CORPORATE LAW & COMPLIANCE

Group - III

Paper - XIII

THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA
(Statutory body under an Act of Parliament)
www.icmai.in

WORK BOOK

CORPORATE LAWS & COMPLIANCE

FINAL COURSE

GROUP – III

PAPER – 13

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA
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Preface

Professional education systems around the world are experiencing great change brought about by the global demand. Towards this end, we feel, it is our duty to make our students fully aware about their curriculum and to make them more efficient.

Although it might be easy to think of the habits as a set of behaviours that we want students to have so that we can get on with the curriculum that we need to cover. It becomes apparent that we need to provide specific opportunities for students to practice the habits. Habits are formed only through continuous practice. And to practice the habits, our curriculum, instruction, and assessments must provide generative, rich, and provocative opportunities for using them.

The main purpose of this volume is to disseminate knowledge and motivate our students to perform better, as we are overwhelmed by their response after publication of the first edition. Thus, we are delighted to inform our students about the e-distribution of the second edition of our 'Work book'.

This book has been written to meet the needs of students as it offers the practising format that will appeal to the students to read smoothly. Each chapter includes unique features to aid in developing a deeper under-standing of the chapter contents for the readers. The unique features provide a consistent reading path throughout the book, making readers more efficient to reach their goal.

Discussing each chapter with illustrations integrate the key components of the subjects. In the second edition, we expanded the coverage in some areas and condensed others.

It is our hope and expectation that this second edition of workbook will provide further an effective learning experience to the students like the first edition.

The Directorate of Studies
The Institute of Cost Accountants of India

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Suggested Marks Distribution from Examination Point of View

Only for Practice Purpose

Total 100 Marks	3 Hours	MCQ = 20 Marks
		Others = 80 Marks

Objective Question

20 Marks (2 Marks each questions)	MCQ	1 mark for correct answer
		1 mark for justification

Short Notes / Case Study

Minimum Marks for each Questions	3 Marks
Maximum Marks for each Questions	10 Marks

Practical Problem

Minimum Marks for each Questions	4 Marks
Maximum Marks for each Questions	16 Marks

Study Note – 1

THE COMPANIES ACT, 2013

Learning Objective: ***This chapter includes the Companies Act, 2013. The specific objective of this chapter is to explore an expert knowledge of corporate functions in the context of Companies Act and related to corporate laws. After learning this chapter, the students will be able to understand the principles of corporate laws relevant for compliance and decision-making. They will also be able to analyze and interpret the situations which are allied to this chapter. They can evaluate the essence of corporate governance for effective implementation. They will understand how to explain the role of a corporate in socio-economic development.***

PART A: COMPANY FORMATION AND CONVERSION

1. Mark the correct answer [only indicate (a) or (b) or (c) or (d) and give justification.

(i) State whether true or false:

Statement - 1: The Government of India Promulgated the Companies (Amendment) Ordinance, 2019 on January 12, 2019 to give continuing effect to the Companies (Amendment) Ordinance, 2018 and to amend the Companies Act, 2013.

Statement - 2: It is a move towards decriminalization of offences the Companies Act, 2013.

(a) 1 - T, 2 - T
(b) 1 -F, 2 - F
(c) 1 - F, 2 - T
(d) 1 - T, 2 - F

Answer : (a)

Justification:
Both the statements are true as per the Government of India's Companies (Amendment) Ordinance, 2019 on January 12, 2019 to give continuing effect to the Companies (Amendment) Ordinance, 2018 and to amend the Companies Act, 2013.

(ii) State whether true or false:

Statement - 1: Issue of Sweat Equity is covered under section 13.

Statement - 2: The companies to issue sweat equities within a period of one year from the date of commencement of the company as per the Companies (Amendment) Act, 2017.

(a) 1 - T, 2 - T
(b) 1 -F, 2 - F
(c) 1 - F, 2 - T
(d) 1 - T, 2 - F

Answer: (a)

Justification: Both the statements are true as per the Companies (Amendment) Act, 2017.

(iii) Must have a minimum of One Director.
- The Sole Shareholder can himself be the Sole Director.
- The Company may have a maximum number of 15 directors. These features belong to -
(a) Private company
(b) Small company
(c) Public company
(d) OPC

Answer : (d)

Justification: These all are the features of One Person Company. The concept of One Person Company has now been introduced in India, through Section 2 (62) of Companies Act, 2013.

(iv) Match the following:

Set - I	**Set - II**
1. Appointment of interim administrator	I. Section 260
2. Appointment of administrator	II. Section 259
3. Powers and duties of company administrator	III. Section 256

(a) 1 - I, 2 - II, 3 - III
(b) 1 - III, 2 - II, 3 - I
(c) 1 - II, 2 - I, 3 - III
(d) 1 - I, 2 - III, 3 - II

Answer : (b)

Justification:
Different sections of the Companies Act, 2013 are to be matched with the concerned provisions.

(v) 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) not final
(c) not an evidence at all
(d) None of the above

Answer: (a)

Justification:
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 stated therein with rights & liabilities of a natural person, competent to enter into contracts [Jubilee Cotton Mills Ltd. v. Lewis (1924) A.C. 958.].

(vi) As per Section 406 of the Companies Act, 2013, 'Nidhi' means a company which has been incorporated as a Nidhi with the object of:

(a) cultivating the habit of thrift and savings amongst its members
(b) receiving deposits from, and lending to, its members only, for their mutual benefit, and
(c) which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.
(d) All of the above

Answer : (d)

Justification:
All are the objectives behind the incorporation of Nidhi As per Section 406 of the Companies Act, 2013, so (d) is the correct answer.

(vii)If a partnership is formed with 51 partners, it is:

(a) Valid in law
(b) Shall be considered as illegal association
(c) May be considered valid
(d) None of the above

Answer : (b)

Justification:
As per Companies Act, 2013, partnership with more than 50 partners will be called as illegal association and is supposed to be registered as a company or LLP.

(viiii)According to Section 2 (6) of the Companies Act, 2013, 'associate company' in relation to another company, means -

(a) a company in which that other company has a significant influence.
(b) a company which is not a subsidiary company of the company having such influence.
(c) a company which includes a joint venture company.
(d) All of the above

Answer : (d)

Justification:
This is a part of the definition of associate company according to section 2 (6) of the Companies Act, 2013.

(ix) 'Significant accounting transaction' means any transaction other than:

(a) payment of fees by a company to the Registrar.
(b) payments made by it to fulfill the requirements of this Act or any other law.
(c) allotment of shares to fulfill the requirements of this Act.
(d) All of the above

Answer : (d)

Justification:
This is as per provision related with the meaning and definition of significant accounting transaction as per Companies Act, 2013.

(x) 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

Answer : (b)

Justification:
According to Section 151 of the Companies Act, 2013, "small shareholder" means a shareholder holding shares of nominal value of not more than 20,000 or such other sum as may be prescribed, hence, answer is (ii).

(xii)Dormant company is formed and registered under this Act -

(a) for a future project

(b) to hold an asset
(c) intellectual property and has no significant accounting transaction
(d) All of the above

Answer : (d)

Justification:
As per Companies Act, 2013, where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

2. 'A Certificate of Incorporation given by the Registrar in respect of any association shall be conclusive evidence.' - Explain this statement.

Answer:

According to Section 35 of the 1956 Act, a Certificate of Incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of the Acts have been complied with in respect of registration and matters precedent and incidental thereto, and that the association is a company authorised to be registered and duly registered under the Act. 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 stated therein with rights & liabilities of a natural person, competent to enter into contracts [Jubilee Cotton Mills Ltd. v. Lewis (1924) A.C. 958.]. The validity of the registration cannot be questioned after the issue of the certificate.

It is for the purpose of incorporation that the certificate was made conclusive by the legislature and the certificate cannot legalise the illegal object contained in the Memorandum. Where the object of the company is unlawful, it has been held that the certificate of registration is not conclusive for this purpose [Performing Right Society Ltd. v. London Theatre of Varieties (1992) 2 KB 433].

Even if the two signatures to a Memorandum were written by one person, or were forged, the certificate would be conclusive that the company was duly incorporated. So too, if the signatories were all minors, the certificate would still be conclusive [Hammod v. Prentice Bros (1920) 1 Ch. 201 and Bowman v. Secular Society Ltd. 1917 AC 406,438].

Section 35 of the 1956 Act has not been incorporated bodily in the 2013 Act and the same shall be watched with interest as to how the Courts would interpret the absence of such a provision.

3. 'OPC is enabling entrepreneur(s) carrying on the business in the Sole Proprietor form of business to enter into a corporate framework.' – Discuss.

Answer:

This is very true that through One Person Company (OPC) a businessman can enter into a Corporate Framework from the Sole Proprietor form of business. The concept of OPC is new to this era of the corporate world. In very simple sense, In OPC, a single person could constitute a company. The new Companies Act, 2013 has done away with redundant provisions of the previous Companies Act, 1956, and provides for a new entity in the form of OPC, while empowering the Central Government to provide a simpler compliance regime for small companies. The introduction of OPC in the legal system is a move that would encourage corporatization of micro-businesses and entrepreneurship. Whereas a Sole Proprietorship firm is also one person business but there are no legal formalities. A Sole Proprietorship means an entity which is run and owned by one individual and where there is no distinction between the owner and the business.

The Companies Act, 2013 classifies companies on the basis of their number of members into OPC, private company and public company. A private company requires a minimum of two members. In other words, an OPC is a kind of private company having only one member. As per section 2(62) of the Companies Act, 2013, "One Person Company" means a company which has only one person as a member. Section 3(1) (c) of the Companies Act, 2013 lays down that a company may be formed for any lawful purpose by one person. In other words, one person company is a kind of private company. An OPC shall have a minimum of one director. Therefore, an OPC will be registered as a private company with one member and one director. By virtue of section 3(2), an OPC may be formed either as a company limited by shares or a company limited by guarantee; or an unlimited liability company.

Also we can mention that, according to Section 2 (62) of the Companies Act, 2013 'One Person Company' means a company which has only one person as a member. A company formed under one person company may be either:

a) A company limited by shares, or
b) company limited by guarantee, or
c) An unlimited company.

OPC is a hybrid of Sole-Proprietor and Company form of business, and has been provided with concessional/relaxed requirements under the act.

4. Can you explain 'Doctrines of constructive notice'? Discuss the following issues relating to doctrine of constructive notice by using case law. 1. Knowledge of irregularity, 2. Negligence, 3. Act void *ab initio* and forgery and 4. Acts outside the scope of apparent authority.

Answer:

Doctrines of constructive notice:

In consequences of the registration of the memorandum and articles of association of the company with the Registrar of Companies, a person dealing with the company is deemed to have constructive notice of their contents. This is because these documents are construed as 'public document' under Section 399 of

the Companies Act, 2013. Accordingly if a person deals with a company in a manner incompatible with the provisions of the aforesaid documents or enters into transaction, which is ultra vires to these documents, he must do so at his peril. If someone supplies goods to a company in which it cannot deal according to its objects clause, he will not be able to recover the price from the company. Suppose the articles provide that a bill of exchange must be signed by two directors, if the bill is actually signed by one director only the holder thereof cannot claim payment thereon.

However, the doctrine of constructive notice is not positive one but a negative one like that of estoppel of which it forms parts. It operates only against the person who has been dealing with the company but not against the company itself. Consequently he is prevented from alleging that he did not know that the constitution of the company rendered a particular act or a particular delegation of authority ultra vires. Thus, the doctrine is a 'cloud' for the strangers.

Case laws on 1. Knowledge of irregularity, 2. Negligence, 3. Act void *ab initio* and forgery and 4. Acts outside the scope of apparent authority which are related to doctrine of constructive notice are as follows:

1. Knowledge of irregularity: Where a person dealing with a company has actual or constructive notice of the irregularity as regards internal management, he cannot claim the benefit t under the rule of indoor management. [T.R. PRATT (Bombay) Ltd. v. E.D. Sassoon & Co. Ltd. AIR 1936 Bom 62].
2. Negligence: Where a person dealing with a company could discover the irregularity if he had made proper inquiries, he cannot claim the benefit of the rule of indoor management. The protection of the rule is also not available where the circumstances surrounding the contract- are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry [Anand Bihari Lel v. Dinshaw & Co and Under-Wood v. Bank of Liver Pool; A.I.R. (1942) Oudh 417].
3. Where the acts done in the name of a company are void *ab initio*, the doctrine of indoor management does not apply. The doctrine applies only to irregularities that otherwise might affect a genuine transaction. It does not apply to a forgery. A Company can never he held liable for forgeries committed by its officers. [Ruben v. Great Fingall Consolidated Co (1906) A.C. 439].
4. Acts outside the scope of apparent authority: If an officer of a company enters into a contract with a third party and if the act of the officer is beyond the scope of his authority, the company is not bound. [Kreditbank Cassel v. Schenkers Ltd (1927) 1 KB 826].

5. (a) How would you rectify the name of memorandum?

Answer:

The rectification procedure is as follows:

(1) Central government to issue direction

According to Section 16 of the Companies Act, 2013, the Central Government is empowered to give direction to the company to rectify its name (where the name is identical with or too nearly resembles the name by which a company in existence had been previously registered, or the name is identical with or too nearly resembling to a registered trade mark) within a period of 3 months or 6 months, as the case may be, from the issue of such direction by passing an ordinary resolution.

(2) Notice of change to the registrar

Where a company changes its name or obtains a new name, it shall within a period of 15 days from the date of such change, give notice of the change to the Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and the memorandum.

(3) Default in compliance with the direction

If a company makes default in complying with any direction:

Liable person	Penalty/punishment
Company	Fine of 1,000 rupees for every day during which the default continues.
Every officer who is in default	Fine varying from 5,000 rupees to 1 lakh rupees.

(b) 'While a company is free to alter its articles of association the way it wants, it shall not be contrary to provisions of the act and its memorandum of association' – Discuss.

Answer:

Section 14 of the Companies Act, 2013 vests companies with power to alter or add to its articles. The law with respect to alteration of articles is as follows:

(a) Alteration by special resolution: Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution alter its articles.

(b) Alteration to include conversion of companies: Alteration of articles includes alterations having the effect of conversion of:

(1) a private company into a public company, or

(2) a public company into a private company:

Even where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, then such company shall, as from the date of such alteration, cease to be a private company:

However any such alteration having the effect of conversion of a public company into a private company, then such conversion shall not take effect except with the approval of the Tribunal and make such order as it may deem fit.

(c) Filing of alteration with the registrar: Every alteration of the articles and a copy of the order of the Tribunal approving the alteration, shall be fled with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same.

(d) Any alteration made shall be valid: Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid as if it were originally contained in the articles.

(e) Alteration noted in every copy: Every alteration made in articles of a company shall be noted in every copy of the articles, as the case may be. If a company makes any default in complying with the stated provisions, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the articles issued without such alteration. [Section 15].

6. Can you explain Memorandum of Producer Company (Section 581F).

Answer:

The memorandum of association of every Producer Company should contain the following:

(a) the name of the company with 'Producer Company Limited' as the last words of the name of such Company.
(b) the State in which the registered office of the Producer Company is to situate.
(c) the main objects of the Producer Company shall be one or more of the objects specified in Section 581B.
(d) the names and addresses of the persons who have subscribed to the memorandum.
(e) the amount of share capital with which the Producer Company is to be registered and division thereof into shares of a fixed amount.
(f) the names, addresses and occupations of the subscribers being producers, who shall act as the first directors in accordance with Sub-Section (2) of Section 58IJ.
(g) that the liability of its member is limited.
(h) opposite to the subscriber's name the number of shares each subscriber takes:
(i) in case the objects of the Producer Company are not confined to one State, the States to whose territories the objects extend.

7. You and few of your friends want to register a company and stat a new business, where all of you shall be shareholders and directors. List out e steps you be taking, till registration

Answer:

we will take the following steps:

(a) sit together and decide on name, capital, main office, etc. and make a memorandum of understanding or agreement. It will be called as promoters' agreement.
(b) All of us shall make our digital signatures and apply for DIN.
(c) We have to select four names and apply for name
(d) The Memorandum of Association and Articles of Association has to be prepared and kept ready
(e) The declaration by Directors shall also be kept ready
(f) Moment we get name approval, we will file the documents with necessary fees.

PART B: INVESTMENT AND LOANS

1. Mark the correct answer [only indicate (a) or (b) or (c) or (d) and give justification.

(i) 'Deposit' includes -

(a) any receipt of money by way of deposit
(b) loan
(c) in any other form by a company
(d) All of the above

Answer: (d)

Justification:
This is contained in section 2 (31) of the Companies Act, 2013.

(ii) It shall be the duty of every trustee for depositors to:

(a) ensure that the assets of the company on which charge is created together with the amount of deposit insurance are sufficient to cover the repayment of the principal amount of secured deposits outstanding and interest accrued thereon.
(b) satisfy himself that the circular or advertisement inviting deposits does not contain any information which is inconsistent with the terms of the deposit scheme or with the trust deed and is in compliance with the rules and provisions of the Act.
(c) ensure that the company does not commit any breach of covenants and provisions of the trust deed.
(d) All of the above

Answer: (d)

Justification:
Since the trustees are suppossed to take care of the interest of the deposit holders, they have, jointly or individually, the duty to ensure the above.

(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

Answer: (c)

Justification:

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) The term 'Investments' is used in a limited sense to mean the investment_______ .

(a) of money
(b) in shares, stock, debentures
(c) other securities
(d) All of the above

Answer: (d)

Justification:

The word 'Investments' in common parlance would include any property or right in which money or capital is invested. However, in the present context, the term 'Investments' is used in a limited sense to mean the investment of money in shares, stock, debentures, or other securities.

2. Illustrate the duties of Trustees.

Answer:

There are so many duties of a Trustee. However, it shall be the duty of every trustee for depositors to:

(a) ensure that the assets of the company on which charge is created together with the amount of deposit insurance are sufficient to cover the repayment of the principal amount of secured deposits outstanding and interest accrued thereon.
(b) satisfy himself that the circular or advertisement inviting deposits does not contain any information which is inconsistent with the terms of the deposit scheme or with the trust deed and is in compliance with the rules and provisions of the Act.
(c) ensure that the company does not commit any breach of covenants and provisions of the trust deed.
(d) take such reasonable steps as may be necessary to procure a remedy for any breach of covenants of the trust deed or the terms of invitation of deposits.
(e) take steps to call a meeting of the holders of depositors as and when such meeting is required to be held.
(f) supervise the implementation of the conditions regarding creation of security for deposits and the terms of deposit insurance.
(g) do such acts as arc necessary in the event the security becomes enforceable.
(h) carry out such acts as are necessary for the protection of the interest of depositors and to resolve their grievances.

3. (a) Write short note on 'Prohibition on Acceptance of Deposits from Public.

Answer:

(a) On and after the commencement of this Act, no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter.
Provided that nothing in this Sub-Section shall apply to a banking company and non-banking financial company as defined in the Reserve Bank of India Act, 1934 and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

(b) A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfillment of the following conditions, namely:
(1) issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed.
(2) fling a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular.
(3) depositing such sum which shall not be less than fifteen per cent of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account.
(4) providing such deposit insurance in such manner and to such extent as may be prescribed.
(5) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits, and
(6) providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company.
Provided that in case where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as 'unsecured deposits' and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

(c) Every deposit accepted by a company under Sub-Section (2) shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in that Sub Section.

(d) Where a company fails to repay the deposit or part thereof or any interest thereon under Sub-Section (3) the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem ft.

(e) The deposit repayment reserve account referred to in clause (c) of Sub-Section (2) shall not be used by the company for any purpose other than repayment of deposits.

4. Do you think that investments of company to be held in its own name? Explain as per section 187 of the Companies Act, 2013.

Answer:

(a) All investments made or held by a company in any property, security or other asset shall be made and held by it in its own name:
Provided that the company may hold any shares in its subsidiary company in the name of any nominee or nominees of the company, if it is necessary to do so, to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.

(b) Nothing in this Section shall be deemed to prevent a company:
   (1) from depositing with a bank, being the bankers of the company, any shares or securities for the collection of any dividend or interest payable thereon or Investments of company to be held in its own name.
   (2) from depositing with, or transferring to, or holding in the name of, the State Bank of India or a scheduled bank, being the bankers of the company, shares or securities, in order to facilitate the transfer thereof:
   Provided that if within a period of six months from the date on which the shares or securities are transferred by the company to, or are first held by the company in the name of, the State Bank of India or a scheduled bank as aforesaid, no transfer of such shares or securities takes place, the company shall, as soon as practicable after the expiry of that period, have the shares or securities re-transferred to it from the State Bank of India or the scheduled bank or, as the case may be, again hold the shares or securities in its own name, or
   (3) from depositing with, or transferring to, any person any shares or securities, by way of security for the repayment of any loan advanced to the company or the performance of any obligation undertaken by it.
   (4) from holding investments in the name of a depository when such investments are in the form of securities held by the company as a beneficial owner.

(c) Where in pursuance of clause (d) of Sub-Section (2), any shares or securities in which investments have been made by a company are not held by it in its own name, the company shall maintain a register which shall contain such particulars as may be prescribed and such register shall be open to inspection by any member or debenture-holder of the company without any charge during business hours subject to such reasonable restrictions as the company may by its articles or in general meeting impose.

(d) If a company contravenes the provisions of this Section, the company shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to twenty five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

5. Discuss the manner and extent of Deposit Insurance.

Answer:

(a) Every company referred to in Sub-Section (2) of Section 73 and every other eligible company inviting deposits shall enter into a contract for providing deposit insurance at least thirty days before the issue of circular or advertisement or at least thirty days before the date of renewal, as the case may be.

Provided that the companies may accept the deposits without deposit insurance contract till the 31st March, 2015.

(b) The deposit insurance contract shall specifically provide that in case the company defaults in repayment of principal amount and interest thereon, the depositor shall be entitled to the repayment of principal amount of deposits and the interest thereon by the insurer up to the aggregate monetary ceiling as specified in the contract.

Provided that in the case of any deposit and interest not exceeding twenty thousand rupees, the deposit insurance contract shall provide for payment of the full amount of the deposit and interest and in the case of any deposit and the interest thereon in excess of twenty thousand rupees, the deposit insurance contract shall provide for payment of an amount not less than twenty thousand rupees for each depositor.

(c) The amount of insurance premium paid on the insurance of such deposits shall be borne by the company itself and shall not be recovered from the depositors by deducting the same from the principal amount or interest payable thereon.

(d) If any default is made by the company in complying with the terms and conditions of the deposit insurance contract which makes the insurance cover ineffective, the company shall either rectify the default immediately or enter into a fresh contract within thirty days and in case of non compliance, the amount of deposits covered under the deposit insurance contract and interest payable thereon shall be repaid within the next fifteen days and if such a company does not repay the amount of deposits within said fifteen days it shall pay fifteen per cent, interest per annum for the period of delay and shall be treated as having defaulted and shall be liable to be punished in accordance with the provisions of the Act.

PART C: DIVIDENDS

1. Mark the correct answer [only indicate (a) or (b) or (c) or (d) and give justification.

(i) Dividend in literal terms means the____ of a company.

(a) profit
(b) loss
(c) amount of distributable profit (a) Both (a) and (c)

Answer: (d)

Justification:

The term 'dividend' has been defined under Section 2(35) of the Companies Act, 2013. The term "Dividend" includes any interim dividend. It is an inclusive and not an exhaustive definition. According to the generally accepted definition, "dividend" means the profit of a company.

(ii) The term 'dividend' has been defined under __________ of the Companies Act, 2013.

(a) Section 2(35)
(b) Section 2(36)
(c) Section 2(37)
(d) Section 2(38)

Answer: (a)

Justification:

The term 'dividend' has been defined under section 2(35) of the Companies Act, 2013.

(iii) Dividends are usually payable -

(a) for a financial year after the final accounts are ready
(b) for the amount of distributable profits is available
(c) Both (a) and (c)
(d) None of the above

Answer: (c)

Justification:

Dividends are usually payable for a financial year after the final accounts are ready and the amount of distributable profits is available.

