. However, the remaining eight principles relate to other aspects of the business. The United Nations (UN) Global Compact, a widely used sustainability framework has 10 principles covering social, environmental, human rights and governance issues, and what is described as CSR is implicit rather than explicit in these principles

Globally, the notion of CSR and sustainability seems to be converging, as is evident from the various definitions of CSR put forth by global organisations. The genesis of this convergence can be observed from the preamble to the recently released rules relating to the CSR clause within the Companies Act, 2013 which talks about stakeholders and integrating it with the social, environmental and economic objectives, all of which constitute the idea of a triple bottom line approach. It is also acknowledged in the Guidelines on Corporate Social Responsibility and Sustainability for Central Public Sector Enterprises issued by the Department of Public Enterprises (DPE) in April 2013. The new guidelines, which have replaced two existing separate guidelines on CSR and sustainable development, issued in 2010 and 2011 respectively, mentions the following: “Since CSR and sustainability are so closely entwined, it can be said that CSR and sustainability is a company’s commitment to its stakeholders to conduct business in an economically, socially and environmentally sustainable manner that is transparent and ethical.”

8. Write short notes any four of the following :

4X4=16

(a) Insolvency resolution process costs

(b) List out the main features (any four) of a qualified and independent audit committee to be set up under SEBI (listing obligations and disclosure Requirements) Regulations, 2015.

(c) Appointment of resolution professional

(d) CSR can mean different things to different people. Explain

(e) Inquiry by the Registrar [(Section 206(4))]

Answer:

8(a) Insolvency resolution process costs means –

- (i) the amount of any interim finance and the costs incurred in raising such finance
- (ii) the fees payable to any person acting as a resolution professional

- (iii) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern
- (iv) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and
- (v) any other costs as may be specified by the Board - Section 5(13) of Insolvency and Bankruptcy Code, 2016. Interim finance means any financial debt raised by the resolution professional during the insolvency resolution process period - Section 5(15) of Insolvency and Bankruptcy Code, 2016.

(b) The main features of a qualified and independent audit committee to be set up under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 are as follows:

1. The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors;
2. All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise; Explanation (I): The term "financially literate" means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.
Explanation (ii): A member will be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.
3. The Chairperson of the Audit Committee shall be an independent director;
4. The Chairperson of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries;
5. The Audit Committee at its discretion shall invite the finance director or the head of the finance function, head of internal audit and a representative of the statutory auditor and any other such executives to be present at the meetings of the committee; provided that occasionally, the Audit Committee may meet without the presence of any executives of the listed entity.;
6. The Company Secretary shall act as the secretary to the committee.

(c) The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors - Section 22(1) of Insolvency and Bankruptcy Code, 2016. The committee of creditors, may, in the first meeting, by a majority vote of not less than sixty six per cent of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional with written consent in specified form or to replace the interim resolution professional by another resolution professional - Section 22(2) of Insolvency and Bankruptcy Code, 2016.

If they decide to continue interim resolution professional, they will inform its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority [Section 24(2)(a) of Insolvency and Bankruptcy Code, 2016]. However, if they decide to replace the interim resolution professional, the resolution professional can be appointed only with approval of Board. Till then, the interim resolution professional will continue - Section 22(5) of Insolvency and Bankruptcy Code, 2016.

(d) Corporate Social Responsibilities (CSR) is an integrated combination of policies, programs, education, and practices which extend throughout a corporation's operations and into the communities in which they operate, about how companies voluntarily manage the business processes to produce an overall positive impact on society. CSR can mean different things to different people:

- For an employee it can mean fair wages, no discrimination, acceptable working conditions etc.
- For a shareholder it can mean making responsible and transparent decisions regarding the use of capital.
- For suppliers it can mean receiving payment on time.
- For customers it can mean delivery on time etc.
- For local communities and authorities it can mean taking measures to protect the environment from pollution.
- For non-governmental organizations and pressure groups it can mean disclosing business practices and performance on issues ranging from energy conservation and global warming to human rights and animal rights, from protection of the rainforests and endangered species to child and forced labour, etc.
- For a company, however, it can simply be seen as responding to the needs and concerns of people who can influence the success of the company and/or whom the company can impact through its business activities, processes and products.

(e) Inquiry by the Registrar [Section 206(4)]

(1) The Registrar may call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard, if the Registrar is satisfied:

- (a) on the basis of information available with or furnished to him, or
- (b) on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act, or
- (c) the grievances of investors are not being addressed.

(2) Before calling the company to furnish in writing any information or explanations and carrying out inquiry, the Registrar has to inform the company of the allegations made against it by a written order.

(3) The Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar or an Inspector appointed by it for the purpose to carry out the inquiry under this subsection.

(4) It is further provided that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447.