

Paper 13 – Corporate Laws and Compliance

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Full Marks: 100

Time allowed: 3 hours

Section – A

1. Answer all questions.

(a) Multiple Choice Questions

[20 Marks]

- (i) Which of the following statements is/are false about Directors Responsibility Statement.
- (a) Shall state that in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures.
- (b) Shall state that the directors had prepared the annual accounts on a periodicity basis.**
- (c) Shall state that the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of Companies Act.
- (d) None of the above
- (ii) A One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within _____ days from the closure of the financial year.
- (a) 180**
- (b) 90
- (c) 45
- (d) 30
- (iii) The Board may fill any casual vacancy in the office of an auditor within 30 days but where such vacancy is caused by the resignation of an auditor, such appointment shall also be approved by the _____.
- (a) Board of Directors
- (b) company at a general meeting
- (c) company at a general meeting convened within three months
- (d) company at a general meeting convened within three months of the recommendation of the Board**
- (iv) According to Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 every listed company and every other public company having a paid up share capital of _____ or more shall have whole-time key managerial personnel.
- (a) ₹ 10 crore**
- (b) ₹ 100 crore

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- (c) ₹ 25 crore
(d) ₹ 50 crore
- (v) If on the winding up or dissolution of a company with charitable object there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the _____
(a) Rehabilitation and Insolvency Fund
(b) Insolvency and Bankruptcy Fund
(c) Surplus Account of the company
(d) Any of the above
- (vi) Chapter VI of SEBI Act 1992 deals with _____
(a) Powers and Functions of the Board
(b) Penalties and Adjudication
(c) Registration Certificate
(d) Finance, Accounts and Audit
- (vii) Wherever during the course of inquiry, the Competition Commission exercises its jurisdiction to pass interim orders; it should pass a final order in that behalf as expeditiously as possible and in any case not later than _____ days.
(a) 60
(b) 45
(c) 30
(d) 180
- (viii) 'Foreign exchange' means foreign currency and includes _____
(a) deposits, credits and balances payable in any foreign currency.
(b) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency.
(c) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.
(d) All of the above
- (ix) Section 25 of Banking Regulation Act, 1949 requires for the maintenance of assets equivalent to _____ of its demand and time liabilities in India, at the close of business of the last Friday of every quarter.
(a) Maximum 75%
(b) at least 75%
(c) Maximum 90%
(d) at least 90%
- (x) SmartGov project has been developed to streamline operations, enhance efficiency through workflow automation and knowledge management for implementation in the _____ Secretariat.

- (a) Karnataka
- (b) Telengana
- (c) Andhra Pradesh**
- (d) West Bengal

Section – B

Answer any 5 questions:

[16×5 = 80]

2. (a) Mahata Limited was incorporated by furnishing false information. As per the Companies Act, 2013, state the power of the Tribunal in this regard. [8]

Answer:

According to section 7(7) of the Companies Act, 2013:

Incorporation by furnishing of incorrect information: Without prejudice to the provisions of sub-section (6), where a company has got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—

- (a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
- (b) direct that liability of the members shall be unlimited; or
- (c) direct removal of the name of the company from the register of companies; or
- (d) pass an order for the winding up of the company; or
- (e) pass such other orders as it may deem fit:

Provided that before making any order under this sub-section.—

- (i) the company shall be given a reasonable opportunity of being heard in the matter; and
- (ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

(b) State the circumstances under which a company may be wound up by Tribunal. [8]

Answer:

Circumstances in which company, may be wound up by Tribunal (Section 271)

Grounds on which a Company may be wound up by the Tribunal, a Company under Section 271(1) may be wound up by the Tribunal if:

- (i) The company is unable to pay its debts.