(iv) According to Section 123 (1) of the Act dividend can be paid by a company:

(a) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2).

(b) out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of both.

(c) out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government.

(d) All of the above

Answer: (d)

Justification:

It is included in declaration of dividend as per section 2(35) of the Companies Act, 2013.

(v) Dividends that are payable to the shareholder in cash may be paid by -

(a) Cheque

(b) Warrant

(c) in any electronic mode

(d) All of the above

Answer: (d)

Justification:

According to Section 123 (5) of the Companies Act, 2013, dividends are payable in cash. Dividends that are payable to the shareholder in cash may be paid by cheque or warrant or in any electronic mode.

2. RL Solutions Pvt. Ltd. redeemed its preference shares 5 years ago. Some of the shares are still unpaid. It credited the unpaid amount into its Investor Education Protection Fund. Was it a contravention of the provisions of Companies Act, 2013?

Answer:

The credits that may be made into the Investor Education Protection Fund as per provisions of Section 125 of Companies Act, 2013 are as under:

(i) Amount in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956.

(ii) Amount in the Unpaid Dividend Account of the companies transferred to the Fund under section 124, and interest accrued thereon

(iii) Application money received by the companies for allotment of any securities and due for refund and remaining unpaid for a period of 7 years, and interest accrued thereon

(iv) Matured deposits remaining unpaid for a period of 7 years, and interest accrued thereon
(v) Matured debentures remaining unpaid for a period of 7 years, and interest accrued thereon
(vi) Redemption amount of preference shares remaining unpaid for a period of 7 years
(vii) Grants by the Central Government after due appropriation made by the Parliament
(viii) Donations given to the Fund by the Central Government, any State Government, companies or any other institution
(ix) Interest or other income received out of the investments made from the Fund
(x) Sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation and remaining unpaid for a period of 7 years. The amount should have remained with the company under a particular dividend account and is payable on demand to the shareholder or his nominee.
(xi) Amount in the General Revenue Account of the Central Government which had been transferred to that account under section 205A(5) of the Companies Act, 1956, as it stood immediately before the commencement of the Companies (Amendment) Act, 1999
(xii) Amount received under section 38(4)
(xiii) Such other amount as may be prescribed.

Since, only 5 years has passed and not 7 years, hence it is a contravention of the provisions. The amount should have remained with the company under particular dividend account and is payable on demand by the shareholder.

3. Mr. Tiwari recently acquired 80% of the equity shares of Asianol Lubricant Company Ltd in the hope of earning good dividend income. Unfortunately the existing Board of Directors have been avoiding declaration o0f dividend due to alleged inadequacy of profits. Unconvinced, Mr. Tiwari seeks permission of the company to examine the Books of Accounts, which is summarily rejected by the company. Examine and advise the provisions relating to inspection of Books of Accounts and remedy available.

Answer:

The present problem relates to section 128, 206 and 212 of the Companies Act, 2013 read with Regulation 89 of Table F contained in Schedule I.

(i) As per section 128 read with Rule 4, a director of the company is entitled to inspect the books of account of the company. However, section 128 does not empower any member (irrespective of the percentage of share capital held by him) to make inspection of the books of account.
(ii) As per section 206, following persons are empowered to inspect the books of account:
   (a) Registrar of Companies
   (b) Such officer of the Government as may be authorised by the Central Government in this behalf.
(iii) As per section 212, the books of account of a company shall be open to inspection of the officers of Serious Fraud Investigation Office (SFIO).
(iv) Regulation 89 of Table F reads as under:
   (i) The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations, the accounts and books of the company, or any of them, shall be open to the inspection of members not being directors.

(ii) No member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by law or authorised by the Board or by the company in general meeting.

In the given case, Mr. Tiwari has not been authorised to inspect the books of account by the Board or by the members in the general meeting, Thus, Mr. Tiwari shall not have any right to inspect the books of account even if he holds 80% of the equity shares of the company. However, Mr. Tiwari may, by using the majority voting power held by him and complying with the provisions of the Companies Act, 2013, get himself appointed as a director of Asianol Lubricant Company Ltd. and then he shall be entitled (in the capacity of director) to make the inspection of books of account.

4. Write short note on 'Interim Dividend'.

Answer:

According to section 2(35), 'dividend' includes any interim dividend. According to section 123(3), 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.

The Board of directors may declare interim dividend and the amount of dividend including interim dividend shall be deposited in a separate bank account within five days from the date of declaration of such dividend.

5. You are a finance office of ABC Ltd. One shareholders comes to you with a complaint that the cheque issued against dividend has not been received by him and wants a duplicate cheque. What you will do?

Answer:

I will first see whether he is shareholder or not and whether cheque was at all issued to him from cheque issue register or counterfoil of e cheque book.

In case things are ok, I will check the bank reconciliation statement to see whether it is lying unpresented. I will also check the unpaid divided statement which is supposed to be uploaded in website. If everything is matching, I will take action to issue duplicate cheque.

PART D: ACCOUNTS AND AUDIT

1. Mark the correct answer [only indicate (a) or (b) or (c) or (d) and give justification.

(i) According to Section 2(13) of the Companies Act, 2013, "Books of Account" includes records maintained in respect of:

(a) All sums of money received and expended by a company and matters in relation to which receipts and expenditure take place.
(b) All sales and purchases of goods and services by the company.
(c) The assets and liabilities of the company.
(d) All of the above

Answer: (d)

Justification:
This is mentioned in maintenance of books of accounts as per section 128 of the Companies Act, 2013.

(ii) As per the definition of Financial Statement under Section 2(40), 'financial statement' in relation to the company includes:

(a) A balance sheet as at the end of the financial year
(b) A profit & loss account, or in case of a company carrying on any activity not for profit, an income and expenditure account for the financial year
(c) Cash Flow Statement for the financial year
(d) All of the above

Answer: (c)

Justification:
As stated in the definition of Financial Statement as per section 2(40) of the Companies Act, 2013.

(iii) 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

Answer: (d)

Justification:

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.

2. Give a brief idea on 'Cost Audit under section 148'.

Answer:

According to Section, the Central Government may specify audit of items of cost in respect of certain companies. These provisions are detailed below:

(a) Notwithstanding anything contained in the provisions related to audit and auditor (Chapter X), the Central Government may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that particulars relating to the utilisation of material or labour or to other items of cost as may be prescribed shall also be included in the books of account kept under Section 128 by that class of companies in Form CRA-1 as per Rule 5(1) of the Companies (Cost Records and Audit) Rules, 2014.

(b) The Central Government shall, before issuing such order in respect of any class of companies regulated under a special Act, consult the regulatory body constituted or established under such special Act.

(c) If the Central Government is of the opinion, that it is necessary to do so, it may, by order, direct that the audit of cost records of class of companies, which are covered aforesaid and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.

(d) The cost audit shall be conducted by a Cost Accountant in practice who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed [Section 148(3)].

3. Can you explain 'Financial Statement' as per section 129.

Answer:

(a) As per the definition of Financial Statement under Section 2(40), 'financial statement' in relation to the company includes:
   (1) A balance sheet as at the end of the financial year
   (2) A profit & loss account, or in case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
   (3) Cash Flow Statement for the financial year;
   (4) A statement of changes in equity, if applicable; and
   (5) Any explanatory note annexed to or forming part of any document referred above. Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include Cash Flow Statement.

(b) Section 129(1) provides that the financial statements shall:
   (1) give a true and fair view of the state of affairs of the company or companies,
   (2) comply with the accounting standards notified under Section 133 and,
   (3) shall be in the form or forms as may be provided for different class or classes of companies in Schedule III.
   (4) However, the items contained in such financial statements shall be in accordance with the accounting standards.

(c) The above provisions relating to form and content of financial statement shall not apply to following companies:
   (1) Insurance Companies, or
   (2) Banking companies, or
   (3) Company engaged in the generation or supply of electricity, or
   (4) Any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company.

(d) If the following disclosures are not made, the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company:
   (1) In case of Insurance Company, matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999.
   (2) In case of Banking Company, matters which are not required to be disclosed by the Banking Regulation Act, 1949.
   (3) In case of Company engaged in the generation or supply of electricity, matters which are not required to be disclosed by the Electricity Act, 2003.
   (4) In case of company governed by any other law, matters which are not required to be disclosed by that law.

(e) Here, any reference to the financial statement shall include any notes annexed to or forming part of such financial statement, giving information required to be given and allowed to be given in the form of such notes under this Act.

4. Write a short note on Corporate Social Responsibility as per section 135 of the Companies Act, 2013.

Answer:

Corporate Social Responsibility ('CSR') was introduced in the Companies Act, 2013. It requires that every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. The Board's report shall disclose the composition of the Corporate Social Responsibility Committee.

The Corporate Social Responsibility Committee shall formulate and recommend to the Board a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified

in Schedule VII of the Companies Act, 2013, it shall recommend the amount of expenditure to be incurred on the activities referred to above and monitor the Corporate Social Responsibility Policy of the company from time-to-time.

The Board of every company shall after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve of the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed and ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

The Board of every company shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

(a) Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility.

(b) Provided further that if the company fails to spend such amount, the Board shall, in its report made specify the reasons for not spending the amount.

Average net profit shall be calculated in accordance with the provisions of Section 198 of the Companies Act, 2013.

5. What do you mean by Casual vacancy as per section 139 (8).

Answer:

a. In the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor General of India, casual vacancy of an auditor be filled by the Comptroller and Auditor General of India within 30 days.

b. In case the Comptroller and Auditor-General of India do not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next 30 days.

6. What are the provisions regarding Remuneration of auditors as per section 142.

Answer:

(a) The remuneration of the auditors of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

(b) In the case of first auditor, remuneration may be fixed by the Board.

(c) The remuneration mentioned aforesaid shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him. But the remuneration does not include any remuneration paid to him for any other service rendered by him at the request of the company.

PART E: BOARD OF DIRECTORS & MANAGERIAL PERSONNEL

1. **Mark the correct answer [only indicate (a) or (b) or (c) or (d) and give justification.**

(i) Section 2 (54) of the Companies Act, 2013 defines a 'Managing Director' as a director who is entrusted with substantial powers of management of the affairs of the company by -

(a) virtue of the articles of a company, or
(b) an agreement with the company, or
(c) a resolution passed in its general meeting, or by its Board of Directors, and includes a director occupying the position of the managing director, by whatever name called.
(d) all of the above

Answer: (d)

Justification:
A director is entrusted with substantial powers of management of the affairs of the company as per Section 2(54) of the Companies Act, 2013.

(ii) 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

Answer: (a)

Justification:
This definition is given in section 2 (49) of the Companies Act, 2013.

(iii) According to section 197 (7), notwithstanding anything contained in any other provision of this Act but subject to the provisions of this section, an independent director shall not be entitled to any stock option and may receive remuneration by way of -

(a) sitting fees in terms of section 197 (5),
(b) reimbursement of expenses for participation in the Board and other meetings, and
(c) profit related commission as may be approved by the members.
(d) all of the above

Answer: (d)

Justification:

This provision is mentioned in section 197 (7) under the head of Remuneration of Independent Director.

(iv) Every Producer Company shall have at least ______ directors and not more than _________ directors.

(a) 3 ; 10

(b) 3 ; 15

(c) 5 ; 15

(d) 5 ; 10

Answer: (c)

Justification:

This provision is mentioned in section 581O under the head of Number of directors. In addition, the proviso to the Section states that in the case of the Inter-State Co-operative Society incorporated as a Producer Company, such company may have more than 15 directors for a period of one year from the date of its incorporation as a Producer Company.

(v) Which of the following is the Principle of Corporate Governance?

(a) Transparency

(b) Accountability

(c) Independence

(d) All of the above

Answer: (d)

Justification:

Corporate governance refers to the accountability of the Board of Directors to all stakeholders of the corporation i.e. shareholders, employees, suppliers, customers and society in general; towards giving the corporation a fair, efficient and transparent administration. These all are the Principles of Corporate Governance.

(vi) Match the following:

Set I	Set II
1. Where a poll is to be taken, the Chairman of the meeting shall appoint such number of persons, as he deems necessary, to scrutinize the poll process and votes given on the poll and to report thereon to him in the manner as may be prescribed.	I. Section 109(7)
2. Subject to the provisions of this section, the Chairman of the meeting shall have power to regulate the manner in which the poll shall be taken.	II. Section 109(6)

The result of the poll shall be deemed to be the decision of the meeting III. Section 109(5) on the resolution on which the poll was taken.

(a) 1 – I, 2 – II, 3 – III
(b) 1 – III, 2 – II, 3 – I
(c) 1 – II, 2 – I, 3 – III
(d) 1 – I, 2 – III, 3 – II

Answer: (b)

Justification:
Different sections of the Companies Act, 2013 are to be matched with the concerned provisions.

(vii)Match the following:

Set - I	Set - II
1. Chief Executive Officer	I. Section 2(24)
2. Chief Financial Officer	II. Section 2(19)
3. Company secretary	III. Section 2(18)

(a) 1 – I, 2 – II,3 – III
(b) 1 – III, 2 – II, 3 – I
(c) 1 – II, 2 – I, 3 – III
(d) 1 – I, 2 – III, 3 – II

Answer: (b)

Justification:
Different sections of the Companies Act, 2013 are to be matched with the concerned provisions.

(viii)Match the following:

Set - I	Set - II
1. Manager	I. Section 2(94)
2. Managing director	II. Section 2(54)
3. Whole-time director	III. Section 2(53)

(a) 1 – I, 2 – II, 3 – III
(b) 1 – III, 2 – II, 3 – I
(c) 1 – II, 2 – I, 3 – III
(d) 1 – I, 2 – III, 3 – II

Answer: (b)

Justification:
Different sections of the Companies Act, 2013 are to be matched with the concerned provisions

(ix) As per Section 203 (1), every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel —

Managing Director, or Chief Executive Officer or Manager and in their absence, a Whole-

(a) Time Director
(b) Company Secretary
(c) Chief Financial Officer
(d) All of the above

Answer: (d)

Justification:

This provision is mentioned in section 203(1) of the Companies Act, 2013 regarding Key Managerial Personnel (KMP).

(x) As per Section 196(3), __________ the employment of any person as managing director, whole-time director or manager.

(a) company shall appoint or continue
(b) no company shall appoint or continue
(c) depends on situation
(d) None of the above

Answer: (b)

Justification:

This provision is mentioned in section 196(3) of the Companies Act, 2013 regarding the appointment of Key Managerial Personnel (KMP).

(xi) State whether the given statements (regarding overall maximum managerial remuneration) are true or not:

(1) As per Section197 (5), a director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board.

(2) As per Section197 (6), a director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other.

(a) 1 - T, 2 - F
(b) 1 - F, 2 - T
(c) 1 - T, 2 - T
(d) 1 - F, 2 - F

Answer: (c)

Justification:
Both the statements are true as per the Companies Act, 2013.

(xii) At least one woman director is required for __________ .

(a) every listed company;
(b) every other public company having paid-up share capital of one hundred crore rupees more
(c) every other public company having turnover of three hundred crore rupees or more
(d) all of the above

Answer: (d)

Justification:
As per second proviso to section 149(1), at least one woman director shall be on the Board of such class or classes of companies as may be prescribed. Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides that the above class of companies shall appoint at least one woman director.

(xiii) Match the following:

Set - I	Set - II
1. Women Director	**I.** Section 149(4)
2. Resident Director	**II.**Section 149 (3)
3. Independent Director	III. Section 149(1)

(a) 1 - I, 2 - II, 3 - III
(b) 1 - III, 2 - II, 3 - I
(c) 1 - II, 2 - I, 3 - III
(d) 1 - I, 2 - III, 3 - II

Answer: (b)

Justification:
Different sections of the Companies Act, 2013 are to be matched with the concerned provisions.

(xiv)A person appointed as small shareholders' director shall vacate the office if:

(a) the director incurs any of the disqualifications specified in section 164;
(b) the office of the director becomes vacant in pursuance of section 167;
(c) the director ceases to meet the criteria of independence as provided in sub-section (6) of section 149.
(d) All of the above

Answer: (d)

Justification:

This provision is mentioned in section 151 of the Companies Act, 2013 regarding 'Appointment of Directors elected by Small shareholders'

(xvi) Who is KMP as per section 203(1)?

(a) Managing Director, or Chief Executive Officer or Manager and in their absence, a Whole time Director.

(b) Company Secretary

(c) Chief Financial Officer

(d) All of the above

Answer: (d)

Justification:

This provision is mentioned in section 203(1) of the Companies Act, 2013 regarding Key Managerial Personnel (KMP).

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

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 Raja Limited is a listed company?

Answer:

The given problem relates to section 149(4) of the Companies Act, 2013 read with Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

(i) As per Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following class(es) of companies shall have at least 2 directors as independent directors:

(a) Public Companies having paid up share capital of ₹ 10 crore or more.

(b) Public Companies having turnover of ₹ 100 crore or more.

(c) Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding ₹ 50 crore.

However, the following classes of unlisted public companies shall not be required to have any independent director:

(a) A joint venture

(b) A wholly owned subsidiary

3. The Board of Directors of Yatrik Athletic Club of Behala, Kolkata (a not-for-profit company) desires to prepare the books of accounts on cash basis. Can it be done without the approval of members or the Central Government?

Answer:

The present problem relates to section 128 of the Companies Act, 2013. As per the section, the books of accounts shall be prepared on accrual basis. Section 128 does not provide any exemption permitting a company to p[reaper the books of accounts on any basis other than accrual basis.

Further, the requirement to prepare the books of accounts on accrual basis is applicable on all companies, whether public or private, whether having share capital or not, whether a company is a government company or non-profit company.
Further, section 128 does not empower the members or the Central Government to permit a company to prepare the books of accounts on any basis other than accrual basis. Thus the books of Accounts of Yatrik Athletic Club cannot be prepared on cash basis. If the books are prepared on cash basis, it would amount to contravention of Section 128.

4. Discuss the provisions regarding to vacation of office of director.

Answer:

The provisions regarding to vacation of office of director are contained in section 167 of the Companies Act, 2013, which are as follows:
As per section167 (1), the office of a director shall become vacant in case -
(a) he incurs any of the disqualifications specified in section 164;
(b) he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;
(c) he acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;
(d) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;
(e) he becomes disqualified by an order of a court or the Tribunal;
(f) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months:
Provided that the office shall be vacated by the director even if he has filed an appeal against the order of such court;
(g) he is removed in pursuance of the provisions of this Act;
(h) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

As per Section167 (2), if a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in subsection (1), he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

As per Section167(3), where all the directors of a company vacate their offices under any of the disqualifications specified in sub-section (1), the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

As per Section167(4), a private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified in sub-section (1).

As per Companies (Amendment) Act, 2017

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 offce 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)—

(i) for thirty days from the date of conviction or order of disqualification;

(ii) 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.".

5. Write short note on 'Resident Director'.

Answer:

Every company shall have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year. [Section 149 (3)]

Transition period: Section 149 (5) provides for the transition period of one year from the date of commencement i.e., 1st April, 2014 to comply with section 149 (3).

Section 149 (3) of the Companies Act, 2013 requires every company to have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year. The MCA clarified that residency requirement would be reckoned from the date of commencement of section 149 of the Act i.e., 1st April, 2014. The first previous calendar year for compliance with these provisions would, therefore, be calendar year 2014. The period to be taken into account for compliance with these provisions will be the remaining period of calendar year 2014 (i.e., 1st April to 31st December). Therefore, on a proportionate

basis, the number of days for which the director(s) would need to be resident in India, during Calendar year 2014, shall exceed 136 days.

Regarding newly incorporated companies it is clarified that companies incorporated between 1st April, 2014 and 30th September, 2014 should have a resident director either at the incorporation stage itself or within six months of their incorporation. Companies incorporated after 30th September, 2014 need to have the resident director from the date of incorporation itself.

6. What is the procedure of resignation of Director as per section 168 of the Companies Act, 2013?

Answer:

Provisions regarding resignation of directors have been provided for the first time under the Companies Act, 2013. According to this section:

(a) a director may resign from his office by giving a notice in writing to the company.

(b) The Board shall on receipt of such notice take note of the same.

(c) The company shall within 30 days from the date of receipt of notice of resignation from a director, intimate the Registrar in Form DIR-12 and post the information on its website, if any.

(d) The company shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company.

(e) Such director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30 days from the date of resignation in Form DIR- 11 along with the prescribed fee.

7. Can you describe the procedure of appointment of a managing director, whole-time director or manager?

Answer:

(a) Subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed, and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting.

(b) The terms and conditions and remuneration approved by Board of Directors as above shall be subject to the approval of shareholders by a resolution at the next general meeting of the company.

(c) In case such appointment is at variance to the conditions specified in the Schedule V of the Companies Act, 2013, the appointment shall be approved by the Central Government.

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

(e) A return in the prescribed form (Form No. MR-1) along with the prescribed fee shall be f led with the Registrar within sixty days of such appointment.

Subject to the provisions of this Act, where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall deemed to be valid [Section 196 (5)].

PART F: BOARD MEETINGS AND PROCEDURES

1. Mark the correct answer [only indicate (a) or (b) or (c) or (d) and give justification.

(i) Section _________ of the Companies Act, 2013 imposes a ___________ obligation on every company to cause minutes of all proceedings of general meetings, board meetings and other meeting and resolution passed by postal ballot.

(a) 118; statutory
(b) 119; statutory
(c) 118; statutory
(d) 118; non-statutory

Answer: (a)

Justification:
This provision is mentioned in section 118 of the Companies Act, 2013 regarding 'Minutes of the Meeting of the General Meeting/Board Meeting'.

(ii) According to section 173(3), every board meeting shall be called by giving at least 7 days notice in writing to all the directors at their registered address _____________ .

(a) in India
(b) outside India
(c) whether in India or outside India
(d) none of the above

Answer: (c)

Justification:
This provision is mentioned in section 118 of the Companies Act, 2013 regarding 'Notice of the Meeting'. In addition, the notice may be sent by hand delivery or by post or by electronic means

(iii) The quorum for a Board Meeting shall be -

(a) one-third of its total strength
(b) two directors, whichever is higher
(c) both (a) and (b)
(d) all of the above

Answer: (c)

Justification:
A quorum is the minimum number of qualified persons who must attend in order to transact business at a duly convened Board meeting. A meeting shall not be deemed to have been properly held unless the quorum was present at that meeting. Section 174 of the Companies Act, 2013 provides for Quorum for meetings of Board.

(iv) Every company incorporated under the Act is required to keep at its registered office, inter alia, the following statutory books and registers:

(a) Register of investments in securities not held in company's name in Form MBP-3. [Section 187(3)]
(b) Register of deposits. [Section 73 and Rule 14 of the Companies (Acceptance of Deposits) Rules, 2014]
(c) Register of securities bought back in Form SH-10. [Section 68(9)]
(d) all of the above

Answer: (d)

Justification:

The company has to maintain certain registers and records for statutory, statistical, disclosure, information management and MIS purposes. Further, the company is also required to keep these records with in the vicinity of the place prescribed for it by the laws.

(v) Section 135(1) read with Rule 3 of the Companies (Corporate Social Responsibility Policy Rules, 2014, mandates every company having:

(a) Net worth of ₹ 5 crores or more, or
(b) Turnover of ₹ 1000 crores or more, or
(c) A net profit of ₹ 5 crores or more
(d) All of the above

Answer: (b)

Justification:

This provision is mentioned in section 135 of the Companies Act, 2013 regarding 'Corporate Social Responsibility'.

(vi) The directors are liable to the company in the following cases:

(a) When they are negligent in the performance of their duty as directors and the company suffers loss, etc.
(b) When they commit an act which is ultra vires their powers or ultra vires the company.
(c) When any illegal act or breach of trust is committed by them.
(d) All of the above

Answer: (c)

Justification:

This provision is mentioned in the Companies Act, 2013 under the head of director's liability.

2. (a) Discuss the impact of the Companies Act, 2013 on Corporate Governance in India.

Answer:

The term "Governance" refers to the process of governing, whether undertaken by government, market or network, whether over a family, tribe formal or informal organization or territory whether through general laws, norms or power. It involves the process of interaction and decision making. The term "Governance" when applied to a business organization, it is defined as combination of processes established and executed by Board of Directors that are reflected in the organization structure and how it is managed and led toward achieving goals. The term "Corporate Governance" gained much importance when accounting fraud of high profile companies were observed in the business world and the reason was due to lack of adequate governance mechanism.

Undoubtedly, the impact of the Companies Act, 2013 on some important areas of corporate governance has already been experienced and measured. However, those important broad areas may be mentioned by the following figure:

Board Composition

Independent Directors

Woman Director

Duties of Directors

Committees of The Board

Board Meetings and Processes

Others

Figure: important areas of corporate governance affected by the Companies Act, 2013

The Companies Act, 2013 contemplates structural and fundamental changes in the way companies would be governed in India and incorporates various lessons that have been learnt from the corporate scams of the recent years that highlighted the role and importance of good governance in organizations. Significant corporate governance reforms, primarily aimed at improving the board oversight process, have been proposed in the Companies Act, 2013 for instance it has proposed, for the first time in Company Law, the concept of an Independent Director and all listed companies are required to appoint independent directors with at least one third of the Board of such companies comprising of independent directors.

The Companies Act, 2013 takes the concept of board independence to another level altogether. The definition of an Independent Director has been considerably tightened and the definition now defines positive attributes of independence and also requires every Independent Director to declare that he or she meets the criteria of independence. In order to ensure that Independent Directors maintain their

independence and do not become too familiar with the management and promoters, minimum tenure requirements have been prescribed. The initial term for an independent director is for five years, following which further appointment of the director would require a special resolution of the shareholders. However, the total tenure for an independent director is not allowed to exceed two consecutive terms.

The Companies Act, 2013 expressly disallows Independent Directors from obtaining stock options in companies to protect their independence. The new guidelines which set out the role, functions and duties of Independent Directors and their appointment, resignation and evaluation introduce greater clarity in their role; however, in certain places they are prescriptive in nature and could end up making the role of Independent Directors quite onerous. In order to balance the extensive nature of functions and obligations imposed on Independent Directors, the Companies Act, 2013 seeks to limit their liability to matters directly relatable to them and limits their liability to 'only in respect of acts of omission or commission by a company which had occurred with his knowledge, attributable through board processes, and with his consent or connivance or where he had not acted diligently'. The Act also requires that all resolutions in a meeting convened with a shorter notice should be ratified by at least one independent director which gives them an element of veto power. Various other clauses such as those on directors' responsibility statements, statement of social responsibilities, and the directors' responsibilities over financial controls, fraud, etc, will create a more transparent system through better disclosures. The Act also contemplates that any undue gain made by a director by abusing his position will be disgorged and returned to the company together with monetary fines.

3. Discuss the duties of directors as per section 166.

Answer:

Duties of directors has been defined in the company Law for the first time under section 166 of the Companies Act, 2013. The following duties have been prescribed for a director under the said section:

(a) He shall act in accordance with the articles of the company, subject to the provisions of this Act.

(b) He shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

(c) He shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

(d) He shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

(e) He shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

(f) He shall not assign his office and if any assignment so made, it shall be void.

(g) If a director of the company contravenes the provisions of this section, such director shall be punishable with f ne which shall not be less than ₹ 1,00,000 but which may extend to ₹ 5,00,000.

PART G: INSPECTION, INQUIRY AND INVESTIGATION

1. Mark the correct answer [only indicate (a) or (b) or (c) or (d) and give justification.

(a) Where a Registrar or Inspector calls for the books of account and other books and papers under section 206, it shall be the duty of every director, officer or other employee of the company:

(a) to produce all such documents to the Registrar or Inspector, and
(b) to furnish him with such statements, information or explanations in such form as the Registrar or Inspector may require, and
(c) to render all assistance to the Registrar or Inspector in connection with such inspection.
(d) all of the above

Answer: (d)

Justification:
Section 206 of the Companies Act, 2013 provides for the power to call for information, inspect books and conduct inquiries.

(b) ________ of the Companies Act, 2013 provides for the submission of the report on inspection made.

(a) Section 205
(b) Section 206
(c) Section 207
(d) Section 208

Answer: (c)

Justification:
Section 208 of the Act provides for the submission of the report on inspection made. According to this section: The Registrar or Inspector shall, after the inspection of the books of account or an inquiry under section 206 and other books and papers of the company under section 207, submit a report in writing to the Central Government along with such documents, if any and such report may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary giving his reasons in support.

2. Mention the composition of SFIO as per section 211 (2) of the Companies Act, 2013.

The SFIO shall be:

(1) Headed by a Director, and
(2) Consist of such number of experts from the following fields to be appointed by the Central Government from amongst persons of ability, integrity and experience in:
  a) banking;
  b) corporate affairs;
  c) taxation;

d) forensic audit;
e) capital market;
f) information technology;
g) law; or
h) such other fields as may be prescribed.

3. Do you think that the Registrar is having power to call for information, explanation or documents? Explain.

Answer:

According to section 206(1) of the Companies Act, 2013, where on a scrutiny of any document f led by a company or on any information received by him, the Registrar is of the opinion that any further information or explanation or any further documents relating to the company is necessary, he may by a written notice require the company :

(1) to furnish in writing such information or explanation; or
(2) to produce such documents, within such reasonable time, as may be specified in the notice.

4. What do you mean by Search and Seizure? Mention the Circumstances for seizure as per section 209 (1) of the Companies Act, 2013.

Answer:

Search means, an examination of public records to determine and confirm a property's legal ownership, and find out what claims are on the property.

Seizure is the forcible taking of property by a government law enforcement official from a person who is suspected of violating, or is known to have violated, the law.

Search and seizure is a procedure used in many civil law and common law legal systems by which police or other authorities and their agents, who suspect that a crime has been committed, do a search of a person's property and confiscate any relevant evidence to the crime.

Section 209 of the Act provides for Search and seizure.

Circumstances for seizure [Section 209 (1)]

Where, upon information in his possession or otherwise, the Registrar or inspector has reasonable ground to believe that the books and papers of a company, or relating to:

(1) the key managerial personnel or
(2) any director or
(3) auditor or
(4) company secretary in practice if the company has not appointed a company secretary, are likely to be destroyed, mutilated, altered, falsified or secreted, he may, after obtaining an order from the Special Court for the seizure of such books and papers:
   (a) enter, with such assistance as may be required, and search, the place or places where such books or papers are kept, and
   (b) seize such books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books or papers at its cost.

PART H: COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

1. Mark the correct answer [only indicate (a) or (b) or (c) or (d) and give justification.

(i) The mode(s) of corporate restructuring -

(a) Amalgamation
(b) Compromise
(c) Arrangement
(d) All of the above

Answer: (d)

Justification:
Corporate restructuring is one of the methods to achieve this objective. Mergers, demerger, amalgamation, compromise and arrangements are the different modes of corporate restructuring. The Companies Act provides the power to the Court for sanctioning schemes of compromise and arrangement.

(ii) State whether true or false:

1. 'Compromise' is a term which implies the existence of a dispute such as relating to rights. It means settlement or adjustment of claims in dispute by mutual concessions.
2. If the members have to gave up their rights entirely, it will not be compromise [NFU Development Trust Ltd., Re (1973) 1 All E.R. 135].
3. There can be no 'compromise' unless there is first a dispute [Guardian Assurance Co., Re. (1917) 1 Ch. 431].
   (a) 1 - T, 2 - T, 3 - T
   (b) 1 -F, 2 - F, 3 - F
   (c) 1 – F, 2 – T, 3 – T
   (d) 1 – F, 2 – F, 3 – T

Answer: (a)

Justification:
All the statements are true as per Chapter XV of the Companies Act, 2013 (Section 230 to Section 240).

(iii) Section 233 prescribes simplified procedure for Merger or amalgamation of _________ .

(a) two or more small companies or
(b) between a holding company and its wholly-owned subsidiary company or
(c) such other class or classes of companies as may be prescribed.
(d) all of the above

Answer: (d)

Justification:

Section 233 of the Companies Act, 2013 provides simplified procedure for Merger or Amalgamation.

(iv) Match the following: **[2 Marks]**

Set - I	Set - II
1. Merger or amalgamation of a company with a foreign	I. Section 232
2. Merger and amalgamation of certain companies	II. Section 233
3. Merger and amalgamation of companies	III. Section 234

(a) 1 – I, 2 – II, 3 – III
(b) 1 - III, 2 - II, 3 - I
(c) 1 - II, 2 - I, 3 - III
(d) 1 - I, 2 - III, 3 - II

Answer: (b)

Justification:

Different sections of the Companies Act, 2013 are to be matched with the concerned provisions.

(v) State whether true or false regarding 'power of the tribunal to enforce compromise or arrangement (section 231)' -

As per Section 231(1) when the Tribunal makes an order under Section 230 sanctioning a compromise or an arrangement in respect of a company, it:

1. shall have power to supervise the implementation of the compromise or arrangement.

2. may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper implementation of the compromise or arrangement.

(a) 1 - T, 2 - T
(b) 1 -F, 2 - F
(c) 1 - F, 2 - T
(d) 1 – T, 2 – F

Answer: (a)

Justification:

Both the statements are true as per the Companies Act, 2013.

(vi) The term 'arrangement' includes a reorganization of the share capital of a company -

(a) by the consolidation of shares of different classes
(b) by the division of share into shares of different classes
(c) by both these methods
(d) all of the above

Answer: d)

Justification:
The term 'arrangement' is of very wide import. It includes a reorganization of the share capital of a company by the consolidation of shares of different classes, or by the division of share into shares of different classes or by both these methods. All modes of reorganizing the share capital, including interference with preferential and other special rights attached to shares, can properly form part of an arrangement with members [Investment Corp. of India Ltd., Re (1987) 61 Comp. Cas.92 (Bom)].

2. Discuss the process of Merger or Amalgamation of a company with a foreign company as per Companies act, 2013.

Answer:

Section 234 (2) Subject to the provisions of any other law for the time being in force, a foreign company, may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or vice versa and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose.

For the purposes of Sub-Section (2), the expression 'foreign company' means any company or body corporate incorporated outside India whether having a place of business in India or not. Section 234 (1) states that the provisions of this Chapter unless otherwise provided under any other law for the time being in force, shall apply mutatis mutandis to schemes of mergers and amalgamations between companies registered under this Act and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government. The Central Government may make rules, in consultation with the Reserve Bank of India, in connection with mergers and amalgamations provided under this Section.

3. Discuss about Merger of small companies, holding and subsidiary companies.

Answer:

Accordingly Sub-Section (1) of Section 233 states that notwithstanding the provisions of Section 230 and Section 232, a scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other class or classes of companies as may be prescribed, subject to the following, namely:

(a) a notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within thirty days is issued by the transferor company or companies and the transferee company;

(b) the objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent. of the total number of shares;

(c) each of the companies involved in the merger files a declaration of solvency, in the prescribed form, with the Registrar of the place where the registered office of the company is situated; and

(d) the scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing.

PART I: PREVENTION OF OPPRESSION AND MIS-MANAGEMENT

1. Mark the correct answer [only indicate (a) or (b) or (c) or (d) and give justification.

(i) Under the Companies Act, the powers have been divided in the following segment(s)

(a) Board of Directors
(b) Shareholders
(c) Both (a) and (b)
(d) None of the above

Answer: (c)

Justification:
Under the Companies Act, the powers have been divided between two segments: one is the Board of Directors and the other is of shareholders. The directors exercise their powers through meetings of Board of directors and shareholders exercise their powers through General Meetings.

(ii) Member's right to vote is recognised as right of property a*nd the shareholder may exercise it as he thinks fit according to his/her -

(a) choice
(b) interest
(c) choice and interest both
(d) None of the above

Answer: (c)

Justification:
According to Section 47 of the Companies Act, 2013, every member of a company, which is limited by shares, holding any equity shares shall have a right to vote in respect of such capital on every resolution placed before the company. This is related with this section.

2. Discuss the powers of Majority.

Answer:

According to Section 47 of the Companies Act, 2013, every member of a company, which is limited by shares, holding any equity shares shall have a right to vote in respect of such capital on every resolution placed before the company. Member's right to vote is recognised as right of property and the shareholder may exercise it as he thinks ft according to his choice and interest. However, this rule is modified by the Act in certain cases. A special resolution, for instance, requires a majority of 3/4th of those voting at the meeting and therefore, where the Act or the Articles require a special resolution for any purpose, a three fourth

majority is necessary and a simple majority is not enough [Edwards v. Halliwell, (1950) 2 All. E.R.1064]. The resolution of a majority of shareholders, passed at a duly convened and held general meeting, upon any question with which the company is legally competent to deal, is binding upon the minority and consequently upon the company [North-West Transportation Co. v. Beatty (1887) L.R. 12 A.C. 589].

Thus, the majority of the members enjoy the supreme authority to exercise the powers of the company and generally to control its affairs. But this is subject to two very important limitations. Firstly, the powers of the majority of members is subject to the provisions of the Company's memorandum and articles of association. Secondly, the resolution of a majority must not be inconsistent with the provisions of the Act or any other statute, or constitute a fraud on minority depriving it of its legitimate rights.

3. Write a short note on 'the Principle of Non-interference'.

Answer:

The general principle of company law is that every member holds equal rights with other members of the company in the same class. The scale of rights of members of the same class must be held evenly for smooth functioning of the company. In case of difference(s) amongst the members the issue is decided by a vote of the majority. The basic principle of non-interference with the internal management of company by the court is laid down in a celebrated case of Foss v. Harbottle 67 E.R. 189. (1843) 2 Hare 461 that no action can be brought by a member against the directors in respect of a wrong alleged to be committed to a company. The company itself is the proper party of such an action.

PART J: REVIVAL AND REHABILITATION OF SICK INDUSTRIAL COMPANIES

1. Mark the correct answer [only indicate (a) or (b) or (c) or (d) and give justification.

(i) SICA stands for -

(a) the Selective Industrial Compromises (Special Provisions) Act, 1985
(b) the Sick Industrial Companies (Special Provisions) Act, 1985
(c) the Selective Industrial Companies (Special Provisions) Act, 1985
(d) the Sick Industrial Companies (Special Provisions) Act, 1995

Answer: (b)

Justification:
This is an important Act which is related with the Companies Act. SICA stands for Sick Industrial Companies (Special Provisions) Act, 1985.

(ii) Which Form is used in case of 'the order of the tribunal declaring the debtor company as sick company (Section - 253)'?

(a) Form-A
(b) Form-B
(c) Form-C
(d) Form-D

Answer: (D)

Justification:
The provision as to determination of sickness is covered under Section 253 of the Companies Act, 2013.

2. Discuss the powers and duties of Company Administrator.

Answer:

Section 253 of the Companies Act, 2013 contains the provisions as to Powers and duties of Company Administrator. Under this Section:

(a) The Company Administrator shall perform such functions as the Tribunal may direct.
(b) Without prejudice to the provisions of Sub-Section (1), the Company Administrator may cause to be prepared with respect to the company:
 (1) a complete inventory of:
  (a) all assets and liabilities of whatever nature.
  (b) all books of account, registers, maps, plans, records, documents of title and all other documents

of whatever nature.

(2) a list of shareholders and a list of creditors showing separately in the list of creditors, the secured creditors and unsecured creditors.
(3) a valuation report in respect of the shares and assets in order to arrive at the reserve price for the sale of any industrial undertaking of the company or for the fixation of the lease rent or share exchange ratio.
(4) an estimate of the reserve price, lease rent or share exchange ratio.
(5) proforma accounts of the company, where no up-to-date audited accounts are available, and
(6) a list of workmen of the company and their dues referred to in Sub-Section (3) of Section 325.

PART K: CORPORATE WINDING UP AND DISSOLUTION

1. Mark the correct answer [only indicate (a) or (b) or (c) or (d) and give justification.

(i) The main purpose of winding up of a company is to

(a) realize the assets of the company
(b) to pay the debts of the company
(c) both (a) and (b)
(d) none of the above

Answer: (c)

Justification:
Chapter XX of the Companies Act, 2013 deals with Corporate Winding-Up.

(ii) Under Companies Act 2013, the Company may be wound up in any of the following modes:

(a) By National Company Law Tribunal (the Tribunal)
(b) Voluntary winding up
(c) both (a) and (b)
(d) none of the above

Answer: (c)

Justification:
The Companies Act, 2013, provides various strategies to deal with such business failures such as arrangement, reconstruction, amalgamation and winding-up. These all are included in section 270 under the head of 'modes of winding up'.

(iii) Match the following:

Set - I	Set - II
1. Powers and duties of Company Liquidator	I. Section 294
2. Books to be kept by Company Liquidator	II. Section 293
3. Audit of Company Liquidator's Accounts	III. Section 290

(a) 1 – I, 2 – II, 3 – III
(b) 1 – III, 2 – II, 3 – I
(c) 1 – II, 2 – I, 3 – III
(d) 1 – I, 2 – III, 3 – II

Answer: (b)

Justification:

Different sections of the Companies Act, 2013 are to be matched with the concerned provisions.

(iv) State whether true or false:

Effect of floating charge is covered under section 332.

As per above section, when a company is being wound up, a floating charge on the undertaking or property of the company created within the twelve months immediately preceding the commencement of the winding up.

(a) 1 - T, 2 - T
(b) 1 -F, 2 - F
(c) 1 - F, 2 - T
(d) 1 - T, 2 - F

Answer: (a)

Justification:

Both the statements are true as per the Companies Act, 2013.

(v) Which of the following is not true?

1. Chapter XX of the Companies Act, 2013 deals with Corporate Winding-Up.
2. Under Chapter XX, Part -I deals with Winding-Up by the Tribunal;
3. Under Chapter XX, Part-II deals with Voluntary Winding-Up;
4. Under Chapter XX, Part-III contains the provisions applicable to every mode of winding up;
5. Under Chapter XX, Part- IV deals with Official Liquidators.

(a) 2,3,4 & 5
(b) Only 1
(c) No false statement
(d) 1 & 5

Answer: (c)

Justification:

All the statements are true as per the Companies Act, 2013.

(vi) A company under Section 271(1) may be wound up by the tribunal if:

(a) if the company is unable to pay its debts.
(b) if the company has, by special resolution, resolved that the company be wound up by the Tribunal.
(c) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.
(d) All of the above

Answer: (d)

Justification:

The provision regarding grounds on which a company may be wound up by the Tribunal is covered under Section 271(1) of the Companies Act, 2013.

(vii)Appointment of Company Liquidators (By National Company Law Tribunal) is covered under section ___________ of the Companies Act, 2013.

(a) 275
(b) 276
(c) 277
(d) 278

Answer: (a)

Justification:

This is mentioned in the Companies Act, 2013. Appointment of Company Liquidators (By National Company Law Tribunal) is covered under section 275 of the Act.

(viii)As per Section 304 (1), a company may be wound up voluntarily:

(a) if the company in general meeting passes a resolution requiring the company to be wound up voluntarily as a result of the expiry of the period for its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company should be dissolved, or
(b) if the company passes a special resolution that the company be wound up voluntarily.
(c) both (a) and (b)
(d) none of the above

Answer: (c)

Justification:

The provision regarding wound up voluntarily is covered under Section 271(1) of the Companies Act, 2013.

2. Can you illustrate the power of tribunal to assess damages against delinquent directors etc. with some case laws?

Answer:

(1) In the matter of Ajay G Podar v. Official Liquidator of JS & WM & Ors. (2008) 85 CLA 398 (SC), Hon'ble Supreme Court has held that section 543(2) of the Companies Act, 1956 [Section 340 under the Companies Act, 2013] deals with the limitation of applications/claims including misfeasance proceedings and prescribes five (5) years period of limitation from the date of the winding up order for fling an application under section 543 (1). However, section 458A of the Companies Act, 1956 [Section

358 under the Companies Act, 2013] provides for the concept of computation of the limitation period. Section 458A being a non obstante clause exclude the period starting from commencement of winding up proceedings till the date on which winding up order is passed and a period of one (1) year thereafter. In view of the above, misfeasance proceedings f led by the OL are well within limitation period.

(2) In L.K. Prabhu v. S.M. Ameerul Millath (2002) 40 SCL 385 (Ker HC), it was held that application under Section 543 (for damages for misapplication or misfeasance) [Section 340 under the Companies Act, 2013] is maintainable against Official Liquidator also, as 'liquidator' includes 'Official Liquidator'. Moreover he is 'Officer' of the company as defined in Section 2(30), even if not specifically mentioned in the definition. However there should be prima facie case against him and there is substance in the allegations. If Official Liquidator has acted in good faith, he is entitled to protection under Section 635A [Section 456 under the Companies Act, 2013].

(3) In Official Liquidator Vs. Ashok Kumar, (1976) 46 Comp. Cas. 575 (Pat), it was held that a director who has not been duly elected and has taken his qualification shares shall be liable if he has acted as such. In other words, where a director continued to act de facto without being validly elected, he shall be liable for misfeasance.

(4) The extent of liability of the Legal Representative: In the case of death of the director, it was held by the Supreme Court that the proceedings commenced against the delinquent director of a liquidated company can be continued against his legal representatives and the amount declared to be due in such misfeasance proceeding can be realized from the estate of the deceased on the hands of his legal representatives. The Court further held that the legal representatives would not, however, be liable for any sum beyond the value of the estate of the deceased in their hands [Official Liquidator, Supreme Bank Ltd. V.P.A. Tendolkar (1973) 43 Comp. (Case 382)] and [Official Liquidator vs. Parthasarthy Sinha (1983) 53. Comp. Case (SC) (3c)].

3. Can you explain the procedure of appointment of Company Liquidators?

Answer:

Section 275(1) States that, for the purposes of winding up of a company by the Tribunal, the Tribunal at the time of the passing of the order of winding up, shall appoint an Official Liquidator or a liquidator from the panel maintained under Sub-Section (2) as the Company Liquidator.

Section 275 (2) states that the provisional liquidator or the Company Liquidator, as the case may be, shall be appointed from a panel maintained by the Central Government consisting of the names of Chartered Accountants, Advocates, Company Secretaries, Cost Accountants or firms or bodies corporate having such Chartered Accountants, Advocates, Company Secretaries, Cost Accountants and such other professionals as may be notified by the Central Government or from a firm or a body corporate of persons having a combination of such professionals as may be prescribed and having at least ten years' experience in company matters.

Section 275 (3) states that if a provisional liquidator is appointed by the Tribunal, the Tribunal may limit and restrict his powers by the order appointing him or it or by a subsequent order, but otherwise he shall have the same powers as a liquidator.

Section 275 (4) enables the Central Government may remove the name of any person or firm or body corporate from the panel maintained under Sub-Section (2) on the grounds of misconduct, fraud, misfeasance, breach of duties or professional incompetence. However, the Central Government before removing him or it from the panel shall give him or it a reasonable opportunity of being heard.

As per Section 275 (5) the terms and conditions of appointment of a provisional liquidator or Company Liquidator and the fee payable to him or it shall be specified by the Tribunal on the basis of task required to be performed, experience, qualification of such liquidator and size of the company.

As per Section 275 (6) On appointment as provisional liquidator or Company Liquidator, as the case may be, such liquidator shall f le a declaration within seven days from the date of appointment in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal and such obligation shall continue throughout the term of his appointment. As per Section 275 (7) while passing a winding up order, the Tribunal may appoint a provisional liquidator, if any, appointed under clause (c) of Sub-Section (1) of Section 273, as the Company Liquidator for the conduct of the proceedings for the winding up of the company.

4. What is the effect of floating charge in company liquidation process?

Answer:

As per Section 332, when a company is being wound up, a floating charge on the undertaking or property of the company created within the twelve months immediately preceding the commencement of the winding up, shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except for the amount of any cash paid to the company at the time of, or subsequent to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent per annum or such other rate as may be notified by the Central Government in this behalf.

5. Discuss the power of tribunal to assess damages against delinquent directors. Support your answer by appropriate case law.