- (ii) The company has by special resolution resolved that the company be wound up by the Tribunal.
- (iii) The company has acted against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency, or morality.
- (iv) The Tribunal has ordered the winding up of the company under chapter XIX (i.e., Revival and Rehabilitation of Sick companies).
- (v) On an application made by the Registrar or any other person authorized by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up.
- (vi) The Company has made a default in filing with the registrar its financial statements or annual returns for immediately preceding five consecutive financial years or
- (vii) The Tribunal is of the opinion that it is just and equitable that the company should be wound up

3. (a) Rukmini Ltd. is a company registered in Japan. Although, it has no place of business established in India, yet it is doing online business through telemarketing in India. Whether it will be treated as a Foreign Company under the Companies Act, 2013? Explain. [8]

Answer:

According to section 2(42) of the Companies Act, 2013, "foreign company" means a company or body corporate incorporated outside India which -

- (a) has a place of business in India whether by itself or through an agent, physically through electronic mode; and
- (b) conducts any business activity in India in any other manner.

According to the Companies (Registration of Foreign Companies) Rules, 2014:

"electronic mode" means carrying out electronically based, whether main server installed in India or not, including, but not limited to –

- (a) business to business and business to consumer transactions, data interchange and other digital supply transactions;
- (b) offering to accept deposits or inviting deposits or accepting deposits subscriptions in securities in India or from citizens of India;
- (c) financial settlements, web based marketing, advisory and transactional services data base services and products, supply chain management;
- (d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- (e) all related data communication services whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

Looking to the above description, it can be said that being involved in business activity through telemarketing, Rukmini Ltd., will be treated as foreign company.

- (b) State the law with respect to the Establishment of Special Court. Mr. Asish Patel is judicial magistrate in a lower court. He was appointed to hold the office of the special court for the speedy disposal of the pending cases under the Act. Decide as per the applicable provisions of the Companies Act, 2013 whether the appointment of Mr. Asish Patel is tenable. [8]**

Answer:

Establishment of Special Court:

As per Section 435 of Companies Act 2013, the Central Government may for the purpose of providing speedy trial of offences punishable under this Act with imprisonment of two years or more, by notification, establish or designate as many special Courts as may be necessary. Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First class having jurisdiction to try any offence under this Act or under any previous Company law.

Appointment of judge:

A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working. A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment holding office of a Session Judge or an additional Session Judge.

Since in the given case, Mr. Asish Patel who is a judicial magistrate in a lower Court was appointed to hold the office of the Special Court for the speedy disposal of the pending cases under the Act. As per the above provision person shall be qualified for appointment as a judge of a Special Court if he, immediately before such appointment holding office of a Session Judge or an Additional Session Judge. Here Mr. Asish Patel was not complying with the eligibility criteria, so his appointment as a judge of Special Court is not tenable.

- 4. (a) State with reference to the relevant provisions of the Companies Act, 2013 whether the following persons can be appointed as a Director of a Company:**
- (i) Mr. Arvind Swamy who has huge personal liabilities far in excess of his Assets and Properties has applied to the court for adjudicating him as an insolvent and such application is pending.**
 - (ii) Mr. Bikash Halder who was caught red-handed in a shop lifting case two years ago, was convicted by a court and sentenced to imprisonment for a period of eight weeks. [6]**

Answer:

- (i) Section 164 (1)(c) states that a person shall not be eligible for appointment as a director: of a company if he has applied to be adjudicated as an insolvent and his application is pending. Therefore, in the present case, Mr. Arvind Swamy cannot be appointed as a Director of a Company- whether public or private.
- (ii) Section 164 (1)(d) states that a person shall not be eligible for appointment as a Director of a Company if he has been convicted by a Court for any offence involving general turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months, and a period of five years has not elapsed from the date of expiry of the sentence. In the present case, although the sentence was only two years ago but the period of sentence was only eight weeks i.e., less than six months. Hence, Mr. Bikash Halder does not come under the purview of this disqualification and can be appointed as a Director of a Company.

(b) In what way does the Companies Act, 2013 restrict the non-cash transactions involving Directors of Public Limited Company? Explain. [6]

Answer:

Restrictions on non -cash transactions involving directors [Section 192]:

1. No company shall enter into an arrangement by which-
 - (a) a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company: or
 - (b) the company acquires or is to acquire assets for consideration other than cash from such director or person so connected, unless prior approval for such arrangement is accorded by a resolution of the company in general meeting and if the director or connected person is a director of its holding company, approval under this sub-section shall also be required to be obtained by passing a resolution in general meeting of the holding company.
2. The notice for approval of the resolution by the company or holding company in general meeting under sub- section (1) shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.
3. Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of the company unless-
 - (a) the restitution of any money or other consideration which is the subject-matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or
 - (b) any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.