Answer:

Section 340 (1) states that if in the course of winding up of a company, it appears that any person who has taken part in the promotion or formation of the company, or any person, who is or has been a director, manager, Company Liquidator or officer of the company:

(a) has misapplied, or retained, or become liable or accountable for, any money or property of the company, or

(b) has been guilty of any misfeasance or breach of trust in relation to the company, the Tribunal may, on the application of the Official Liquidator, or the Company Liquidator, or of any creditor or contributory, made within the period specified in that behalf in Sub-Section (2), inquire into the conduct of the person, director, manager, Company Liquidator or officer aforesaid, and order him to repay or restore the money or property or any part thereof respectively, with interest at such rate as the Tribunal

considers just and proper, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Tribunal considers just and proper.

Sub-Section (2) states that an application under Sub-Section (1) shall be made within five years from the date of the winding up order, or of the first appointment of the Company Liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer. (3) This Section shall apply, notwithstanding that the matter is one for which the person concerned may be criminally liable.

Case Law

1. In the matter of Ajay G Podar v. Official Liquidator of JS & WM & Ors. (2008) 85 CLA 398 (SC), Hon'ble Supreme Court has held that section 543(2) of the Companies Act, 1956 [Section 340 under the Companies Act, 2013] deals with the limitation of applications/claims including misfeasance proceedings and prescribes five (5) years period of limitation from the date of the winding up order for fling an application under section 543 (1). However, section 458A of the Companies Act, 1956 [Section 358 under the Companies Act, 2013] provides for the concept of computation of the limitation period. Section 458A being a non obstante clause exclude the period starting from commencement of winding up proceedings till the date on which winding up order is passed and a period of one (1) year thereafter. In view of the above, misfeasance proceedings fled by the Official Liquidator are well within limitation period.

6. Discuss the circumstances in which company may be wound up by Tribunal.

Answer:

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:

(a) if the company is unable to pay its debts.

(b) if the company has, by special resolution, resolved that the company be wound up by the Tribunal.

(c) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(d) if the Tribunal has ordered the winding up of the company under Chapter XIX(i.e., Revival and Rehabilitation of Sick Companies).

(e) if 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.

(f) if the company has made a default in fling with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years, or

(g) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

PART L: COMPANIES INCORPORATED OUTSIDE INDIA

1. **Mark the correct answer [only indicate (a) or (b) or (c) or (d) and give justification.**

(i) **According to section 2(42) of the Companies Act, 2013, 'foreign company' means any company or body corporate incorporated outside India which:**

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode.
(b) conducts any business activity in India in any other manner.
(c) Both (a) and (b)
(d) None of the above

Answer: (b)

Justification:
The provision regarding 'foreign company' is covered under Section 2(42) of the Companies Act, 2013.

(ii) **Every foreign company shall, in every calendar year make out -**

(a) a balance sheet
(b) profit and loss account
(c) a balance sheet and profit and loss account both
(d) none of the above

Answer: (c)

Justification:
The provision regarding 'foreign company' is mentioned in the Companies Act, 2013.

2. **What is the service on foreign company as per section 383 of the Companies Act, 2013?**

Answer:

Any process, notice or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar under section 380 and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

3 **What about the application of act to foreign companies as per section 379 of the Companies Act, 2013?**

Answer:

Where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by:

(1) one or more citizens of India, or

(2) by one or more companies or bodies corporate incorporated in India, or

(3) by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of Chapter XXII and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

PART M: OFFENCES AND PENALTIES

1. Mark the correct answer [only indicate (a) or (b) or (c) or (d) and give justification.

(i) 'Bailable offence' means an offence -

(a) which is mentioned as bailable in the First Schedule of the Indian Penal Code.
(b) which is made bailable by any other law for the time being in force.
(c) both (a) and (b)
(d) none of the above

Answer: (c)

Justification:

The Companies Act, 2013 provides the provisions as to Offences and Penalties in Chapter XXVIII. This is related to this chapter. Bailable offence' means an offence (i) which is mentioned as bailable in the First Schedule of the Indian Penal Code or (ii) which is made bailable by any other law for the time being in force.

(ii) Penalty(ies) that have been contemplated under the Companies Act, 2013 -

(a) Fine only
(b) Imprisonment or fine
(c) Imprisonment or fine or with both
(d) All of the above

Answer: (d)

Justification:

The Companies Act, 2013 provides the provisions as to Offences and Penalties in Chapter XXVIII. This is related to this chapter. This is the classification of penalties.

(iii) ' _______ ' is an offence and ' ______________'is a case for which a police officer has no authority to arrest without warrant.

(a) Non-cognizable offence; Non-cognizable case
(b) Cognizable offence; Cognizable case
(c) both (a) and (b)
(d) none of the above

Answer: (a)

Justification:

The Companies Act, 2013 also contains the provisions with regard to the offences and penalties there upon. The Contravention of the provisions of the Companies Act, 2013 is considered as offence. Section 439 of the Companies Act, 2013 provides for offences to be non-cognizable.

2. Bailable or Non-Bailable Offences – Discuss.

Bailable offence' means an offence (i) which is mentioned as bailable in the First Schedule of the Indian Penal Code or (ii) which is made bailable by any other law for the time being in force. 'Non-bailable offence' means any other offence. Bailable offences are considered less serious than nonbailable offences. In bailable offences, bail can be claimed as of right and is granted as a matter of course by the police officer or by the court. It does not, however, mean that in case of a non-bailable offence, bail can never be granted. If simply means that the accused cannot ask for bail as of right in such cases. The Police officer or the court has discretion to grant bail after considering the facts and circumstances of each case. Again, bailable and non-bailable offences should not be confused with bailable and non-bailable warrants. In appropriate cases, a non-bailable warrant may be issued by a court for bailable offences. The matter is entirely in the discretion of the court. Schedule I specifies which offences are bailable offences and which are non-bailable offences under the Indian Penal Code and under other Statutes.

PART N: NATIONAL COMPANY LAW TRIBUNAL AND SPECIAL COURTS

1. **Mark the correct answer [only indicate (a) or (b) or (c) or (d) and give justification.**

(i) SICA and NCLAT both are related with revival and rehabilitation of sick industrial companies. Here, SICA stands for _____________and NCLAT stands for _______________ .

(a) Sick Industrial Companies (Special Provisions) Act, 1985; National Company Law Appellate Tribunal
(b) Sick Industrial Companies (Special Provisions) Act, 1980; National Company Law Appellate Tribunal
(c) Sick Industrial Companies (Special Provisions) Act, 1985; National Company Legal Appellate Tribunal
(d) None of the above

Answer: (a)

Justification:
SICA stands for Sick Industrial Companies (Special Provisions) Act, 1985 and NCLAT stands for National Company Law Appellate Tribunal.

(ii) Which Form will you use to submit 'application by company administrator to tribunal for sanctioning the Scheme of Revival & Rehabilitation under sec-262?

(a) Form-P
(b) Form-Q
(c) Form-R
(d) Form-S

Answer: (a)

Justification:
The name of the Form is clearly mentioned in section 262 of the Companies Act, 2013.

(iii) The Companies (Second Amendment) Act, 2002 provides for the setting up of a National Company Law Tribunal and Appellate Tribunal _____________ the existing Company Law Board (CLB) and Board for Industrial and Financial Reconstruction (BIFR).

(a) to replace
(b) to modify
(c) to use with
(d) to swap

Answer: (a)

Justification:
This is clearly mentioned in The Companies (Second Amendment) Act, 2002.

(iv) The establishment of the National Company Law Tribunal (NCLT) consolidates the corporate jurisdiction of the following authorities:
(a) Company Law Board.
(b) Board for Industrial and Financial Reconstruction.
(c) The Appellate Authority for Industrial and Financial Reconstruction.
(d) All of the above

Answer: (d)

Justification:
Chapter XXVII of the Companies Act, 2013 deals with the National Company Law Tribunal and Appellate Tribunal.

2. Discuss the qualification of President and Members of Tribunal.

Answer:

Section 409 of the Act contains the provisions as to Qualification of President and Members of Tribunal. According to this Section the qualifications of the President and members of Tribunal are as follows:
(a) Qualification for the President: He shall be a person who is or has been a Judge of a High Court for fve years.
(b) Qualification for the Judicial member: A person shall not be qualified for appointment as a Judicial Member unless he is or has been:
(1) a judge of a High Court, or
(2) a District Judge for at least five years, or
(3) an advocate of a court for at least ten years.
(c) Qualification for Technical member: A person shall not be qualified for appointment as a Technical Member unless he:
(1) has, for at least fifteen years been a member of the Indian Corporate Law Service or Indian Legal Service out of which at least three years shall be in the pay scale of Joint Secretary to the Government of India or equivalent or above in that service, or
(2) is, or has been, in practice as a Chartered Accountant for at least fifteen years, or
(3) is, or has been, in practice as a Cost Accountant for at least fifteen years, or
(4) is, or has been, in practice as a Company Secretary for at least fifteen years, or
(5) is a person of proven ability, integrity and standing having special knowledge and experience, of not less than fifteen years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies, or is, or has been, for at least five years, a presiding officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947.

Study Note – 2

SEBI LAWS AND REGULATIONS

Learning Objective: ***Important definitions associated with SEBI Act; Powers and Functions of the Board, provision regarding Prohibition of Manipulative and Deceptive Devices, Insider Trading and Substantial Acquisition of Securities or Control, Penalties and Adjudication; provision regarding public issue, rights issue, preferential issue, an issue of bonus shares by a listed issuer, qualified institutions placement by a listed issuer and issue of Indian Depository Receipts as per SEBI Issue of Capital and Disclosure Requirements (ICDR) Regulations 2009, basic understandings about SEBI (Listing Obligation and Disclosure Requirement) Rules, 2015, The Securities Contracts (Regulation) Act,1956, SEBI (Prohibition of Insider Trading) Regulations, 2015***

1. Mark the correct answer [only indicate (a) or (b) or (c) or (d) and give justification.

i. Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order.

(A) 30 days
(B) 45 days
(C) 60 days
(D) 90 days

Answer: (c)

Justification:
Appeal to the Supreme Court (Section 15 Z)
Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order.

ii. Who is the compliance officer responsible for ensuring conformity with the regulatory provisions, Co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories

(A) independent director
(B) chairman of the Board
(C) Company Secretary
(D) practicing chartered accountants

Answer: (c)

Justification:

As per SEBI (Listing Obligation and Disclosure Requirement) Rules, 2015 Qualified Company Secretary as the compliance officer Responsible for -

(i) Ensuring conformity with the regulatory provisions

(ii) Co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories the compliance with rules, regulations and other directives of these authorities

(iii) Ensuring that the correct procedures have been followed in fling monitoring email address of grievance redressal division

iii. **As per SEBI (Listing Obligation and Disclosure Requirement) Rules, 2015 no person can be serve as an independent director in more than ______________ listed companies.**

(A) five
(B) seven
(C) three
(D) two

Answer: (B)

Justification:

As per LODR, an independent director is not to serve as independent director in more than 7 listed entities

iv. **The Company is required to obtain a certificate regarding compliance of corporate governance from as enumerated in this clause and annex this certificate with the director's report sent annually to the shareholders of the Company. The same certificate is to be sent to the stock exchanges along with the annual report.**

(A) independent director
(B) chairman of the board
(C) practicing company secretaries
(D) practicing chartered accountants

Answer: (c)

Justification:

The Company is required to obtain a certificate regarding compliance of corporate governance from practicing company secretaries as enumerated in this clause and annex this certificate with the director's report sent annually to the shareholders of the Company. The same certificate is to be sent to the stock exchanges along with the annual report.

v. **In case of an initial public offer, minimum contribution of the promoters of the issuer should not be less than ______________ of the post issue capital.**

(A) 5%
(B) 10%
(C) 15%
(D) 20%

Answer: (d)

Justification:

Promoters' Contribution (Regulation 32)

The promoters' minimum contribution varies from case to case. The promoters of the issuer are required to contribute in the public issue as follows:

(a) In case of an initial public offer, the minimum contribution should not be less than 20% of the post issue capital.

vi. **In case of public issue or right issue of equity shares and convertible securities the amount for general corporate purposes as mentioned in the objects of the issue in the draft offer document shall not exceed ....of the amount raised by the issuer.**

(A) 10%
(B) 15%
(C) 25%
(D) 20%

Answer: (c)

Justification:

The amount for general corporate purposes as mentioned in the objects of the issue in the draft offer document shall not exceed 25% of the amount raised by the issuer.

vii. **In case the issuer opts for the alternate method of book building, the issuer may offer specified securities to its employees at a price lower than the floor price. However, the difference between the floor price and the price at which equity shares and convertible securities are offered to employees should not be more than 10% of the floor price.**

(A) 10%
(B) 5%
(C) 15%
(D) 20%

Answer: (A)

Justification:

In case the issuer opts for the alternate method of book building, the issuer may offer specified securities to its employees at a price lower than the floor price. However, the difference between the floor price and the price at which equity shares and convertible securities are offered to employees should not be more than 10% of the floor price.

viii. A foreign company can access Indian securities market for raising funds through issue of .

(A) Global Depository Receipts
(B) Foreign Depository Receipts
(C) Indian Depository Receipts
(D) American Depository Receipts

Answer: (c)

Justification:

A foreign company can access Indian securities market for raising funds through issue of Indian Depository Receipts (IDRs) which is just the opposite GDR.

ix. Listed entity shall submit a quarterly compliance report on corporate governance within from close of the quarter

(A) 30 days
(B) 15 days
(C) 21 days
(D) 45 days

Answer: 15 days

ix. A listed entity shall submit quarterly report within …….days.

(A) 15
(B) 21
(C) 30
(D) 45

Answer: (b)

Justification:

x. Annual report to be submitted to the stock exchange within of adoption at AGM.

(A) 15 days
(B) 7 days
(C) 21 days
(D) 30 days

Answer: (c)

Justification:

Annual report to be submitted within 21 days of adoption at AGM

2. Briefly discuss the power and functions of the Securities Exchange Board of India.

Answer:

Chapter IV of the SEBI Act, 1992 deals with the powers and function of the Securities Exchange Board of India. The functions of the securities Exchange Board of India has been dealt in Section 11. Sub-Section (1) of Section 11 declares that it shall be the duty of the Securities Exchange Board of India:

(a) to protect the interest of investors in securities, and
(b) to promote the development of and
(c) to regulate the securities market by such measures as the Board thinks to fit and
(d) for matters connected therewith and incidental thereto. The Board is mainly entrusted with two main functions, namely:
   (A) Regulatory functions and
   (B) Developmental functions.

A) Regulatory functions

The Board is responsible for:

(1) regulating the business in stock exchanges and any other securities markets.
(2) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner.
(3) registering and regulating the working of the depositories, participants, custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf.
(4) registering and regulating the working of venture capital funds and collective investment schemes, including mutual funds.
(5) promoting and regulating self-regulatory organizations.
(6) prohibiting fraudulent and unfair trade practices relating to securities markets.
(7) promoting investors' education and training of intermediaries of securities markets.
(8) prohibiting insider trading in securities.
(9) regulating substantial acquisition of shares and take-over of companies.
(10) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market intermediaries and self- regulatory organisations in the securities market.
(11) calling for information and record from any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which is under investigation or inquiry by the Board.
(12) performing such functions and exercising such powers under the provisions of the Securities Contracts (Regulation) Act, 1956, as may be delegated to it by the Central Government.

(13) levying fees or other charges for carrying out the purposes of this Section.
(14) conducting research for the above purposes.
(15) calling from or furnishing to any such agencies, as may be specified by the Board, such information as may be considered necessary by it for the efficient discharge of its functions
(16) performing such other functions as may be prescribed.

B) Developmental Functions

1) Promoting investors' education.
2) Training of intermediaries.
3) Conducting research and publishing information useful to all market participants.
4) Promotion of fair practices.
5) Promotion of self regulatory organizations.

Beside these above mentioned functions, the Board may take measures to undertake inspection of any book or register or any other document or record of any listed public company which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market.

3. Explain the term 'Insider Trading'.

Answer:

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 fduciary 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 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.

4. What are the essential conditions for Initial Public Offer?

Answer:

Conditions for Initial Public Offer:

(a) An issuer may make an initial public offer (an offer of equity shares and convertible debentures by an unlisted issuer to the public for subscription and includes an offer for sale of specified securities to the public by an existing holder of such securities in an unlisted issuer) if:

(1) The issuer has net tangible assets of at least ₹ 3 crores in each of the preceding 3 years (of 12 months each) of which not more than 50% are held in monetary assets. If more than 50% of the net tangible assets are held in monetary assets, then the issuer has to make firm commitment to utilize such excess monetary assets in its business or project.

(2) it has a minimum average pre-tax operating profit of ₹ 15 crore, calculated on a restated and consolidated basis, during the three most profitable years out of the immediately preceding fve years.

(3) The issuer company has a net worth of at least ₹ 1 crores in each of the preceding 3 full years (of 12 months each).

(4) The aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size does not exceed 5 times its pre-issue net worth as per the audited balance sheet of the preceding financial year.

(5) In case of change of name by the issuer company within last one year, at least 50% of the revenue for the preceding one year should have been earned by the company from the activity indicated by the new name.

(b) Any issuer not satisfying any of the conditions stipulated above may make an initial public offer if:

(1) The issue is made through the book building process and the issuer undertakes to allot at least 75% of the net offer to public to qualified institutional buyers and to refund full subscription monies if it fails to make allotment to the qualified institutional buyers.

(c) An issuer may make an initial public offer of convertible debt instruments without making a prior public issue of its equity shares and listing.

(d) An issuer cannot make an allotment pursuant to a public issue if the number of prospective allottees is less than one thousand.

(e) No issuer can make an initial public offer if there are any outstanding convertible securities or any other right which would entitle any person any option to receive equity shares after the initial public offer. However, this is not applicable to:

(1) a public issue made during the currency of convertible debt instruments which were issued through an earlier initial public offer, if the conversion price of such convertible debt instruments was determined and disclosed in the prospectus of the earlier issue of convertible debt instruments.

(2) outstanding options granted to employees pursuant to an employee stock option scheme framed in accordance with the relevant Guidance Note or Accounting Standards, if any, issued by the Institute of Chartered Accountants of India in this regard.

(3) Fully paid-up outstanding securities which are required to be converted on or before the date of fling of the red herring prospectus (in case of book built issues) or the prospectus (in case of fixed price issues), as the case may be.

(f) in case the issuer opts for the alternate method of book building, the issuer may offer specified securities to its employees at a price lower than the floor price. However, the difference between the floor price and the price at which equity shares and convertible securities are offered to employees should not be more than 10% of the floor price.

5. Write short note on: Book Building

Answer:

Book Building means a process undertaken to elicit demand and to assess the price for determination of the quantum or value of specified securities or Indian Depository Receipts, as the case may be in accordance with the SEBI (ICDR) Regulations 2009.

(a) In an issue made through the book building process, the allocation in the net offer to public category is made as follows:

(1) Not less than 35 % to retail individual investors.

(2) Not less than 15 % to non institutional investors i.e. investors other than retail individual investors and qualified institutional buyers.

(3) Not more than 50% to Qualified Institutional Buyers; 5 % of which would be allocated to mutual funds.

Provided that in addition to five per cent allocation available in terms of clause (3), mutual funds shall be eligible for allocation under the balance available for qualified institutional buyers.

In an issue made through the book building process the allocation in the net offer to public category shall be as follows:

(1) not more than ten per cent to retail individual investors;

(2) not more than fifteen per cent to non-institutional investors;

(3) not less than seventy five per cent to qualified institutional buyers, five per cent of which shall be allocated to mutual funds.

Provided further that in addition to five per cent allocation available, mutual funds shall be eligible for allocation under the balance available for qualified institutional buyers.

In an issue made through the book building process, the issuer may allocate up to 60% of the portion available for allocation to qualified institutional buyers to an anchor investor in accordance with the conditions specified in ICDR Regulations 2009.

(b) In an issue made other than through the book building process, allocation in the net offer to public category will be made as follows:

(1) minimum 50% to retail individual investors, and

(2) remaining to individual applicants other than retail individual investors and other investors including corporate bodies or institutions, irrespective of the number of equity shares and convertible securities applied for.

(3) the unsubscribed portion in either of the categories specified above (point 1 and 2) may be allocated to applicants in the other category.

(4) If the retail individual investor category is entitled to more than 50% on proportionate basis, the retail individual investors will be allocated that higher percentage.

6. Define the term 'Securities'.

Answer:

Securities include,

(1) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or body corporate.
(2) derivative.
(3) units or any other instrument issued by any collective investment scheme to the investors in such schemes.
(4) security receipt as defined in clause (zg) of Section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
(5) units or any other such instrument issued to the investors under any mutual fund scheme.

It has been explained that "securities" shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938);]

(6) any certificate of instrument (by whatever name called) issued to an investor by any issuer being a special purpose distinct entity which possess any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be.
(7) Government securities.
(8) such other instruments as may be declared by the Central Government to be securities, and
(9) rights or interests in securities.

7. What are the different types of Listing?

Answer:

Listing of securities falls under 5 groups:

(1) Initial listing: If the shares or securities are to be listed for the first time by a company on a stock exchange is called initial listing.
(2) Listing for Public Issue: When a company whose shares are listed on a stock exchange comes out with a public issue of securities, it has to list such issue with the stock exchange.
(3) Listing for Rights Issue: When companies whose securities are listed on the stock exchange issue further securities to existing share holders on rights basis, it has to list such rights issues on the concerned stock exchange.
(4) Listing of Bonus Shares: Companies issuing shares as a result of capitalization of profits through bonus issue shall list such issues also on the concerned stock exchange.
(5) Listing for merger or amalgamation: When new shares are issued by an amalgamated company to the share holders of the amalgamating company, such shares are also required to be listed on the concerned stock exchange.

8. State what are the benefits of Listing?

Answer:

The following benefits are available when securities are listed by a company in the stock exchange:

(a) public image of the company is enhanced.

(b) the liquidity of the security is ensured making it easy to buy and sell the securities in the stock exchange.

(c) tax concessions are made available both to the investors and the companies.

(d) listing procedure compels company management to disclose important information to the investors enabling them to make crucial decisions with regard to holding or disposing of such securities.

(e) Shares of listed companies command better credibility as they could be offered as security for loans from Banks and FIs.

9. What are the penalties for failure to furnish information and return under Securities Contracts (Regulation) Act, 1956?

Answer:

Under Section 26 of Securities Contracts (Regulation) Act, 1956, any person, who is required under this Act or any rules made there under:

1) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefore in the listing agreement or conditions or bye-laws of the recognised stock exchange, shall be liable to a 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 for each such failure.

2) to maintain books of account or records, as per the listing agreement or conditions, or bye-laws of a recognised stock exchange, fails to maintain the same, shall be liable to a 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.

10. Discuss about the penalty provision for insider trading.

Answer:

Penalty for insider trading as stated under section 15G, is not less than ₹ 10 lakh but which may extend to ₹ 25 crore or three times the amount of profits made out of insider trading, whichever is higher.

11. What factors to be taken into account by the adjudicating officer while adjudging quantum of penalty as per SEBI Act?

Answer:

Under Section 15, the adjudicating officer shall have due regard to the following factors, namely:

(1) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default.

(2) the amount of loss caused to an investor or group of investors as a result of the default.
(3) the repetitive nature of the default.

According to Section 15JA, the adjudicating officer should ensure crediting all sums realized by way of penalties to Consolidated Fund of India. Further, all sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

12. As per SEBI (Listing Obligation and Disclosure Requirement) Rules, 2015 what should be the Optimum combination of executive and non-executive directors on the Board?

Answer:

Optimum combination of executive and non-executive directors on the Board

- At least one woman director
- Not less than 50% non-executive directors
- 1/3rd Independent directors

Where chairperson is related to promoter then 1/2 independent Director
Board shall meet at least four times a year and maximum time gap of 120 days between any two meetings.

13. Discuss about the requisite Conditions for issue of IDR.

Answer:

An issue of IDR is subject to the following conditions:
(a) issue size should not be less than ₹ 50 crore.
(b) procedure to be followed by each class of applicant for applying should be mentioned in the prospectus.
(c) minimum application amount should be ₹ 20,000.
(d) at least 50% of the IDR issued should be allotted to qualified institutional buyers on proportionate basis.
(e) the balance 50% may be allocated among the categories of non-institutional investors and retail individual investors including employees at the discretion of the issuer and the manner of allocation has to be disclosed in the prospectus. Allotment to investors within a category will be on proportionate basis. Further, at least 30% of the IDRs issued will be allocated to retail individual investors and in case of under-subscription in retail individual investor category, spill over to other categories to the extent of under-subscription may be permitted.
(f) At any given time, there will be only one denomination of IDR of the issuing company.

Study Note – 3

THE COMPETITION ACT, 2002

Learning Objective: ***Important definitions associated with The Competition Act, 2002, Meaning, objectives, extent and applicability of Competition; Areas affecting competition, Basic understanding about Competition Commission of India.***

1. Mark the correct answer [only indicate (a) or (b) or (c) or (d) and give justification.

i. Any person aggrieved by any order of Competition Appellate Tribunal (COMPAT), may file an appeal to the Hon'ble Supreme Court within……… days, from the date of receipt of the order of Appellate Tribunal.

(A) 30 days
(B) 45 days
(C) 60 days
(D) 90 days

Answer: (c) 60 days

Justification:
The order of CPMPAT can be appealed to Hon'ble Supreme Court within 60 days

ii. Unfair competition means adoption of practices such as

(A) Allocation of markets
(B) Deliberate reduction in output in order to increase prices,
(C) Predatory pricing
(D) All of the above

Answer: (B) Deliberate reduction in output in order to increase prices

Justification:
Unfair competition means adoption of practices such as collusive price fixing, deliberate reduction in output in order to increase prices, creation of barriers to entry, allocation of markets, tie-in sales, predatory pricing, discriminatory pricing, etc.

iii. The Commission also has the power to impose a fine which may extend up to of the total turnover or the assets of the combination, whichever is higher, for failure to give notice to the Commission of the combination.

(A) 2%
(B) 1%
(C) 0.5%
(D) 3%

Answer: (B) 1%

Justification:
The Commission also has the power to impose a fine which may extend to one per cent of the total turnover or the assets of the combination, whichever is higher, for failure to give notice to the Commission of the combination.

(iv) The Chairperson and every other Member of Competition Commission of India shall hold office for a term of years from the date on which he enters upon his office and shall be eligible for re-appointment.

(A) one
(B) two
(C) five
(D) three

Answer: (B) two

Justification:
Term of office of Chairperson and other Members (Section 10)
The Chairperson and every other Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment and shall hold office up to the age of 65 years.

ANSWER THE FOLLOWING QUESTIONS:

2. What are the objectives of the Competition Act, 2002?

Answer:

Keeping in view of the economic development of the country, the Competition Act, 2002 was laid down to provide for an establishment of a Commission seeks to achieve the following objectives:

(a) to prevent practices having adverse effect on competition.
(b) to promote and sustain competition in markets.
(c) to protect the interests of consumers.
(d) to ensure freedom of trade carried on by other participants in markets in India and for matters connected therewith or incidental thereto.

The objectives of the Act are sought to be achieved through the instrumentality of the Competition Commission of India (CCI) which has been established by the Central Government with effect from 14th October, 2003.

3. Discuss the Duties of Commission.

Answer:

In terms of Section 18 of the Competition Act, 2002, it shall be the duty of the Commission to eliminate practices having adverse effect on competition, to promote and sustain competition in markets in India, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India. The Commission may for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement, with the prior approval of the Central Government, with any agency of any foreign country.

4. State the Powers of the Commission.

Answer:

Powers and Functions of the Commission

(a) Appreciable Adverse effect: The Commission has the power to determine whether an agreement has an appreciable adverse effect on competition or not

(b) Dominant position of enterprise: The Commission has the power to inquire whether an enterprise enjoys a dominant position or not

(c) Relevant Market: The Commission has the power to determine whether a market constitutes a "relevant market", due regard to "relevant geographic market" and "relevant product market" for the purposes of this Act or not.

5. What is the procedure for inquiry under the Competition Act, 2002?

Answer:

(a) Section 26 prescribes the detailed procedure for any inquiry initiated suo moto by the Commission and various complaints and references referred to in Section 19 of the Act.

The procedure is as follows:

(1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under Section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter. If the subject matter of information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

(2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under Section 19, the Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems ft and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(3) The Director General shall, on receipt of direction submit a report on his findings within such period as may be specified by the Commission.

(4) The Commission may forward a copy of the report to the parties concerned. In case the investigation is caused to be made based on reference received from the Central Government or the State Government or the statutory authority, the Commission shall forward a copy of the report to the Central Government or the State Government or the statutory authority, as the case may be.

(5) If the report of the Director General recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General.

(6) If, after consideration of the objections and suggestions if any, the Commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems ft and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(7) If, after consideration of the objections or suggestions if any, the Commission is of the opinion that further investigations is called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made by in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.

(8) If the report of the Director General recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act. Orders by Commission after inquiry into agreements or abuse of dominant position (Section 27)

(b) Where after inquiry the Commission finds that any agreement referred to in Section 3 or action of an enterprise in a dominant position, is in contravention of Section 3 or Section 4, as the case may be, it may pass all or any of the following orders, namely:

(1) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be.

(2) impose such penalty, as it may deem ft which shall be not more than ten per cent of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse. Provided that in case any agreement referred to in Section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent of its turnover for each year of the continuance of such agreement, whichever is higher.

(3) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission.

(4) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any.

(6) pass such other order or issue such directions as it may deem fit. While passing orders under this Section, if the Commission comes to a finding, that an enterprise in contravention to Section 3 or Section 4 of the Act is a member of a group as defineed in clause (b) of the Explanation to Section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this Section, against such members of the group. (Section 27)

(7) If, after consideration of the objections or suggestions if any, the Commission is of the opinion that further investigations is called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made by in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.

(8) If the report of the Director General recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act. Orders by Commission after inquiry into agreements or abuse of dominant position (Section 27)

6. Discuss about the acts taking place outside India but having an effect on competition in India?

Answer:

The Commission shall, notwithstanding that:

(a) an agreement referred to in Section 3 has been entered into outside India. or

(b) any party to such agreement is outside India. or

(c) any enterprise abusing the dominant position is outside India. or

(d) a combination has taken place outside India. or

(e) any party to combination is outside India. or

(f) any other matter or practice or action arising out of such agreement or dominant position or combination is outside India.

have power to inquire in accordance with the provisions contained in Sections 19, 20, 26, 29 and 30 of the Act into such agreement or abuse of dominant position or combination if such agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on competition in the relevant market in India and pass such orders as it may deem fit in accordance with the provisions of this Act.

7. Write short notes on:

(i) Cartel

(ii) Combination

(iii) Unfair Competition

Answer:

(i) Cartel: According to Section 2(c) Cartel includes an association of producers, sellers or distributors, traders or service providers who, by agreement amongst themselves, limit control or attempt to control the production, distribution, sale or price of or, trade in goods or provision of services.

The nature of a cartel is to raise price above competitive levels, resulting in injury to consumers and to the economy. For the consumers, cartelisation results in higher prices, poor quality and less or no choice for goods or/and services. An international cartel is said to exist, when not all of the enterprises in a cartel are based in the same country or when the cartel affects markets of more than one country. An import cartel comprises enterprises (including an association of enterprises) that get together for the purpose of imports into the country.

(ii) Combinations: Broadly, combination under the Act means acquisition of control, shares, voting rights or assets, acquisition of control by a person over an enterprise where such person has direct or indirect control over another enterprise engaged in competing businesses, and mergers and amalgamations between or amongst enterprises when the combining parties exceed the thresholds set in the Act. The thresholds are specified in the Act in terms of assets or turnover in India and abroad. The words combination and merger are used interchangeably in this booklet. Entering into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India is prohibited and such combination shall be void.

(iii) Unfair Competition: Unfair competition means adoption of practices such as collusive price fixing, deliberate reduction in output in order to increase prices, creation of barriers to entry, allocation of markets, tie-in sales, predatory pricing, discriminatory pricing.

8. You are Finance Controller of ABC Ltd., which is going to be merged with XYZ Ltd. Your MD wants to know whether the company has to notify to Competition Commission. Prepare a note for your MD.

Answer:

If the merger of the two companies is resulting into a company or entity which comes under the definition of combination as per the Act, the firm proposing to enter into combination has to notify to Commission with details within 30 days of Board approval of the proposing company or entering into any agreement of merger. The threshold limit is as follows.

Individual: Either the combined assets of the enterprises would value more than ₹ 1,500 crores in India or the combined turnover of the enterprise is more than ₹ 4,500 crores in India.

In case either or both of the enterprises have assets/turnover outside India also, then the combined assets of the enterprises value more US$ 750 millions, including at least ₹ 750 crores in India, or turnover is more than US$ 2250 millions, including at least ₹ 2,250 crores in India.

Group: The group to which the enterprise whose control, shares, assets or voting rights are being acquired would belong after the acquisition or the group to which the enterprise remaining the merger or amalgamation would belong has either assets of value of more than ₹ 6000 crores in India or turnover more than ₹18000 crores in India.

Where the group has presence in India as well as outside India then the group has assets more than US$ 3 billion including at least ₹ 750 crores in India or turnover more than US$ 9 billion including at least ₹ 2250 crores in India.

Study Note – 4

FOREIGN EXCHANGE MANAGEMENT ACT, 1999

Learning Objective: ***Different provision of FEMA including important definition, regulation and management of foreign exchange.***

1. **Mark the correct answer [only indicate (a) or (b) or (c) or (d) and give justification.**

   i. **The External Commercial Borrowings Framework enables permitted resident entities to borrow from recognized non resident entities in the forms of:**

   (A) Loans including bank loans.

   (B) Suppliers' credit.

   (C) Foreign Currency Convertible Bonds (FCCBs).

   (D) All of the above

   Answer: (D) All of the above

   Justification:

   Forms of ECB: The ECB Framework enables permitted resident entities to borrow from recognized nonresident entities in the following forms:

   a) Loans including bank loans.
   b) Securitized instruments (e.g., floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares/debentures).
   c) Buyers' credit.
   d) Suppliers' credit.
   e) Foreign Currency Convertible Bonds (FCCBs).
   f) Financial Lease, and
   g) Foreign Currency Exchangeable Bonds (FCEBs),

   ii. **Which one of the following is not a Current account transaction?**

   (A) Imports payables

   (B) Exports receivables

   (C) Dividend

   (D) External Commercial Borrowings

   Answer: (D) External Commercial Borrowings

Justification:

As per Section 2(j) 'current account transaction' means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes:

(1) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business.
(2) payments due as interest on loans and as net income from investments.
(3) remittances for living expenses of parents, spouse and children residing abroad, and
(4) expenses in connection with foreign travel, education and medical care of parents, spouse and children.

Since external commercial borrowing is a loan, it will not come under current account transaction.

ANSWER THE FOLLOWING QUESTIONS:

2. What is the objective of the Foreign Exchange Management Act, 1999?

Answer:

Foreign exchange means 'foreign currency' and includes deposits, credits and balances payable in any foreign currency and secondly drafts, travelers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency.

The objective of Foreign Exchange Management Act (FEMA) is to facilitate external trade and payments and to promote the orderly development and maintain a healthy foreign exchange market in India.

3. Define Capital account transaction.

Answer:

'capital account transaction' means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India.

4. What is Foreign Institutional Investor (FII) and Foreign Portfolio Investor (FPI)?

Answer:

'Foreign Institutional Investor'(FII) means an entity established or incorporated outside India which proposes to make investment in India and which is registered as a FII in accordance with the Securities and Exchange Board of India (SEBI) (Foreign Institutional Investor) Regulations 1995.

'Foreign Portfolio Investor'(FPI) means a person registered in accordance with the provisions of Securities and Exchange Board of India (SEBI) (Foreign Portfolio Investors) Regulations, 2014, as amended from time to time.

5. Define 'Person resident in India' as per Foreign Exchange Management Act, 1999.

Answer:

Under section 2(v) of Foreign Exchange Management Act (FEMA) 'person resident in India' means:

(A) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include:
   (1) a person who has gone out of India or who stays outside India, in either case:
      a) or or on taking up employment outside India, or
      b) for carrying on outside India a business or vocation outside India, or for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period.
   (2) a person who has come to or stays in India, in either case, otherwise than:
      a) for or on taking up employment in India, or
      b) for carrying on in India a business or vocation in India, or
      c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.

(B) any person or body corporate registered or incorporated in India.

(C) an office, branch or agency in India owned or controlled by a person resident outside India.

(D) an office, branch or agency outside India owned or controlled by a person resident in India.

6. Discuss the provision regarding the holding of foreign exchange.

Answer:

According to Section 4 of Foreign Exchange Management Act, 1999, except as provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

This section restricts a resident in India from acquiring, holding, owing, possessing or transferring in any manner foreign exchange, foreign security or any immovable property situated outside India. However the acquisition such immovable property outside India on lease for a period not exceeding five years is permissible provided such transactions are not specifically prohibited.

In terms of regulations relating to acquisition and transfer of immovable property outside India, such acquisition by a person resident in India would require prior approval of Reserve Bank except in the following cases:

a) Property held outside India by a foreign citizen resident in India.

b) Property acquired by a person on or before 8th July, 1947 and held with the permission of Reserve Bank.
c) Property acquired by way of gift or inheritance from persons referred to in above.
d) Property purchased out of funds held in RFC account.

However, RBI by various regulations have allowed dealing and holding of foreign exchange upto certain limit.

7. What are the different forms of business that may be conducted by a Foreign Company in India?

Answer:

A foreign company planning to set up business operations in India may:

a) Incorporate a company under the Companies Act, 1956 (now Companies Act 2013), as a Joint Venture or a Wholly Owned Subsidiary.
b) Set up a Liaison Office/Representative Office or a Project Office or a Branch Office of the foreign company which can undertake activities permitted under the Foreign Exchange Management (Establishment in India of Branch Office or Other Place of Business) Regulations, 2000.

8. What is Foreign Direct Investment in India? What is the procedure for receiving Foreign Direct Investment (FDI) in an Indian company?

Answer:

Foreign Direct Investment (FDI) is a category of cross border investment made by a resident in one economy (the direct investor) with the objective of establishing a lasting interest in an enterprise (the direct investment enterprise) i.e., resident in an economy other than that of the direct investor. The motivation of the direct investor is a strategic long term relationship with the direct investment enterprise to ensure the significant degree of influence by the direct investor in the management of the direct investment enterprise. The objectives of direct investment are different from those of portfolio investment whereby investors do not generally expect to influence the management of the enterprise.

Foreign Direct Investment (FDI) in India is undertaken in accordance with the FDI Policy which is formulated and announced by the Government of India. The Department of Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, issues a Consolidated FDI Policy on an yearly basis elaborating the policy and the process in respect of FDI in India. The latest Consolidated FDI Policy is governed by the provisions of the Foreign Exchange Management Act (FEMA), 1999.

FEMA Regulations which prescribe amongst other things the mode of investments i.e. issue or acquisition of shares / convertible debentures and preference shares, manner of receipt of funds, pricing guidelines and reporting of the investments to the Reserve Bank.

An essential requirement for receiving foreign direct investment is the compliance with the KYC (Know your customer) requirement specified by the Reserve Bank of India. As and when the negotiations take place for foreign investment, the overseas investor should be apprised of the need to receive the KYC certification

through the Banking channels. An Indian company may receive Foreign Direct Investment (FDI) under the two routes as given under:

(a) Automatic Route
FDI is allowed under the automatic route without prior approval either of the Government or the Reserve Bank of India in all activities/sectors as specified in the consolidated FDI Policy, issued by the Government of India from time to time.

(b) Government Route
FDI in activities not covered under the automatic route requires prior approval of the Government which is considered by respective administrative ministry. Application can be made in the prescribed Form. Plain paper applications carrying all relevant details are also accepted. No fee is payable.

The Indian company having received FDI either under the Automatic route or the Government route is required to comply with provisions of the FDI policy including reporting the FDI to the Reserve Bank of India.

9. What are the prohibited sectors for FDI in India?

Answer:

FDI is prohibited in:
1) Lottery Business including Government / private lottery, online lotteries, etc.
2) Gambling and betting including casinos etc.
3) Chit funds.
4) Nidhi company.
5) Trading in Transferable Development Rights (TDRs).
6) Housing and Real Estate Business or Construction of Farm Houses 'Real estate business' shall not include development of townships, construction of residential / commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.
7) Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
8) Activities / sectors not open to private sector investment e.g.,
   a) Atomic Energy and
   b) Railway operations (other than permitted activities).

Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities.

10. State the provision regarding Possession and Retention of Foreign Exchange by a person resident in India

Answer:

The Reserve Bank of India has specified the following persons with the limits for possession and retention of foreign currency by a person resident in India:

a) Authorised Persons in accordance with the limits advised by the Reserve Bank.
b) Any person may possess foreign coins without no restriction.
c) Any person resident in India is permitted to retain in aggregate foreign currency not exceeding USD 2,000 or its equivalent in the form of currency notes/bank notes or travellers cheques acquired by him.
d) A person resident in India but not permanently resident therein is permitted without limit, if the foreign currency was acquired when he was resident outside India and was brought into India and declared to the Customs Authorities.

11. Discuss about the what are the entry routes for investment in India by non-resident

Answer:

Investments in India have to be in accordance with any one of the schedules to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000. There are nine schedules to the Regulations.

Investments can be made by non-residents in the equity shares/fully, compulsorily and mandatorily convertible debentures/fully, compulsorily and mandatorily convertible preference shares of an Indian company, through the Automatic Route or the Government Route which is also alternatively referred to as the approval route. Under the Automatic Route, the nonresident investor or the Indian company does not require any approval from Government of India for the investment. Under the Government Route, prior approval of the Government of India is required. Proposals for foreign investment under Government route, are considered by respective administrative ministry of central government. Various fling are required to be made to RBI in automatic route.

12. You are Finance manager of an automotive component plant. One foreign delegation visits your factory and intends to form a joint venture with 50:50 equity. How would you confirm compliance of FEMA regulations?

Answer:

This would amount to capital account transaction. I have to see the FDI guidelines. As it appears, investment in this sector falls in automatic route. So no Govt. of India approval would be required

The joint venture agreement may be signed and amount for equity shares can be taken. Within a specific period the shares shall have to be issued and information has to be filed with RBI. The transaction has to be made through normal banking channels.

Study Note – 5

LAW RELATED TO BANKING SECTOR

Learning Objective: ***This chapter contains different provisions of law related to Banking Sector.***

1. Mark the correct answer [only indicate (a) or (b) or (c) or (d) and give justification.

i. Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act popularly known as SARFAESI Act was enacted in which of the following year:

(a) 21st Day of June 2002
(b) 30th Day of May 2002
(c) 21st Day of July 2002
(d) 21st Day of April 2002

Answer: (a)

Note:

SARFAESI Act or Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 lets the banks as well as other financial institutions of India auction commercial or residential properties for the purpose of loan recovery. ARC, the first asset reconstruction company, was established under this act.

The SARFAESI Act, 2002 was framed to allow the financial houses to assess the asset quality in different ways. In other words, the act was made to identify and rectify the problem of Non-Performing Assets (NPAs) through multiple mechanisms.

The SARFAESI Act provides provisions in details for the formation and actions of Asset Securitization Companies as well as Reconstruction Companies. The act details the scope of capital requirements, funding and activities. Reserve Bank of India regulates the institutions established under the SARFAESI Act.

The Act, to insulate assets in a legal way, addresses the financial assets of banks and other secured creditors. According to multiple provisions under the act, the financial institutions enjoy the rights and power to handle different types of bad asset issues. The prime objectives of the SARFAESI Act under Insolvency Law In India are as follows:

The Act details the procedures for NPAs' transfer to the asset reconstruction companies for the purpose of asset reconstruction.

The Act specifies the legal framework for scanning activities in India.

The Act confers powers to the financial institutions to take custody of the immovable property, which is charged or hypothecated, for debt recovery.

The Act imposes the security interest without any intervention from the court.

The SARFAESI Act sanctions three processes to recover Non-Performing Assets as follows:
1. Securitization
2. Asset reconstruction
3. Security Enforcement without court's intervention

The Act employs three significant tools for asset management of financial institutions - asset securitization, asset reconstruction and powers for security interest enforcement. The readers should be aware of what these terms actually mean in order to understand the SARFAESI Act.

Securitization:

It refers to the process of drawing and converting of loans and other financial assets into marketable securities worth selling to the investors. In other words, it involves repackaging of less liquid assets into saleable securities. The securitization company takes over the mortgaged assets of the borrower and is entitled to adopt the following steps:
- Getting hold of financial assets from bank
- Creating funds from eligible institutional buyers by din't of issuing security receipts to acquire the financial assets
- Fund raising in any legal way
- Financial asset acquisition along with taking over the mortgaged assets (such as building, land etc)

Asset Reconstruction:

It refers to conversion of non-performing assets into performing assets. There are multiple steps to reconstruct asset. The point to be noted in this context is reconstruction must be done in accordance with the SARFAESI Act and RBI regulations.

Security Interest Enforcement:

As per the Act, the financial institutions are entitled to issue notice to the defaulting loan takers as well as guarantors, asking them to clear the sum in arrears within 60 days from the date of issuing the notice under Insolvency and bankruptcy board of India. If the defaulter fails to act in accordance with the notice, the bank is entitled to enforce security interest.

ii. **Reserve Bank has the power under __________of the Securitisation Act to cancel the Certificate of Registration issued by it to any ARC:**

(a) Section 5
(b) Section 8
(c) Section 4
(d) Section 12

Answer: (c)

Cancellation of certificate of registration:-

1. The Reserve Bank, under section 4 of the Act, may cancel a certificate of registration granted to a securitisation company or a reconstruction company, if such company-
   a. ceases to carry on the business of securitisation or asset reconstruction; or
   b. ceases to receive or hold any investment from a qualified institutional buyer; or
   c. has failed to comply with any conditions subject to which the certificate of registration has been granted to it; or
   d. at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (3) of section 3; or
   e. fails to-
      - comply with any direction issued by the Reserve Bank under the provisions of this Act; or
      - maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Act; or
      - submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank; or
      - obtain prior approval of the Reserve Bank required under sub-section (6) of section 3:

2. Provided that before cancelling a certificate of registration on the ground that the securitization company or reconstruction company has failed to comply with the provisions of clause (c) or has failed to fulfil any of the conditions referred to in clause (d) or sub-clause (iv) of clause (e), the Reserve Bank, unless it is of the opinion that the delay in cancelling the certificate of registration granted under sub-section (4) of section 3 shall be prejudicial to the public interest or the interests of the investors or the securitisation company or the reconstruction company, shall give an opportunity to such company on such terms as the Reserve Bank may specify for taking necessary steps to comply with such provisions or fulfillment of such conditions.

3. A securitisation company or reconstruction company aggrieved by the order of rejection of application for registration or cancellation of certificate of registration may prefer an appeal, within a period of thirty days from the date on which such order of rejection or cancellation is communicated to it, to the Central Government:
   Provided that before rejecting an appeal such company shall be given a reasonable opportunity of being heard.

4. A securitisation company or reconstruction company, which is holding investments of qualified institutional buyers and whose application for grant of certificate of registration has been rejected or certificate of registration has been cancelled shall, notwithstanding such rejection or cancellation, be deemed to be a securitisation company or reconstruction company until it repays the entire investments held by it (together with interest, if any) within such period as the Reserve Bank may direct.

iii. **The Three Stages of Money Laundering are:**

(a) Layering, Placement, Refining
(b) Placement, Refining, Integration
(c) Layering, Placement, Integration
(d) Layering, Refining, Integration

Answer: (c)

Note:
There are three stages involved in money laundering i.e., Placement, Layering and Integration.