- (c) A petition by majority shareholders complaining oppression by minority shareholders. Give your answer according to the provisions of the Companies Act, 2013 [4]**

Answer:

Right not confined to minority:

According to Section 244, The Right to apply for relief under section 241/242 is given to 100 members or 1/10 of the total number of members or any member or members holding not less than 1/10 of the issued share capital of the company. There is nothing in this section which suggests even indirectly that unless the application is made by minority shareholders it is not maintainable. The Right to apply is, therefore, not confined to oppressed minority of the shareholders alone. It was held by Calcutta High Court in Re. Sindhri Iron Foundry(P) Ltd. that the oppressed majority also might apply for relief under section 241. Therefore the petitioners are likely to succeed in getting relief provided the other conditions laid down in Section 242(i.e., that to wind up the Company would unfairly prejudice such members, but that otherwise the facts would justify the making of a winding up order on just equitable ground) is satisfied even though the Delhi High Court held a contrary view in Suresh Kumar Sanghi versus Supreme Motors Ltd.

- 5. (a) Mr. Sidhartha was appointed as a Member of the Competition Commission of India by Central Government. He has a professional experience in international business for a period of 12 years, which is not a proper qualification for appointment of a person as member. Pointing out this defect in the Constitution of Commission, Mr. Goswami, against whom the commission gave a decision, wants to invalidate the proceedings of the commission. Examine with reference to the provisions of the Competition Act, 2002 whether Mr. Goswami will succeed. [4]**

Answer:

As per Section 15 of Competition Act 2002 Any act or proceeding of the Commission shall not be invalidated merely on the ground of:

- (a) Any vacancy in, or any defect in the Constitution of the Commission; or
- (b) Any defect in the appointment of a person acting as a Chairperson or as a member; or
- (c) Any irregularity in the procedure of the Commission not affecting the merits of the case.

Here in this case Mr. Sidhartha should have professional qualification of not less than 15 years as per Section 8 of the Act but this disqualification will not invalidate the proceeding of the Commission.

- (b) M/s Samrat is a company engaged in providing services of supplying goods all over the world through aircrafts. The aircrafts of the said company is registered and insured in India with the reputed insurance company. Company found that the insurance policy of one of aircraft which is in Europe had expired. Company said to his officer to get new Insurance policy of that aircraft in Europe. State the validity of such an act of registration of aircraft in Europe. [4]**

Answer:

Given problem is based on the Section 2CB of the Insurance Act, 1938. The said Section deals with the Indian properties not to be insured with foreign insurers. According to the Section No person shall take out or renew any policy of Insurance in respect of any property in India or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India, without the permission of the IRDAI. In the given case Act of registration of aircraft M/s Samrat which is an Indian property, with an insurer in Europe, is an invalid Act.

(c) Explain the responsibilities of banking companies under the Prevention of Money Laundering Act, 2002. [8]

Answer:

Section 12 provides for the obligation of Banking Companies. Financial Institution and Intermediaries or a Person carrying on a designated business or profession. According to Subsection (1), every banking Company, Financial Institution and intermediary or a person carrying on a designated business or a profession shall-

- (a) Maintain a record of all transaction, including information relating to transactions covered under Clause (b), in such manner as to enable it to reconstruct individual transaction;
- (b) Furnish to Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;
- (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
- (e) Maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force shall be kept confidential.

The records referred to in clause (a) of subsection (1) shall be maintained for a period of 5 years from the date of transaction between a client and the reporting entity. The records referred to in clause(e) of sub section (1) shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later. The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this chapter.

6. (a) Discuss about the Powers and duties of Liquidator under Section 35 of Insolvency and Bankruptcy Code, 2016. [10]

Answer:

(1) Powers and duties of the liquidator - The liquidator shall have the following powers and duties

- (a) To verify claims of all the creditors
- (b) To take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor
- (c) To evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report
- (d) To take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary
- (e) To carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary
- (f) To sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified
- (g) To draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business
- (h) To take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself
- (i) To obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities
- (j) To invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code
- (k) To institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on behalf of the corporate debtor
- (l) To investigate the financial affairs of the corporate debtor to determine undervalued

or preferential transactions

- (m) To take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator
- (n) To apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board
- (o) To perform such other functions as may be specified by the Board.