1. **Placement**
This is the movement of cash from its source. On occasion the source can be easily disguised or misrepresented. This is followed by placing it into circulation through financial institutions, casinos, shops, bureau de change and other businesses, both local and abroad. The process of placement can be carried out through many processes including:-
Currency Smuggling – This is the physical illegal movement of currency and monetary instruments out of a country. The various methods of transport do not leave a discernible audit trail FATF 1996-1997 Report on Money Laundering Typologies.
Bank Complicity – This is when a financial institution, such as banks, is owned or controlled by unscrupulous individuals suspected of conniving with drug dealers and other organised crime groups. This makes the process easy for launderers. The complete liberalisation of the financial sector without adequate checks also provides leeway for laundering.
Currency Exchanges – In a number of transitional economies the liberalisation of foreign exchange markets provides room for currency movements and as such laundering schemes can benefit from such policies.
Securities Brokers – Brokers can facilitate the process of money laundering through structuring large deposits of cash in a way that disguises the original source of the funds.
Blending of Funds – The best place to hide cash is with a lot of other cash. Therefore, financial institutions may be vehicles for laundering. The alternative is to use the money from illicit activities to set up front companies. This enables the funds from illicit activities to be obscured in legal transactions.
Asset Purchase – The purchase of assets with cash is a classic money laundering method. The major purpose is to change the form of the proceeds from conspicuous bulk cash to some equally valuable but less conspicuous form.

2. **Layering**
The purpose of this stage is to make it more difficult to detect and uncover a laundering activity. It is meant to make the trailing of illegal proceeds difficult for the law enforcement agencies. The known methods are:
Cash converted into Monetary Instruments - Once the placement is successful within the financial system by way of a bank or financial institution, the proceeds can then be converted into monetary instruments. This involves the use of banker's drafts and money orders.

Material assets bought with cash then sold - Assets that are bought through illicit funds can be resold locally or abroad and in such a case the assets become more difficult to trace and thus seize.

3. **Integration**

This is the movement of previously laundered money into the economy mainly through the banking system and thus such monies appear to be normal business earnings. This is dissimilar to layering, for in the integration process detection and identification of laundered funds is provided through informants. The known methods used are:

Property Dealing - The sale of property to integrate laundered money back into the economy is a common practice amongst criminals. For instance, many criminal groups use shell companies to buy property; hence proceeds from the sale would be considered legitimate.

Front Companies and False Loans - Front companies that are incorporated in countries with corporate secrecy laws, in which criminals lend themselves their own laundered proceeds in an apparently legitimate transaction.

Foreign Bank Complicity - Money laundering using known foreign banks represents a higher order of sophistication and presents a very difficult target for law enforcement. The willing assistance of the foreign banks is frequently protected against law enforcement scrutiny. This is not only through criminals, but also by banking laws and regulations of other sovereign countries.

False Import/Export Invoices - The use of false invoices by import/export companies has proven to be a very effective way of integrating illicit proceeds back into the economy. This involves the overvaluation of entry documents to justify the funds later deposited in domestic banks and/or the value of funds received from exports.

iv. **Who shall be responsible for furnishing information on modification and satisfaction of security interest:**

(a) Asset Reconstruction Company or secured creditor
(b) Only secured creditor
(c) Only the asset reconstruction company
(d) Borrower or secured creditor

Answer: (a)

Note:

(1) The Securitisation Company or the reconstruction company or the secured creditor as the case may be, shall give intimation to the Central Registrar of the payment or satisfaction in full, of any security interest relating to the securitisation company or the reconstruction company or the secured creditor and requiring registration under this Chapter, within thirty days from the date of such payment or satisfaction.

1[(1-A) On receipt of intimation under sub-section (1), the Central Registrar shall order that a memorandum of satisfaction shall be entered in the Central Register].

(2) 2[If the concerned borrower gives an intimation to the Central Registrar for not recording the payment or satisfaction referred to in sub-section (1), the Central Registrar shall on receipt of such intimation], cause a notice to be sent to the securitisation company or reconstruction company or the secured creditor calling upon it to show cause within a time not exceeding fourteen days specified in such notice, as to why payment or satisfaction should not be recorded as intimated to the Central Registrar.

(3) If no cause is shown, the Central Registrar shall order that a memorandum of satisfaction shall be entered in the Central Register.

(4) If cause is shown, the Central Registrar shall record a note to that effect in the Central Register, and shall inform the borrower that he has done so.

v. Before which for can an asset reconstruction company file an application for enforcement of its security interest:

(a) Debt Recovery Tribunal
(b) High Court
(c) District Court
(d) National Company Law Tribunal

Answer: (a)

Note:

Debts Recovery Tribunals (DRT) and Debts Recovery Appellate Tribunals (DRAT) have been constituted under the provisions of the Recovery of Debts due to Bank and Financial institutions Act (RDBBFI) 1993, popularly called as DRT Act, for establishment of Tribunals for expeditious adjudication and recovery of debts due to Banks and Financial Institutions and for matters connected therewith.

DRT has also been given the power to adjudicate the applications filed by the Borrower/Mortgagor against the action of the Secured Creditor initiated under the Securitization Act.

Applications to be made to DRT under DRT Act

- Only Banks and Financial Institutions defined under the DRT Act, (which includes Public Financial Institutions within the meaning of Section 4A of the Companies Act, 1956, Securitization company / Reconstruction company under the Securitization Act), can file an application before the DRT. Normal fees, based on amount claimed in O.A., has been fixed as court fee which does not exceed ₹ 1.50 lakhs.
- Summary procedure is adopted by the DRTs for adjudication of dispute. Evidence is taken on affidavit and cross examination is not permitted except in few deserving cases.
- The defendants can file counter claim or claim of set off against the claimed amount.
- The final order is passed by the Tribunal directing the borrowers to pay the amount. In case, the borrower does not pay the ordered amount, recovery certificate is ordered to be issued against the borrower which is then executed by Recovery Officer of the DRT.

Powers of DRT

DRT has power to:

- summoning and enforcing the attendance of any person and examining him on oath;
- requiring the discovery and production of documents;
- receiving evidence on affidavits;
- issuing commissions for the examination of witnesses or documents;
- reviewing its decisions;
- dismissing an application for default or deciding it ex-parte.
- make interim order by way of injunction, stay or attachment against the defendant to debar from transferring, alienating or otherwise dealing with the property or asset without permission of Tribunal.
- direct the defendants to provide security sufficient to satisfy the debt.

Willful disobedience of powers of Tribunal are punishable under Contempt of Court Act.

Appeal against the order of DRT

Any person aggrieved on account of order passed by DRT may file an appeal before DRAT. However, the DRAT does not entertain the appeal unless the Appellant deposits with the Appellate Authority, 75% of the amount or such other lesser amount as directed by DRAT.

vi. Which of the following is the usage of shell companies?

(a) To create the appearance of legitimate transaction through false invoice and financial statements.

(b) To take loan against securities acquired from black money and paying tax on profit.

(c) Both (i) and (ii)

(d) None of the above

Answer: (c)

Shell companies are the corporate entities which do not have any active business operations or significant assets in their possession. They neither manufacture anything nor render any service. They are generally used to make financial transactions. Their assets, if exists, only exist on paper and not in reality. So, the government views them with suspicion as some of them could be used for money laundering, tax evasion and other illegal activities.

A shell company may or may not authentic business transaction. It may not be into involved in any exchange of goods or services. But it may have fake financial transactions to validate its existence, and these fake transactions are of illegal nature.

The Companies Act, 2013 has not defined what a shell company is and what kind of activities would lead to a company being termed a 'shell'.

vii. What is the stamp duty to be paid in respect of any document executed by any banker financial institution for issuing a debenture or bond.

(a) One rupee for every ₹ 100 or part thereof.
(b) One rupee for every ₹ 1000 or part thereof.
(c) It shall be exempted from stamp duty.
(d) It depends from State to State.

Answer: (c)

viii. An Example of smurfng:

(a) Wiring money to the foreign country
(b) A drug dealer asking a stranger to buy a money order with drug money.
(c) A broker buying pesos with US Dollars
(d) None of the above.

Answer: (a)

Note:

Smurfng is a colloquial term for a money launderer, or one who seeks to evade scrutiny from government agencies by breaking up a transaction involving a large amount of money into smaller transactions below the reporting threshold. A smurf deposits illegally gained money into bank accounts for transfer in the near future. The act of breaking down a transaction into smaller transactions to avoid regulatory requirements or an investigation by the authorities.

For example, suppose a jurisdiction requires shareholders to register with regulators if they purchase more than 5% of a company's stock. A shareholder may smurf by having dummy shareholders purchase smaller quantities of stock so that he controls more than the statutory percentage but does not have to register. Smurfng is a crime in many jurisdictions.

ix. Which the following is not a security interest:

(a) mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, tangible asset, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any other contract.
(b) Such right, title or interest in any intangible asset or assignment or licence of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or licence of intangible asset
(c) A lien on any goods, money or security given by or under the Indian Contracts Act, 1872 or the Sale of Goods Act, 1930 or any other law for the time being in force Lien of goods, pledge of movables, security interest of less than ₹ 1 Lakh

Answer: (c)

Answer the following questions:

2. (a) What is the meaning of security interest as per SARFAESI Act?

(b) Can SARFAESI proceedings be initiated against the guarantor to the credit facility? Can proceedings against the guarantor be initiated first and then against the borrower?

Answer:

(a) The term "security interest" has been defined in section 2(zf) of the SARFAESI Act, 2002, as amended by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 (Amendment Act).

Broadly, it includes the following:

a. Where the property is tangible in nature:
   - (i) Right title or interest those created for security;
   - (ii) Mortgage created under section 58 of the Transfer of Property Act, 1881 conferring the right to the lender to sell the property on default;
   - (iii) Charge created on immovable property under section 100 of the Transfer of Property Act, 1881;
   - (iv) Hypothecation created on movable property - defined in section 2(1)(n) of the SARFAESI Act, 2002 and includes all forms of security interest created on movable properties except by virtue of which the possession is taken by the creditor, i.e., pledge;
   - (v) Assignment of rights created for the purpose of creating a security and not for the purpose of transferring.
   - (vi) Right or interest created by way of financial lease, hire purchase or conditional sale - Though from legal point of view, these are ownership interests, however, for the purpose of SARFAESI Act, these have been recognised as security interests.

(b) SARFAESI Act defines the term borrower in section 2(f) in the following manner -
"borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;

As stated in the law quoted above, the term borrower includes anyone who has extended guarantee for a financial assistance. Therefore, enforcement proceedings under the SARFAESI Act can be initiated against the guarantors as well. Note, however, that SARFAESI is available only for enforcement of security interest. That is, if the guarantor has granted a security interest, the same may be enforced under SARFAESI.

Yes.

There is no specific provision in the Act which requires the secured lender to proceed first against the principal borrower and then against the guarantor.

3. How does Money Laundering take place? What has been the international response to tackle Money Laundering?

Answer:

Usually, the process of Money Laundering goes through the following three stages :

(a) **Placement:-**The Money Launderer, who is holding the money generated from criminal activities, introduces the illegal funds into the financial system. This might be done by breaking up large amount of cash into less conspicuous smaller sums which are deposited directly into a Bank Account or by purchasing a series of instruments such as Cheques, Bank Drafts etc., which are then collected and deposited into one or more accounts at another location.

(b) **Layering:-**The second stage of Money Laundering is layering. In this stage, the Money Launderer typically engages in a series of continuous conversions or movements of funds, within the financial or banking system by way of numerous accounts, so as to hide their true origin and to distance them from their criminal source. The Money Launderer may use various channels for movement of funds, like a series of Bank Accounts, sometimes spread across the globe, especially in those jurisdictions which do not co-operate in anti Money Laundering investigations.

(c) **Integration:-**Having successfully processed his criminal profits through the first two stages of Money Laundering, the Launderer then moves to this third stage in which the funds reach the legitimate economy, after getting inseparably mixed with the legitimate money earned through legal sources of income. The Money Launder might then choose to invest the funds into real estate, business ventures & luxury assets, etc. so that he can enjoy the laundered money, without any fear of law enforcement agencies.

The above three steps may not always follow each other. At times, illegal money may be mixed with legitimate money, even prior to placement in the financial system. In certain cash rich businesses, like Casinos (Gambling) and Real Estate, the proceeds of crime may be invested without entering the mainstream financial system at all.

In response to mounting concern over money laundering, the Financial Action Task Force on money laundering (FATF) was established by the G-7 Summit in Paris in 1989 to develop a co-ordinated international response. One of the first tasks of the FATF was to develop Recommendations which set out the measures national governments should take to implement effective anti-money laundering programmes.

4. (a) Can the following classes of creditors vote in the resolution for enforcement of security interest -

i. Secured creditor holding first charge
ii. Secured creditor holding second charge
iii. Secured creditor holding sub-servient charge
iv. Unsecured creditor
v. Trade creditor

(b) Whether a lender can avail the benefits of SARFAESI Act in the following circumstances –

i. An insolvency application has been launched against the borrower
ii. The borrower is under BIFR
iii. A winding up petition has been made against the borrower
iv. A criminal proceeding has been launched by the lender against the borrower

Answer:

4. (a) SARFAESI Act is applicable only where the creditor is a secured creditor, therefore, only secured creditors can vote in the resolution for enforcement of security interest. Further, the Act does not provide for any difference between first charge holders and subsequent charge holders. Based on this discussion, let us understand which classes of creditors can vote –

i. Secured creditor holding first charge - Yes
ii. Secured creditor holding second charge - Yes
iii. Secured creditor holding sub-servient charge - Yes
iv. Unsecured creditor - No
v. Trade creditor - No

(b) i. Where an insolvency application is launched against the borrower, a secured lender shall not be able to exercise its powers under the SARFAESI Act during the first moratorium granted by the Adjudicating Authority under section 14(1)(c) of the Insolvency and Bankruptcy Code, 2016 for a period of 180 days from the date of admission of the application, which is extendable for another period of 90 days

ii. Where the borrower in question is under BIFR, the secured lender can still proceed against the borrower under the SARFAESI Act, 2002 after obtaining leave of the said authority. Since, the SARFAESI Act deals with enforcement of security interest on specific properties, therefore, enforcement action under this Act shall override BIFR proceedings. The same can be validated from reading of section 35 of the Act, which provides that the provisions of SARFAESI Act will override all such laws, for the time being in force, having inconsistencies with this Act.

iii. Yes. If the lender decides not to relinquish the security interest on the property at the time of winding up of the borrower company, the lender will be able to retain the proceeds recovered from the enforcement proceedings after depositing the workmen dues with the liquidator in terms of second proviso to section 13(9) of the SARFAESI Act.

iv. In a criminal proceeding the suit is launched by the state against the defendant whereas the SARFAESI Act empower the secured lenders to enforce security interests by non-judicial means, the proceedings of the two are completely different from each other. Therefore, there is no bar in pursuing both simultaneously.

5. What is Money Laundering? What steps have been taken by the Government of India to tackle the menace of Money Laundering?

Answer:

The goal of a large number of criminal activities is to generate profit for an individual or a group. Money laundering is the processing of these criminal proceeds to disguise their illegal origin.

Illegal arms sales, smuggling, and other organised crime, including drug trafficking and prostitution rings, can generate huge amount of money. Embezzlement, insider trading, bribery and computer fraud schemes can also produce large profits and create the incentive to "legitimise" the ill-gotten gains through money laundering. The money so generated is tainted and is in the nature of `dirty money'. Money Laundering is the process of conversion of such proceeds of crime, the 'dirty money', to make it appear Legitimate Money.

Steps taken by Indian Government to tackle the menace of Money Laundering are:
Government of India is committed to tackle the menace of Money Laundering and has always been part of the global efforts in this direction. India is signatory to the following UN Conventions, which deal with Anti Money Laundering / Countering the Financing of Terrorism:

1. International Convention for the Suppression of the Financing of Terrorism (1999)
2. UN Convention against Transnational Organized Crime (2000)
3. UN Convention against Corruption (2003)

In pursuance to the political Declaration adopted by the special session of the United Nations General Assembly (UNGASS) held on 8 to 10 June 1998 (of which India is one of the signatories) calling upon member states to adopt Anti Money Laundering Legislation & Programme, the Parliament has enacted a special law called the `Prevention of Money Laundering Act, 2002' (PMLA 2002). This Act has been substantially amended, by way of enlarging its scope, in 2009 (w.e.f. 1.6.2009), by enactment of Prevention of Money Laundering (Amendment) Act, 2009.

6. Write Short Notes on:

i) Powers available to the Investigating Officers under the Prevention of Money Laundering Act

Answer :

The Investigating Officers have the powers:-

(a) To conduct survey of a place (Section 16)
(b) To conduct search of building, place, vessel, vehicle or aircraft & seize records & property (Section 17)
(c) To conduct personal search (Section 18)
(d) To summon and record the statements of persons concerned (Sec. 50);
(e) To arrest persons accused of committing the offence of Money Laundering (Section 19).
(f) To provisionally attach any property suspected to be derived from the proceeds of crime (Section 5)

ii) 'scheduled offence' under the Prevention of Money Laundering Act

Answer:

The offences listed in the Schedule to the Prevention of Money Laundering Act, 2002 are scheduled offences in terms of Section 2(1)(y) of the Act. With the amendment of the Act in 2009, a large number of offences have been included in the Schedule of the Act. The scheduled offences are divided into three parts - Part A, Part B, & Part C.

In Part A, certain serious offences such as those connected with waging war against the Nation, circulation of Fake Indian Currency Notes, offences relating to Narcotic Drugs, etc. have been included, wherein no monetary limit for initiating action under PMLA has been prescribed.

In relation to offences under Part 'B' of the schedule, the value involved should be ₹ 30 Lakhs or More. Part C of the Schedule deals with trans-border crimes, and is a vital step in tackling Money Laundering across international boundaries.

iii) Rights of persons being searched during search under Prevention of Money Laundering Act.

Answer:

The rights of persons being searched during search Prevention of Money Laundering Act are as follows:

(i) Where an authority is about to search any person, he shall, if such person so requires, take such person within twenty-four hours to the nearest Gazetted Officer, superior in rank to him, or a Magistrate.

(ii) If the requisition is made, the authority shall not detain the person for more than twenty-four hours prior to taking him before the Gazetted Officer, superior in rank to him, or the Magistrate referred to in that sub-section.

(iii) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge such person but otherwise shall direct that search be made.

(iv) Search shall be made in the presence of two or more persons.

(v) No female shall be searched by anyone except a female. (Section 18)

7. Can the following classes of creditors vote in the resolution for enforcement of security interest –

a. Secured creditor holding first charge

b. Secured creditor holding second charge

c. Secured creditor holding sub-servient charge

d. Unsecured creditor

e. Trade creditor.

Answer:

Trade creditor SARFAESI Act is applicable only where the creditor is a secured creditor, therefore, only secured creditors can vote in the resolution for enforcement of security interest. Further, the Act does not provide for any difference between first charge holders and subsequent charge holders. Based on this discussion, let us understand which classes of creditors can vote –

a. Secured creditor holding first charge - Yes
b. Secured creditor holding second charge – Yes
c. Secured creditor holding sub-servient charge - Yes
d. Unsecured creditor – No
e. Trade creditor - No

8. Whether a lender can avail the benefits of SARFAESI Act in the following circumstances –

a. An insolvency application has been launched against the borrower
b. The borrower is under BIFR
c. A winding up petition has been made against the borrower
d. A criminal proceeding has been launched by the lender against the borrower

Answer:

a. Where an insolvency application is launched against the borrower, a secured lender shall not be able to exercise its powers under the SARFAESI Act during the first moratorium granted by the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016 for a period of 180 days from the date of admission of the application, which is extendable for another period of 90 days
b. Where the borrower in question is under BIFR, the secured lender can still proceed against the borrower under the SARFAESI Act, 2002 after obtaining leave of the said authority. Since, the SARFAESI Act deals with enforcement of security interest on specific properties, therefore, enforcement action under this Act shall override BIFR proceedings.
c. Yes. If the lender decides not to relinquish the security interest on the property at the time of winding up of the borrower company, the lender will be able to retain the proceeds recovered from the enforcement proceedings after depositing the workmen dues with the liquidator in terms of provisions of the SARFAESI Act.
d. In a criminal proceeding the suit is launched by the state against the defendant whereas the SARFAESI Act empower the secured lenders to enforce security interests by non-judicial means, the proceedings of the two are completely different from each other. Therefore, there is no bar in pursuing both simultaneously.

Study Note – 6

LAW RELATED TO INSURANCE SECTOR

Learning Objective: ***This chapter contains different provisions of law related to Insurance Sector.***

1. Mark the correct answer [only indicate (a) or (b) or (c) or (d) and give justification.

i. The amount credited to The Insurance Regulatory and Development Authority Fund shall consist of:

(a) all Government grants, fees and charges received by the Authority;
(b) all sums received by the Authority from such other source as may be decided upon by the Central Government;
(c) the percentage of prescribed premium income received from the insurer;
(d) all of the above

Answer: (d)

Note:

Insurance Regulatory and Development Authority Fund: According to Section 16(1) of Insurance Regulatory and Development Authority Act, 1999, there shall be constituted a fund to be called "the Insurance Regulatory and Development Authority Fund" and there shall be credited thereto-

(a) all Government grants, fees and charges received by the Authority;
(b) all sums received by the Authority from such other source as may be decided upon by the Central Government;
(c) the percentage of prescribed premium income received from the insurer.

Utilization of Insurance Regulatory and Development Authority Fund: According to Section 16(2) of Insurance Regulatory and Development Authority Act, 1999, the Fund shall be applied for meeting

(a) the salaries, allowances and other remuneration of the members, officers and other employees of the Authority;
(b) the other expenses of the Authority in connection with the discharge of its functions and for the purposes of this Act.

ii. IRDA shall, within _____________ after the close of each financial year, submit to the Central Government a report giving a true and full account of its activities including the activities for promotion and development of the insurance business during the previous financial year.

(a) nine months
(b) three months
(c) one month
(d) six months

Answer: (a)

Note:

FURNISHING OF RETURNS, ETC., TO CENTRAL GOVERNMENT u/s 20(1):

(1) The Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed, or as the Central Government may direct to furnish such returns, statements and other particulars in regard to any proposed or existing programme for the promotion and development of the insurance industry as the Central Government may, from time to time, require.

(2) Without prejudice to the provisions of sub-section(1), the Authority shall, within nine months after the close of each financial year, submit to the Central Government a report giving a true and full account of its activities including the activities for promotion and development of the insurance business during the previous financial year.

(3) Copies of the reports received under sub-section (2) shall be laid, as soon as may be after they are received, before each House of Parliament.

iii. The headquarter of IRDA is located in the city of_______

(a) New Delhi
(b) Hyderabad
(c) Kolkata
(d) Mumbai

Answer: (b)

Note:

IRDA was formed in the year 1991 and it has its headquarters in Hyderabad. COMPOSITION OF AUTHORITY-
The Authority shall consist of the following members, namely:-

(a) a Chairperson;
(b) not more than five whole-time members;
(c) not more than four part-time members, to be appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge or experience in life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration or any other discipline which would, in the opinion of the Central Government, be useful to the Authority:

Provided that the Central Government shall, while appointing the Chairperson and the whole-time members, ensure that at least one person each is a person having knowledge or experience in life insurance, general insurance or actuarial science, respectively.

TENURE OF OFFICE OF CHAIRPERSON AND OTHER MEMBERS.-- (1) The Chairperson and every other whole-time member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment:

Provided that no person shall hold office as a Chairperson after he has attained the age of sixty-five years:

(a) Provided further that no person shall hold office as a whole-time member after he has attained the age of sixty-two years.
(2) A part-time member shall hold office for a term not exceeding five years from the date on which he enters upon his office.
(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), a member may –
    (a) relinquish his office by giving in writing to the Central Government notice of not less than three months; or
    (b) be removed from his office in accordance with the provisions of section

iv. **The principle of _____________ ensures that an insured does not profit by insuring with multiple insurers.**

a. Subrogation
b. Contribution
c. Co-insurance
d. Indemnity

Answer: (b)

Note:

The seven principles of insurance are:-

1. Principle of Uberrimaefdei (Utmost Good Faith),
2. Principle of Insurable Interest,
3. Principle of Indemnity,
4. Principle of Contribution,
5. Principle of Subrogation,
6. Principle of Loss Minimization, and
7. Principle of Causa Proxima (Nearest Cause).