The liquidator may exercise the above powers subject to the directions of the Adjudicating Authority.

(2) Power of the liquidator to consult the stakeholders

The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53. However, any such consultation shall not be binding on the liquidator. The records of any such consultation shall be made available to all other stakeholders not so consulted, in the manner specified by the Board.

(b) Mr. Sandeep, an Indian National desires to obtain foreign exchange for the following purposes:

(i) Payment of commission on exports under Rupee State Credit Route.

(ii) Gift remittance exceeding US\$ 10,000.

Advise him whether he can get foreign exchange and if so, under what condition? [6]

Answer:

Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction. However, the Central Government may, in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign 'Exchange Management (Current Account Transactions) (Rules, 2000. The (Rules stipulate some prohibitions and restrictions on drawal of foreign exchange for certain purposes. In the light of provisions of these rules, the answer to the given problem is as follows:

- (i) (Rule 3 read with Schedule I of Foreign 'Exchange Management (Current Account Transactions) (Rules, 2000 prohibits payment of commission on exports under (Rupees State Credit (Route (except commission upto 10% of invoke value of exports of tea and tobacco). Therefore, payment of commission on exports under (Rupee State Credit

(Route is prohibited unless such commission is paid for export of tea and tobacco, and the commission does not exceed 10% of invoice value of exports.

- (ii) As per (Rule 5 read with Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000, individuals can draw foreign exchange upto US Dollar 2,50,000 for gift or donation referred to as 'the Liberalised (Remittance Scheme)'. Drawal of foreign exchange in excess of US Dollar 2,50,000 shall require prior approval of the Reserve Bank of India. Therefore, Mr. Sunny can obtain more than US Dollar 10,000 for gift without any approval of the Reserve Bank of India provided the total amount drawn by him during the entire financial year does not exceed US Dollar 2,50,000.

7. (a) Write short notes on CSR and Sustainability.

[8]

Answer:

CSR and Sustainability

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 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 organizations. 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 constitutes 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

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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."

(b) What is meant by the Corporate Governance as per renowned exponents in this field? How far do you agree with their views? (Agree / Strongly agree / Disagree etc.). [8]

Answer:

Corporate Governance: Corporate Governance is.

- The process of supervision and control intended to ensure that the companies management acts in accordance with the interest of share holders (Parkinson, 1994)- Strongly agree
- The governance role is not concerned with the running of the business of the company per se, but with giving overall directions to the enterprise, with overseeing and controlling the executive actions of management and with satisfying legitimate expectations of accountability and regulation by interests beyond the Corporate boundaries (Tricker, 1984) – Agree
- The governance of an enterprise is the sum of those activities that make up the internal regulation of the business in compliance with the obligations placed on the firm by legislation, ownership trusteeship of assets, their management and their deployment (Cannon, 1994) – Agree
- The relationship between shareholders and their companies and the way in which shareholders act to encourage best practice (e.g. by Voting at AMs and by regular meetings with companies senior management). Increasingly, this includes shareholders activism which involves a campaign by a shareholder or a group of shareholders to achieve change in companies (the Corporate Governance Handbook 1996). - Some agreement.
- The structures, process, cultures and systems that engender the successful operation of the organization (Keasey and Wright, 1993). - Some agreement
- The system by which companies are directed and controlled (The Cadbury Report 1992). - Slight Agreement

8. Write a note on: (Any Four)

[4 × 4 = 16]

(i) Public Financial Institutions

- (ii) Offences to be non-cognizable u/s 439 of Companies Act, 2013
- (iii) Insurable Interest
- (iv) Persons who are not entitled to initiate insolvency resolution process.
- (v) Advantages of XBRL

Answer:

(i) Public Financial Institutions

According to Section 2 (72) of the Companies Act, 2013 the following institutions are to be regarded as public financial institutions:

- (1) The Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956.
- (2) The Infrastructure Development Finance Company Limited,
- (3) Specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002.
- (4) Institutions notified by the Central Government under Section 4A (2) of the Companies Act, 1956 so repealed under Section 465 of this Act.
- (5) Such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

Provided that no institution shall be so notified unless:

- a) it has been established or constituted by or under any Central or State Act. Or
- b) not less than fifty-one per cent of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments.