Principle of Contribution is a corollary of the principle of indemnity. It applies to all contracts of indemnity, if the insured has taken out more than one policy on the same subject matter. According to this principle, the insured can claim the compensation only to the extent of actual loss either from all insurers or from any one insurer. If one insurer pays full compensation then that insurer can claim proportionate claim from the other insurers.

For example: - Mr. John insures his property worth $ 100,000 with two insurers "AIG Ltd." for $ 90,000 and "MetLife Ltd." for $ 60,000. John's actual property destroyed is worth $ 60,000, then Mr. John can claim the full loss of $ 60,000 either from AIG Ltd. or MetLife Ltd., or he can claim $ 36,000 from AIG Ltd. and $ 24,000 from Metlife Ltd.

So, if the insured claims full amount of compensation from one insurer then he cannot claim the same compensation from other insurer and make a profit. Secondly, if one insurance company pays the full compensation then it can recover the proportionate contribution from the other insurance company.

v. An actuary is expected to:

a. Make an exact forecast of the future liabilities of policies
b. Make a reasonable forecast of the future liabilities of policies
c. Calculate the premium required to cover a risk on a long-term basis
d. Find the probability of an insured event to happen in non-life policies

Answer: (b)

Note:

According to The Actuaries Act, 2006, "Actuary" means a person skilled in determining the present effects of future contingent events or in finance modelling and risk analysis in different areas of insurance, or calculating the value of life interests and insurance risks, or designing and pricing of policies, working out the benefits, recommending rates relating to insurance business, annuities, insurance and pension rates on the basis of empirically based tables and includes a statistician engaged in such technology, taxation, employees benefits and such other risk management and investments and who is a fellow member of the Institute; and the expression "actuarial science" shall be construed accordingly.

Answer the following questions:

2. a) Explain the provisions of the Insurance Act, 1948 related to the requirement of capital of insurance companies.

b) Explain the principle of insurable interest.

Answer:

a) According to Section 6 (1) of the Insurance Act, 1948 no insurer not being an insurer as defined in sub-clause (d) of clause (9) of section 2, carrying on the business of life insurance, general insurance, health insurance or re-insurance in India or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has,—

a paid-up equity capital of rupees one hundred crore, in case of a person carrying on the business of life insurance or general insurance; or

a paid-up equity capital of rupees one hundred crore, in case of a person carrying on exclusively the business of health insurance; or

a paid-up equity capital of rupees two hundred crore, in case of a person carrying on exclusively the business as a re-insurer:

Provided that the insurer, may enhance the paid-up equity capital, as provided in this section in accordance with the provisions of the Companies Act, 2013, the Securities and Exchange Board of India Act, 1992 and the rules, regulations or directions issued thereunder or any other law for the time being in force:

Provided further that in determining the paid-up equity capital, any preliminary expenses incurred in the formation and registration of any insurer as may be specified by the regulations made under this Act, shall be excluded.

Section 6 (2) of the Act also specifies that no insurer, as defined in sub-clause (d) of clause (9) of section 2, shall be registered unless he has net owned funds of not less than rupees five thousand crore."

b) The principle of insurable interest states that the person getting insured must have insurable interest in the object of insurance. A person has an insurable interest when the physical existence of the insured object gives him some gain but its non-existence will give him a loss. In simple words, the insured person must suffer some financial loss by the damage of the insured object.

For example: The owner of a taxicab has insurable interest in the taxicab because he is getting income from it. But, if he sells it, he will not have an insurable interest left in that taxicab. From this example, we can conclude that, ownership plays a very crucial role in evaluating insurable interest. Every person has an insurable interest in his own life. A merchant has insurable interest in his business of trading. Similarly, a creditor has insurable interest in his debtor.

3. a) State the powers and functions of IRDA.

Answer:

a) Under Section 14 of the IRDA Act, IRDA the Authority shall have the duty to regulate, promote and ensure orderly growth of the insurance business and re-insurance business.

Without prejudice to the generality of the provisions contained in sub-section (1), the powers and functions of the Authority shall include, -

(a) Issue of Certificate of Registration to insurance companies, renew, modify, withdraw, suspend or cancel the certificate of registration
(b) Protection of interests of policyholders in matters concerning assignment of policies, nomination, insurable interest, claim settlement, surrender value and other terms and conditions of insurance contract
(c) Specification of requisite qualifications, practical training and code of conduct for insurance agents and intermediaries
(d) Specification of code of conduct for surveyors and loss assessors
(e) Promoting efficiency in the conduct of insurance business
(f) Promoting and regulating professional organizations connected with insurance and reinsurance business
(g) Levying fees and other charges for carrying out the purposes of the Act
(h) Calling for information from or undertaking inspection of insurance companies, intermediaries and other oganisations connected with insurance business
(i) Control and regulation of rates, advantages, terms and conditions that may be offered by general insurance companies

(j) Specifying the form and manner in which books of account shall be maintained by insurance companies and intermediaries
(k) Regulation of investments of funds by insurance companies
(l) Regulation of maintenance of margin of solvency
(m) Adjudication of disputes between insurers and insurance intermediaries
(n) Supervising the functioning of Tariff Advisory Committee
(0) Specifying the percentage of premium income of the insurer to finance schemes for promoting and regulating professional organizations
(o) Specifying the percentage of insurance business to be undertaken by insurers in rural or social sectors
(p) Such other powers as may be prescribed

4. a) Highlight the provisions of the IRDA Act relating to maintenance of accounts by IRDA and auditing of the same.

b) State the prohibitions on the Insurance companies in granting loans or advances.

Answer:

a) As per Section 17 of the IRDA Act, the following are the provisions relating to maintenance of accounts by IRDA and auditing of the same:

(1) IRDA shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.
(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General.
(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books of account, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.
(4) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit-report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

b) According to Section 29 of the Insurance Act, 1938 the prohibitions on the Insurance companies in granting loans or advances are:

No insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life insurance policies issued by him within their surrender value, to any director, manager, actuary, auditor or officer of the insurer, if a company or to any other company or firm in which any such director, manager, actuary or

officer holds the position of a director, manager, actuary, officer or partner: Provided that nothing contained in this sub-section shall apply to such loans, made by an insurer to a banking company, as may be specified by the Authority: Provided further that nothing in this section shall prohibit a company from granting such loans or advances to a subsidiary company or to any other company of which the company granting the loan or advance is a subsidiary company if the previous approval of the Authority is obtained for such loan or advance.

The provisions of section 185 of the Companies Act, 2013 shall not apply to a loan granted to a director of an insurer being a company, if the loan is one granted on the security of a policy on which the insurer bears the risk and the policy was issued to the director on his own life, and the loan is within the surrender value of the policy. (3) Subject to the provisions of sub-section (1), no insurer shall grant—

(a) any loans or temporary advances either on hypothecation of property or on personal security or otherwise, except such loans as may be specified by the regulations including the loans sanctioned as part of their salary package to the full-time employees of the insurer as per the scheme duly approved by its Board of Directors;

(b) temporary advances to any insurance agent to facilitate the carrying out of his functions as such except in cases where such advances do not exceed in the aggregate the renewal commission earned by him during the immediately preceding year.

(c) Where any event occurs giving rise to circumstances, the existence of which at the time of grant of any subsisting loan or advance would have made such grant a contravention of this section, such loan or advance shall, notwithstanding anything in any contract to the contrary, be repaid within three months from the occurrence of such event.

(d) In case of default in complying with the provisions of sub-section (4), the director, manager, auditor, actuary, officer or insurance agent concerned shall, without prejudice to any other penalty which he may incur, cease to hold office under, or to act for, the insurer granting the loan on the expiry of three months."

5. Write Short Notes on:

(i) Insurance Advisory Committee

(ii) Principle of Uberrimaefdei

(iii) Constitution of Insurance Regulatory and Development Authority

(iv) Principle of Causa Proxima

Answer:

i) IRDA may, establish a Committee to be known as the Insurance Advisory Committee which shall consist of not more than twenty-five members excluding ex-officio members to represent the interests of commerce, industry, transport, agriculture, surveyors, agents, intermediaries, organisations engaged in safety and loss prevention, research bodies and employees' association in the insurance sector. The Chairperson and the members of the Authority shall be the ex officio Chairperson and ex officio members of the Insurance Advisory Committee. The objects of the Insurance Advisory Committee shall be to advise the Authority on matters relating to the making of the regulations.

ii) **Principle of Uberrimaefdei** (a Latin phrase), or in simple English words, the Principle of Utmost Good Faith, is a very basic and first primary principle of insurance. According to this principle, the insurance contract must be signed by both parties (i.e. insurer and insured) in an absolute good faith or belief or trust. The person getting insured must willingly disclose and surrender to the insurer his complete true information regarding the subject matter of insurance. The insurer's liability gets void (i.e. legally revoked or cancelled) if any facts, about the subject matter of insurance are either omitted, hidden, falsified or presented in a wrong manner by the insured. The principle of Uberrimaefdei applies to all types of insurance contracts.

iii) The Insurance Regulatory and Development Authority Act has established the Insurance Regulatory and Development Authority ("IRDA" or "Authority") as a statutory regulator to regulate and promote the insurance industry in India and to protect the interests of holders of insurance policies. The members of the IRDA are appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge or experience in life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration etc. The Authority consists of a chairperson, not more than five whole-time members and not more than four part-time members.

The Chairperson and every other whole-time member of IRDA appointed shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment. However, Chairperson shall not hold office after he or she attains the age of 65 years while whole time members shall not hold after he or she attains the age of 62 years. A part-time member shall hold office for a term not exceeding five years from the date on which he enters upon his office.

Central Government may remove any member from office if he or she is adjudged insolvent or is physically or mentally incapacitated or has been convicted of an offence involving moral turpitude or has acquired financial or other interests or has abused his position. Chairperson and the whole time members shall not for a period of two years from the date of cessation of office in IRDA, hold office as an employee with Central Government or any State Government or with any company in the insurance sector.

iv) **Principle of Causa Proxima** (a Latin phrase), or in simple English words, the Principle of Proximate (i.e. Nearest) Cause, means when a loss is caused by more than one causes, the proximate or the nearest or the closest cause should be taken into consideration to decide the liability of the insurer. The principle states that to find out whether the insurer is liable for the loss or not, the proximate (closest) and not the remote (farthest) must be looked into.

For example: A cargo ship's base was punctured due to rats and so sea water entered and cargo was damaged. Here there are two causes for the damage of the cargo ship - (i) The cargo ship getting punctured because of rats, and (ii) The sea water entering ship through puncture. The risk of sea water is insured but the first cause is not. The nearest cause of damage is sea water which is insured and therefore the insurer must pay the compensation.

However, in case of life insurance, the principle of Causa Proxima does not apply. Whatever may be the reason of death (whether a natural death or an unnatural death) the insurer is liable to pay the amount of insurance.

6. Your friend has lodged a claim with ABC Insurance co. for vehicle accident loss. The company is keeping quiet for three months. He wants to lodge a complaint to proper authority. Advise how and where he will complain against the insurance company.

Answer:

The proper authority where the complaint can be lodged is IRDA.I would advise my friend to take either of the action,

(a) Approach the Grievance Redressal Cell of the Consumer affairs Dept. of IRDAI by calling on a designated phone number or designated email. He can there after monitor action taken on his complaint online.

(b) Send a letter to IRDAI in downloaded format for complaint and send it duly filled with relevant documents by post to GM, Consumer Affairs Dept., IRDAI, Hyderabad.

Study Note – 7

CORPORATE GOVERNANCE

Learning Objective: ***The specific objective of this chapter is to explore an expert knowledge on Corporate Governance.***

1. Mark the correct answer [only indicate (a) or (b) or (c) or (d) and give justification.

(i) The Companies Act, 2013 specified "Small Shareholder" as a shareholder holding __________ shares of nominal value of not more than:

(i) ₹ 15,000
(ii) ₹ 20,000
(iii) ₹ 25,000
(iv) ₹ 30,000

Answer: (ii)

Justification- According to Section 151 of the Companies Act, 2013, 'small shareholder' means a shareholder holding shares of nominal value of not more than ₹ 20,000 or such other sum as may be prescribed.

(ii) Matters not to be dealt with in a meeting through video conferencing or other audiovisual means:

(i) The approval of annual financial statements
(ii) The approval of the Board's report
(iii) The approval of the prospectus
(iv) All the above

Answer: (iv)

Justification - As provided in Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014, all the said matters are not to be dealt with in a meeting through video conferencing or other audio-visual means.

(iii) ______________ means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company.

(i) Director
(ii) Manager
(iii) Managing Director
(iv) both (ii) and (iii) above

Answer: (iv)

Justification: The manager or managing director is an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company.

(iv) As per LODR, constitution of Risk management Committee applies to:

(i) Top 100 companies by market capitalisation
(ii) Top 200 companies by market capitalisation
(iii) Only (i) above
(iv) Only (ii) above

Answer: (i)

Justification - As per Clause regulation 21 of LODR; formation of risk management committee is applicable only to the top 100 companies by market capitalisation as at the closing of immediate previous financial year.

(v) Every company shall hold the first meeting of the Board of Directors within how many days of the date of incorporation:

(i) 15 days
(ii) 30 days
(iii) 45 days
(iv) 60 days

Answer: (ii)

Justification- Section 173 of The Companies Act, 2013 states that every company shall hold the first meeting of the Board of Directors within 30 days of the date of its incorporation.

(vi) Every listed Public Company shall have "Independent Directors" of at least

(i) 1/3 rd of the total number of Directors
(ii) 2/3 rd of the total number of Directors
(iii) ¼th of the total number of Directors
(iv) 2/4th of the total number of Directors

Answer: (i)

Justification- Under Section 149(4) of the Companies Act, 2013 it has been stated that every listed public company shall have at least 1/3 rd of the total number of directors as independent directors.

(vii) Unless the Articles require a larger number of members, Quorum of a General Meeting of a Producer Company shall be

(i) 5 members
(ii) one third of total membership
(iii) one-fourth of total membership
(iv) half of total membership

Answer: (iii)

Justification: ¼th membership. (Sec 581 Y), hence answer is (iii).

(viii) Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides that companies shall appoint at least one woman director:

(i) Where paid-up share capital is at least ₹ 100 crore
(ii) Turnover of the company is at least ₹ 300 crore
(iii) Both the above
(iv) None of the above

Answer: (iii)

Justification - Rule 3 of the Companies (Appointment and qualification of Directors) Rules, 2014 provides that the following class of companies shall appoint at least one woman director:

(1) every listed company.
(2) every other public company having.

(a) paid-up share capital of one hundred crore rupees or more; or
(b) turnover of ₹ 300 crores or more.

At least one woman director shall be on the Board of such class or classes of companies as may be prescribed. [Second proviso to section 149(1)].

(ix) The ______________ shall satisfy itself on the need for omnibus approval for transactions of repetitive nature and that such approval is in the interest of the company.

(a) Board of Directors
(b) Audit Committee
(c) Management Committee
(d) Any of the above

Answer: (b)

The Audit Committee shall satisfy itself on the need for omnibus approval for transactions of repetitive nature and that such approval is in the interest of the company.

(x) _______________ means any director whose presence cannot count for the purpose of forming a quorum at a meeting of the Board, at the time of the discussion or vote on any matter.

(a) Interested Director
(b) Related party
(c) Nominee Director
(d) None of the above

Answer: (a)

Interested Director means any director whose presence cannot count for the purpose of forming a quorum at a meeting of the Board, at the time of the discussion or vote on any matter.

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

(a) Any other Director
(b) Independent Director
(c) Interested Director
(d) Employees

Answer: (a)

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

ANSWER THE FOLLOWING QUESTIONS:

2. (a) What matters are to be stated in the Director's Responsibility Statement?

(b) XYZ Company Ltd in its Annual General Meeting appointed all its directors by passing one single resolution. No objection was made to the resolution. Examine the validity of the appointment of directors explaining the relevant provisions of the companies act' 2013. Will it make any difference, if XYZ Company was a private company?

Answer:

(a) Director's Responsibility Statement [Section 134(5)] The Directors" Responsibility Statement shall state that:

(i) In the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures.

(ii) The directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period.

(iii) The directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities.

(iv) The directors had prepared the annual accounts on a going concern basis, and

(v) The directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively. Here, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information.

(vi) The directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

(b) Under section 162(1) of the Companies Act, 2013, at a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it. From the above provision of law, it is mandatory for the company to first get a unanimous approval of the company on the appointment or more than one director by a single resolution. In the given case, no such motion was put to vote at the meeting and passed unanimously. Merely not raising any objection is not the same as active unanimous approval. Further, according to section 162(2), a resolution moved in contravention of subsection (1) shall be void, whether or not any objection was taken when it was moved. Hence, in the given case the appointment of all the directors made by a single resolution at the AGM is void. The Ministry of Corporate Affairs has clarified via Notifications No, 464(E) dated 5th June, 2015, that section 162 of the Companies Act, 2013, shall not apply to a private company, Thus, if XYZ would have been a private company, then provisions of section 162 shall not be attracted.

3. (a) What do you mean by 'Small Company'?

(b) State the impact of LODR on IT Governance.

Answer:

(a) According to Section 2 (85) of Companies Act, 2013 a 'small company' means a company, other than a public company:

(1) Paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees. Or

(2) Turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees. Provided that nothing in this clause shall apply to:
   (i) Holding company or a subsidiary company.
   (ii) A company registered under Section 8, or
   (iii) A company or body corporate governed by any special Act Some of the advantages enjoyed by the small companies are:
      (i) Holding of two board meetings instead of four – one each in the first and second half years and the gap between the two meeting should not be more than 90 days. (section 173(5))
      (ii) Not required to give cash flow statements with the financial statements (section 2(40)).

(b) Impact of listing obligation on IT Governance - Most Indian corporate entities have witnessed a heavy penetration of IT in the running of business processes. Corporate majors have gone in for massive state-of-the-art enterprise resource planning (ERP) implementations across their geographically dispersed business locations, reaping in the bargain online recording of transactions and availability of information at the click of the mouse. Major ERP vendors have come out with India-specific versions to service their expanding Indian clientele. Adding momentum to this development is the increasing offshore (and often intercontinental) acquisitions of business units by most of the top business houses over the last year, in services and manufacturing verticals. The cumulative impact of all these developments boils down that the road to corporate governance definitely lies through achieving IT governance. Many of the Indian corporate entities have started recognizing the importance of having a Chief Information Officer (CIO) working independently and reporting directly to the board of directors, in place of the traditional reporting structure of working under and reporting to the CFO This has lent a sense of urgency to giving the IT function its rightful place in the management scheme of things.

Basic issues of governance are data authenticity, transparency and quick information. These are taken care of through e-governance.

4. (a) State the OECD Principles of Corporate Governance.

(b) 'The typical organizational structure of PSUs makes it difficult for the implementation of Corporate Governance practices as applicable to other publicly- listed private enterprise.' In the above context, list the difficulties encountered in Governance.

Answer:

(a) In response to a call by its council, the OECD issued the OECD Principles of Corporate Governance in 1999 after extensive consultations. These were later revised in 2004 following a comprehensive survey of corporate governance practices in and outside the OECD area. Since their launch, the principles have formed the basis for corporate governance initiatives in both OECD and non OECD countries alike. They represent the minimum standard that countries with different traditions have agreed on, being applicable to countries with a civil and common law tradition without being unduly prescriptive. The principles have been devised with four fundamental concepts in mind: responsibility, accountability, fairness and transparency and enabling diversity of rules and regulations. They outline the following:

(1) the basis for an effective corporate governance framework.
(2) the rights of shareholders.
(3) equitable treatment of shareholders.
(4) the role of stakeholders in corporate governance.
(5) disclosure and transparency, and
(6) the responsibilities of the board.

(b) The 2004 revisions covered four main areas:

A. a new set of principles on the development of regulatory framework to underpin corporate governance mechanisms for implementation and enforcements.
B. additional principles to strengthen the exercise of informed ownership by shareholders that call on institutional investors to disclose their corporate
C. governance policies and to strengthen the rights of shareholders when choosing Board members.
D. strengthened principles to reinforce Board oversight and enhance Board members'' independent judgment, and
E. new and strengthened principles to contain conflicts of interest through enhanced disclosure and transparency (for example, on related party transactions), thus making auditors more accountable to shareholders and promoting auditors'' independence.

b) While routine governance regulations become applicable for public sector companies formed under the Companies Act, 2013 and come under the purview of SEBI regulations the moment they mobilize funds from the public, the typical organizational structure of PSUs makes it difficult for the implementation of corporate governance practices as applicable to other publicly - listed private enterprises. The typical difficulties faced are: The board of directors will comprise essentially of bureaucrats drawn from various ministries which are interested in the PSU. In addition, there may be nominee directors from banks or financial institutions who have loan or equity exposures to the unit. The effect will be to have a board much beyond the required size, rendering decision-making a difficult process. The chief executive or managing director (or chairman and managing director) and other functional directors are likely to be bureaucrats and not necessarily professionals with the required expertise. This can affect the efficient running of the enterprise. Difficult to attract expert professionals as independent directors. The laws and regulations may necessitate a percentage of independent components on the board; but many professionals may not be enthused as there are serious limitations on the impact they can make. Due to their very nature, there are difficulties in implementing better governance practices. Many public sector corporations are managed and governed according to the whims and fancies of politicians and bureaucrats. Many of them view PSUs as a means to their ends. A lot of them have turned sick due to overdoses of political interference, even when their areas of operations offered enormous opportunities for advancement and growth. And when the economy was opened up, many of them lacked the competitiveness to fight it out with their counterparts from the private sector.

5. (a) A producer company was incorporated on 1st September, 2009. At present the paid up Share Capital of the company is ₹ 10 lakhs consisting of 1,00,000 Equity Shares of ₹ 10 each fully paid-up held by 200 individuals and 20 producers institutions. You are required to answer the following with reference to the provisions of the Companies Act, 1956:

(i) What is the time limit for holding the First Annual General Meeting and the subsequent Annual General Meetings?

(ii) What is the Quorum for the Annual General Meeting?

(iii) State the manner in which the voting rights of the members are determined.

(iv) Is it possible to remove a member?

Answer:

(a) (i) Annual General Meeting - The first annual general meeting of a producer company shall be held within 90 days of incorporation i.e. on or before 29th November, 2009 in this case [Sec. 581 ZA(2)]. In the case of subsequent AGMs gap between two AGMs must not be more than 15 months. Registrar of Companies may extend the time for holding any AGM other than the first AGM by a period not exceeding 3 months for any special reason [581 ZA(i)]

(ii) Quorum Unless the articles of association of the producer company provide for a larger number, 1/4th of the total number of members of the producer company shall be the quorum for its annual general meeting. In this case the company has got 220 members. Hence the quorum is 55 [Sec. 581ZA(8)].

(iii) Voting rights of members: It depends on the type of membership. Where the membership consists of individuals and producer institutions, (as in this case) voting rights should be computed on the basis of a single vote for every member [Section 581 D(c)]

(iv) Removal of member: No person, who has any business interest which is in conflict with business of the producer company, shall become a member of that company (Section 581 D(4). A person who has become a member of the producer company acquires any business interest which is on conflict with the business of the producer company, shall cease to be a member of that company and be removed as a member in accordance with the articles [Sec. 581 D(5)].

6. (a) WILSON Limited is facing loss in business during the current Financial Year 2015-16. In the immediate preceding three financial years, the company had declared dividend at the rate of 8%, 10% and 12% respectively. To maintain the goodwill of the company, the Board of Directors has decided to declare 12% interim dividend for the current financial year. Examine the applicable provisions of the Companies Act, 2013 and state whether the Board of Directors can do so.