(ii) Offences to be non-cognizable u/s 439 of Companies Act, 2013

Section 439 of the Companies Act, 2013 provides for offences to be non-cognizable. According to this section:

- (a) Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub-section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.
- (b) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorized by the Central Government in that behalf.
- (c) The court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorized by the Securities and Exchange Board of India.

Nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

- (d) Where the complainant is the Registrar or a person authorized by the Central Government, the presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial. The above provisions shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX or in any other provision of this Act relating to winding up of companies.
- (e) The liquidator of a company shall not be deemed to be an officer of the company.

(iii) Insurable Interest

To constitute insurable interest, it must be an interest such that the risk would by its proximate effect cause damage to the assured, that is to say, cause him to lose a benefit or incur a liability. The validity of an insurance contract, in India, is dependent on the existence of an insurable interest in the subject matter. The person seeking an insurance policy must establish some kind of interest in the life or property to be insured, in the absence of which, the insurance policy would amount to a wager and consequently void in nature.

The test for determining if there is an insurable interest is whether the insured will in case of damage to the life or property being insured, suffer pecuniary loss [New India Insurance Company Ltd. v. G.N. Sainani, (1997) 6 SCC 383]. A person having a limited interest can also insure such interest.

Insurable interest varies depending on the nature of the insurance. The controversy as to the existence of an insurable interest between spouses was settled by the court, which held that such an interest could exist as neither was likely to indulge in any 'mischievous game'. The same analogy may be extended to parents and children. Further, the courts have also held that such an insurable interest would exist for a creditor (in a debtor) and for an employee (in an employer) to the extent of the debt incurred and the remuneration due, respectively.

The existence of insurable interest at the time of happening of the event is another important consideration. In case of life and personal accident insurance it is sufficient if the insurable interest is present at the time of taking the policy. However, in the case of fire and motor accident insurance the insurable interest has to be present both at the time of taking the policy and at the time of the accident. The case is completely different with marine insurance wherein there need not be any insurable interest at the time of taking the policy.

(iv) Persons who are not entitled to initiate insolvency resolution process

The Code states that a corporate debtor (which includes a corporate applicant in respect of such corporate debtor) shall not be entitled to make an application to initiate corporate

insolvency resolution process [Section 11 of Insolvency and Bankruptcy Code, 2016] in the following cases:

- (a) when undergoing a corporate insolvency resolution process; or
- (b) having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or
- (c) or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or
- (d) in respect of him a liquidation order has been made.

Thus, application to initiate insolvency resolution process cannot be filed within 12 months or if there were violation of conditions or where order of liquidation has been made.

(v) Advantages of XBRL

XBRL offers major benefits at all stages of business reporting and analysis. The benefits are seen in automation, cost saving, faster, more reliable and more accurate handling of data, improved analysis and in better quality of information and decision making. XBRL enables producers and consumers of financial data to switch resources away from costly manual processes, typically involving time consuming comparison, assembly and re-entry of data. They are able to concentrate effort on analysis, aided by software which can validate and process XBRL information. XBRL is a flexible language, which is intended to support all current aspects of reporting in different countries and industries. Its extensible nature means that it can be adjusted to meet particular business requirements, even at the individual organization level.

All types of organizations can use XBRL to save costs and improve efficiency in handling business and financial information. Because XBRL is extensible and flexible, it can be adapted to a wide variety of different requirements. All participants in the financial information supply chain can benefit, whether they are preparers, transmitters or users of business data.

XBRL is set to become the standard way of recording, storing and transmitting business financial information. It is capable of use throughout the world, whatever the language of the country concerned, for a wide variety of business purposes. It will deliver major cost savings and gains in efficiency, improving processes in companies, governments and other organisations.