(b) Mr. Deshmukh is a director of Practical Ltd. The said company is having sufficient liquid funds and Mr. Deshmukh is in dire need of funds. In order to mitigate the hardship of Mr. Deshmukh the board of directors of Practical Ltd. wants to lend ₹ 5 lakhs to him and ₹ 2 lakhs to his wife. State whether such loans can be given and if so under what conditions. What would be your answer if the company Practical Ltd. would have been Practical Private Ltd.

(c) The Board of directors of Best Ltd. are contributing every year to a charitable organization a sum of ₹ 60,000. In a particular year, the company suffered losses and the directors are contemplating to contribute the said amount in spite of the losses. In this connection, state whether the directors can do so?

Answer:

(a) Declaration of 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 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 given case the company is facing loss during the current financial year 2015-16. In the immediate preceding three financial years, the company declared dividend at the rate of 8%, 10% and 12%. As per the above mentioned provision, 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 [i.e. 8+10+12=30/3=10%]. Therefore, decision of Board of Directors to declare 12% of the interim dividend for the current financial year is not tenable.

(b) Loan to Director and his relative: According to Section 185 of the Companies Act, 2013, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person. Thus, in the instant case, if Practical Ltd. wants to lend ₹ 5 Lakhs to Mr. Deshmukh who is a director in Practical Ltd. and ₹ 2 Lakhs to his wife, then it is in violation of Section 185 of the Companies Act, 2013.
If Practical Ltd would have been Practical Private Ltd. than vide Notification No. G.S.R. 464 (E) dated 5th June 2015, Section 185 of the Companies Act, 2013 shall not apply to a Private companies in certain conditions.

(c) Under section 181 of the Companies Act, 2013 the Board of Directors of a company is authorized to contribute to bonafide charitable and other funds. However, in case the aggregate amount of such contribution in any financial year exceeds five per cent, of its average net profits for the three immediately preceding financial years, prior permission of the company in general meeting shall be required. The section does not make it mandatory for the company to have a profit for making a charitable contribution in a financial year. As the amount of donation is restricted to the average of previous 3 years' profits, it is possible for a company suffering a loss to make a contribution provided it is to a bonafide charitable fund. In the present case, even though the company has incurred a loss it can contribute to the charitable fund only if it is a bonafied charitable fund and' the amount is upto 5% of the average of the preceeding three years' profits. In case the contribution exceeds the limit, the prior approval of the members must be taken at a general meeting of the company.

7. (a) Mr. Kamal, a Chartered Accountant, was appointed by the Board of Directors of Reliable Limited as the First Auditor. The company in General Meeting removed Mr. Kamal without seeking the approval of the Central Government and appointed Mr. Naresh as Auditor in his place. Examine the validity of the appointment with reference to the provisions of Companies Act, 2013.

(b) What are the duties of the inspector as enumerated in Sec 223 of the Companies Act, 2013 in relation to his report.

(c) Examine with reference to the provisions of the Companies Act, 2013 whether notice of a Board Meeting is required to be sent to the following persons: (i) An interested Director; (ii) A Director who has expressed his inability to attend a particular Board Meeting

Answer:

(a) Removal of first auditor: Section 140(1) stipulates that any auditor appointed under Section 139 may be removed from office before the expiry of his term by passing special resolution in general meeting, after obtaining the previous approval of the Central Government in that behalf. Provided that before taking any action under subsection (i) of Section 140, the auditor concerned shall be given a reasonable opportunity of being heard. The first auditors appointed by Board of Directors can be removed in accordance with the provision of Section 140(1) of the Companies act, 2013. Hence the removal of the first auditor appointed by the Board without seeking the approval of the Central Government is invalid. The company contravened the provision of the Act.

(b) Section 223 of the Companies Act, 2013 deals with Inspector's report. The following provisions are applicable in respect of the Inspector's report on investigation: (i) Submission of interim report and fnal report [Sub section (1)]: An inspector appointed under this Chapter (Chapter XIV- inspection, Inquiry and Investigation) may, and if so directed by the Central Government shall, submit interim reports to that Government, and on the conclusion of the investigation, shall submit a final report to the Central Government. (ii) Report to be writing or printed [Sub section (2)]: Every report made under sub section (1) above shall be in writing or printed as the Central Government may direct. (iii) Obtaining copy or report [Sub section (3)]: A copy of the above report may be obtained by making an application in this regard to the Central Government, (iv) Authentication of report [Sub section (4)]: The report of any inspector appointed under this Chapter shall be authenticated either — (a) by the seal, if any, of the company whose affairs have been investigated; or (b) by a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872, and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report. (v) Exceptions: Nothing in this section shall apply to the report referred to in section 212 of the Companies Act, 2013.

(c) Notice of Board meeting (i) Interested director: Section 173(3) of the Companies Act, 2013 makes it mandatory for every director to be given proper notice of every board meeting. It is immaterial whether a director is interested or not. In case of an Interested Director, notice must be given to him even though he is precluded from voting at the meeting on the business to be transacted. (ii) A Director who has expressed his inability to attend a particular Board Meeting: In terms of section 173(3) even if a director states that he will not be able to attend the next Board meeting; notice must be given to that director.

8. (a) State the "Role of the Board of Directors" &"Role of the CEO" Corporate Governance in family business

(b) Write short notes on Director Identification Number and Resolution by circulation passed by board

Answer:

(a) (i) Role of the Board of Directors-Constitution of the Board place an important role in managing the Family Owned Businesses. The Board is expected to takes independent/unbiased decisions and the board members are the 'trustees' of the shareholders, especially the minority group. They should be in a position to provide transparent data and take decisions in the best interest of the shareholders. When it comes to board membership, most family Controlled businesses reserve this right to members of the family and in a few cases to some well trusted non-family managers. This practice is generally used to keep family control over the direction of its business. Indeed, most decisions are usually taken by the family member directors. Family directors who are also managers in the business would naturally encourage reinvesting profits in the company so as to increase its growth potential. On the contrary, family directors who do not work in the business would rather make the decision of distributing the profits as dividends to family shareholders. These gainsay views can lead to major conflicts in the board and negatively impact its way of Functioning.

(ii) Role of the CEO-In selecting the CEO of a company, one should want the organization to be run by the 'most competent' person with professional knowledge and experience. Being employee of firm the CEO has accountability and responsibility to the organization and its shareholders. He or she should be able to be questioned by an 'independent' authority called the Board or Chairperson of the company. In a worst case situation if found unsuitable, he/she is asked to relinquish the position. Practically, it is when the CEO is a family member; this becomes quite difficult and awkward which can create further unsuitable problems for management and as a whole business. This family CEO believes that being owner of majority share owner he has full right for different experiments as well to do according to their force.

(b) (i) **Director Identification Number' (DIN) -**Director Identification Number' (DIN) means an identification number allotted by the Central Government to any individual, intending to be appointed as director or to any existing director of a company, for the purpose of his identification as a director of a company. Section 153 to 157 of the Companies Act, 2013 provide for making application to Central Government for allotment of DIN and other matters connected there with. Section 153 of the Act deals with the fling of application to the Central Government for allotment of DIN. According to it, every individual intending to be appointed as director of a company shall make an application for allotment of DIN to the Central Government in such form and manner and along with such fees as may be prescribed. Rule 9 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides a detailed procedure for making application for allotment of DIN.

(ii) **Resolution by Circulation passed by Board-** 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.

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.

9. (a) Discuss about the "Legal Framework of Corporate Governance".

(b) Organization for Economic Cooperation and Development (OECD) developed a set of principles of Corporate Governance which are internationally recognized to serve as good benchmarks. Comment.

Answer:

(a) The companies in India have to comply with the provisions of the Companies Act, 2013 the SEBI guidelines, the Kumara Mangalam Birla report on corporate governance, the Accounting Standards issued by the ICAI and the listing agreements with the stock exchanges in which they are listed. The Companies Act, 2013 is the relevant statute in India that governs the incorporation and, functioning of the companies. The ordinary business activities like declaration of dividends, appointment of directors, acceptance of the financial statements and appointment of auditors requires the consent of 51% of the shareholders, whereas all other business activities (other than routine business activities) requires the approval of 75% of the shareholders. If a company wants to start a new business it requires the approval of 75% shareholders, which means that the board of a widely held company should be able to persuade the shareholders about their strategy to pass the special resolution. Whereas, the board of a closely held company will not find it difficult to pass such a resolution, because the shareholders are usually the managers in such cases. However the Kumara Mangalam Birla report (KMB report) required that in case of appointment/ reappointment of directors, shareholders should be provided a resume, information regarding functional expertise and number of directorships held in other companies. KMB

report mentioned that the board shall consist of at least 50% of non-executive directors. And if the chairman is an executive director then at least half of the board of directors shall be independent and in other case at least one-third of the total directors shall be independent. The KMB report has taken a more stringent view that the directors shall not be members of more than 10 committees or chairman of more than 5 committees across all companies. The remuneration payable to managerial personnel under the Act, if there is only one such person, shall not exceed 5% of its net profit and in case of more than one managerial personnel it shall not exceed 10% of its net profit except with prior permission of the Central Government. In case of companies, which incurred a loss in the current financial year the limits on the salaries and perquisites to be paid to the Managing personnel. The minority shareholders are protected under the Act and the members holding at least 10% of the share capital can make an application for relief to the concerned authorities in the cases of oppression and mismanagement. The minority shareholders have a provision to appoint representative director on the board. There is no special provision under the companies to protect the creditors. If the company makes default then the creditors have to move the civil court for realization of dues, which demands more time and money to be spent around the courts. The Securitization and Reconstruction of Financial Assets and Enforcement of Securities Act, 2002 [SARFAESI Act] was enacted to regulate securitization and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. The Institute of Chartered Accountants of India is the concerned authority to issue Accounting Standards, which are mandatory in most of the cases. These Standards provide guidelines for disclosures of financial information to ensure uniformity between companies. The Securities and Exchange Board of India is the regulatory authority, which issues regulations, rules and guidelines to companies to ensure protection of investors. The companies whose shares are listed on the stock exchanges should comply with additional requirements as mentioned in the listing agreement on a regular basis.

(b) The governance mechanism differs in each country and is shaped by its political, economic and social history as also by its legal framework. With keen interest shown by organizations like World Bank, Asian Development Bank etc., Organization for Economic Cooperation and Development (OECD) developed a set of principles of Corporate Governance which are internationally recognized to serve as good benchmarks.

They are discussed below:

(a) The Basis of an Effective Corporate Governance Framework The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law, and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.

(b) Rights of Shareholders and Key Ownership Functions The corporate governance framework should protect and facilitate the exercise of shareholders' rights. Seven core principles in this category spell out the various rights of shareholders and call for effective shareholder participation in key corporate governance decisions.

(c) Equitable Treatment of Shareholders The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.

(d) Role of Stakeholders in Corporate Governance The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and should encourage active cooperation between corporations and stakeholders in creating wealth, jobs and sustainability of financially sound enterprises.

(e) Disclosure and Transparency The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters with respect to the corporation, including the financial situation, performance, ownership, and governance of the company.

(f) Responsibilities of the Board The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board and the board's accountability to the company and the shareholders. The advisory group on CG attempted to compare the status of corporate governance in India vis-a-vis the internationally recognized best standards and suggested to improve corporate governance standards in India.

10. (a) Can governance be extended to unlisted companies? Discuss.

(b) Discuss about the advantages and disadvantages of the Family Businesses over Non-Family Businesses.

Answer:

(a) There is generally an incorrect perception that 'unlisted' or 'closely held' companies are small, mostly family run and relatively insignificant part of the corporate sector when it comes to policymaking and regulation relating to their governance. Undoubtedly, this group includes a vast proportion of such small and medium size entities but it is also home to several very substantial corporations which qualify as unlisted only by virtue of their ownership structures notwithstanding their revenues, profits, employee population, customer and vendor base, and sourcing of funds from banks and financial institutions. Illustratively, a Reserve Bank of India study of finances of select private limited companies (covering 6.8% of the paid up capital of all private limited companies at work) as of March 2012 indicated that the ratio of total borrowings (including both long and short term funds)to equity was 74.1 to 25.9; in other words, three fourths of the finances of these companies were borrowed from banks and financial institutions, and as such there was nothing strictly private about these companies except their ownership that was closely held. Many of these private limited companies would be joint ventures, wholly owned subsidiaries, venture-capital or other investor assisted units, and so on. Several companies in these groups may well be aspiring for listed status in the near future; ironically, the group would also include companies that preferred to delist from stock exchanges for whatever reason. A major thrust of the Act has been to extend several good governance practices to the unlisted segment of corporate business. As of December 2012, there were 852,957 companies at work comprising 806,666 private limited companies and 66,291 public limited companies; of these, about 6500 (10%) public companies were listed on the two major Indian stock exchanges. Given their predominant contribution to a nation's economy and employment potential, not to mention their extensive use of borrowed funds to sustain their operation, adoption of good corporate governance practices voluntarily or by legislation will likely help to improve their performance and reputational perceptions. Recognising these imperatives,

guidelines have already been issued for such companies in Europe and the UK. Due allowance has also been made to minimise the costs of governance by segregating smaller from the relatively larger unlisted companies in these guidelines.

In India, while SEBI over the last decade and more has gradually strengthened regulatory requirements in respect of listed companies, the vast unlisted segment has received virtually no major policy interventions in this regard. The 2013 Act has taken the first steps to bridge this enormous vacuum by extending several good governance practices to the unlisted companies segment. The Act and the rules framed there under reckon several criteria thresholds for extending application of such governance practices to unlisted companies. Primarily, these are based on paid-up capital and net worth, sales revenue, profits after tax, number of shareholders, deposit holders and debt security holders, and the extent of bank and other borrowings. Threshold levels of course will have to be such that they ensure additional costs of governance are commensurate with desired levels of benefits to the companies themselves and their stakeholders. There are daunting problems ahead: appropriate capacity building exercises have to be undertaken, both in getting these companies' buy-in to the new measures (based on their value-add to them rather than on threat of punishment for non-compliance) and in enlarging the pool of independent directors, and other key management personnel to take up the relevant responsibilities.

(b) Family businesses identify a number of positive differences over non-family businesses. These include commitment and passion towards the success of the business, being able to make quick market focused decisions, having a deep industry knowledge, etc. Some of the advantages that family businesses share over non-family enterprises include the following:

(i) Commitment, Passion and Dedication: It is believed that owners tend to take better care of their businesses as they have greater personal stakes involved. Family businesses are more appreciative of their talent.

(ii) Agile decision-making abilities**:** Not having responsibilities towards any shareholders gives the Indian family businesses greater flexibility in terms of making decisions faster, improving the speed with which they launch new initiatives, change operations, evaluate new business

11. The Board of ABC Ltd. Is comprised of 7 directors in total, consisting of one Chairman and Managing Director, two executive directors, three independent directors and one nominee director. Mr. N M Nilekani is the appointed as the Chairman and Managing director of the company, Mr. Subrata Parekh as Director (Finance), Mr. Arunava Bandyopadhyay as Director (Commercial), Mr. Ankit Patni, Mr. S.K. Burnwal, Mr. Vipul Jain as Independent directors of the company and Mr. Vinayak Chaturvedi as Nominee director of SBI.

Constitute the Audit Committee, Nomination and Remuneration Committee and Corporate Social Responsibility committee with the above mentioned directors as per the provisions of the Companies Act, 2013 and complying the SEBI (LODR), 2015.

Answer:

As per section 177 of the Companies Act, 2013 the Audit Committee shall consist of a minimum of three directors with independent directors forming a majority. So complying with the provisions of the Companies Act, 2013 the committee should be constituted as follows:

1. Mr. Vipul Jain: Chairman
2. Mr. Vinayak Chaturvedi: Member
3. Mr. Ankit Patni: Member
   (functional directors should not be members but can be invitees)

As per section 178 of the Companies Act, 2013 the Nomination and Remuneration Committee shall consist of three or more non-executive directors out of which not less than one half shall be independent directors. So complying with the provisions of the Companies Act, 2013 the committee should be constituted as follows:

1. Mr. Vinayak Chaturvedi: Chairman
2. Mr. Vipul Jain: Member
3. Mr. Ankit Patni: Member

As per section 135 of the Companies Act, 2013 the Corporate Social Responsibility Committee shall consist of three or more directors out of which one shall be an independent director. So complying with the provisions of the Companies Act, 2013 the committee should be constituted as follows:

1. Mr. Arunava Bandyopadhyay : Chairman
2. Mr. Vinayak Chaturvedi : Member
3. Mr. Ankit Patni: Member
4. Mr. Subrata Parekh as Director (Finance),

Study Note – 8

SOCIAL ENVIRONMENTAL AND ECONOMIC RESPONSIBILITIES OF BUSINESS

Learning Objective: ***The main objective of this chapter is to develop an overall knowledge of Social, Environmental, & Economic Responsibilities of Business.***

1. Mark the correct answer [only indicate (a) or (b) or (c) or (d) and give justification.

i. National Voluntary Guidelines, 2011 have been articulated in the form of _____ Principles with the Core Elements to actualize each of the principles.

(i) 9
(ii) 10
(iii) 12
(iv) 15

Answer : (i)

National Voluntary Guidelines, 2011 have been articulated in the form of 9 Principles with the Core Elements to actualize each of the principles.

ii. XBRL is ____

(i) an extensible Business Reporting Language
(ii) based on extensible Markup Language
(iii) a combination of extensible Markup Language and OLAP
(iv) none of the above

Answer: (iii)

XBRL is a combination of extensible Markup Language (XML) and Online Analytical Processing (OLAP)

iii. National Informatics Centre Network (NICNET) was established in _______________

(i) 1977
(ii) 1980
(iii) 1987
(iv) 1990

Answer: (iii)

National Informatics Centre Network (NICNET) was established in 1987.

iv. What is the minimum committee size of the CSR Committee?

(i) 2 with one Independent Director,
(ii) 3 with one Independent Director,
(iii) 4 with one Independent Director,
(iv) 5 with two Independent Directors.

Answer: (ii)

Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

v. National Task Force on Information Technology and Software Development was constituted in

(i) March, 1984
(ii) May, 1985
(iii) May, 1998
(iv) March, 1994.

Answer: (iii)

National Task Force on Information Technology and Software Development was constituted in May, 1998.

vi. The Triple Bottom Line Approach was developed by-

(i) Milton Friedman
(ii) Henry Mintzberg
(iii) Peter Drucker
(iv) John Elkington.

Answer: (iv)

The Triple Bottom Line Approach was developed by John Elkington

vii. Among the following which is not a part of National Voluntary Guidelines 2011

(i) Businesses should conduct and govern themselves with Ethics, Transparency and Accountability
(ii) Businesses should treat all stakeholders with equitable and fair mindset and focussed on holistic value generation
(iii) Businesses should promote the well being of all employees
(iv) Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner

Answer: (ii)

This is not a part of NVG, 2011. Rather in case of the stakeholders the Guideline says that "Businesses should respect the interests of and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized".

2. (a) State the National Voluntary Guidelines, 2011 on Social, Environmental and Economic Responsibilities of Business?

(b) Rapid Real Estate Limited, a listed company has made the following profits; the profits reflect eligible profits under the relevant section of the Companies Act, 2013. Financial year Amount (₹ in crores)

i. 2011-12- ₹ 20
ii. 2012-13- ₹ 40
iii. 2013-14- ₹ 30
iv. 2014-15- ₹ 70
v. 2015-16- ₹ 50
(i) Calculate the amount that the company has to spend towards CSR.
(ii) Give the composition of the CSR committee of a listed and unlisted company.
(iii) Will the company suffer penalties if they fail to provide for or incur expenditure for CSR

Answer:

National Voluntary Guidelines 2011 on Social, Environmental and Economic Responsibilities of Business: The Guidelines emphasize that businesses have to endeavour to become responsible actors in society, so that their every action leads to sustainable growth and economic development. These Guidelines have been developed through an extensive consultative process by a Guidelines Drafting Committee (GDC) comprising competent and experienced professionals representing different stakeholder groups. The Guidelines are designed to be used by all businesses irrespective of size, sector or location and therefore touch on the fundamental aspects of an enterprise. The Guidelines are applicable to all such entities, and are intended to be adopted by them comprehensively, as they raise the bar in a manner that makes their value creating operations sustainable. The Guidelines have been articulated in the form of nine (9) Principles with the Core Elements to actualize each of the principles. A reading of each Principle, with its attendant Core Elements, should provide a very clear basis for putting that Principle into practice.

Principle 1: Businesses should conduct and govern themselves with Ethics, Transparency and Accountability The principle recognizes that ethical conduct in all its functions and processes is the cornerstone of responsible business. The principle acknowledges that business decisions and actions, including those required to operationalize the principles in these Guidelines should be amenable to disclosure and be visible to relevant stakeholders. The principle emphasizes that businesses should inform all relevant stakeholders of the operating risks and address and redress the issues raised. The principle recognizes that the behavior, decision making styles and actions of the leadership of the business establishes a culture of integrity and ethics throughout the enterprise.

Principle 2: Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle The principle emphasizes that in order to function effectively and profitably, businesses should work to improve the quality of life of people. The principle recognizes that all stages of the product life cycle, right from design to final disposal of the goods and services after use, have an impact on society and the environment. Responsible businesses, therefore, should engineer value in their goods and services by keeping in mind these impacts.

Principle 3: Businesses should promote the well being of all employees The principle encompasses all policies and practices relating to the dignity and wellbeing of employees engaged within a business or in its value chain. The principle extends to all categories of employees engaged in activities contributing to the business, within or outside of its boundaries and covers work performed by individuals, including sub-contracted and home based work.

Principle 4: Businesses should respect the interests of and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized The principle recognizes that businesses have a responsibility to think and act beyond the interests of its shareholders to include all their stakeholders. The Principle, while appreciating that all stakeholders are not equally influential or aware, encourages businesses to proactively engage with and respond to those that are disadvantaged, vulnerable and marginalized.

Principle 5: Businesses should respect and promote human rights The principle recognizes that human rights are the codification and agreement of what it means to treat others with dignity and respect. Over the decades, these have evolved under the headings of civil, political, economic, cultural and social rights. This holistic and widely agreed nature of human rights offers a practical and legitimate framework for business leaders seeking to manage risks, seize business opportunities and compete in a responsible fashion. The principle imbibes its spirit from the Constitution of India, which through its provisions of Fundamental Rights and Directive Principles of State Policy, enshrines the achievement of human rights for all its citizens. In addition, the principle is in consonance with the Universal Declaration of Human Rights, in the formation of which, India played an active role.

Principle 6: Business should respect, protect and make efforts to restore the environment The principle recognizes that environmental responsibility is a prerequisite for sustainable economic growth and for the well being of society. The principle emphasizes that environmental issues are interconnected at the local, regional and global levels which makes it imperative for businesses to address issues such as global warming, biodiversity conservation and climate change in a comprehensive and systematic manner.

Principle 7: Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner The principle recognizes that businesses operate within the specified legislative and policy frameworks prescribed by the Government, which guide their growth and also provide for certain desirable restrictions and boundaries. The principle acknowledges that in a democratic set-up, such

legal frameworks are developed in a collaborative manner with participation of all the stakeholders, including businesses. The principle, in that context, recognizes the right of businesses to engage with the Government for redressal of a grievance or for influencing public policy and public opinion. The principle emphasizes that policy advocacy must expand public good rather than diminish it or make it available to a select few.

Principle 8: Businesses should support inclusive growth and equitable development The principle recognizes the challenges of social and economic development faced by India and builds upon the development agenda that has been articulated in the government policies and priorities. The principle recognizes the value of the energy and enterprise of businesses and encourages them to innovate and contribute to the overall development of the country, especially to that of the disadvantaged, vulnerable and marginalised sections of society. The principle also emphasizes the need for collaboration amongst businesses, government agencies and civil society in furthering this development agenda. The principle reiterates that business prosperity and inclusive growth and equitable development are interdependent.

Principle 9: Businesses should engage with and provide value to their customers and consumers in a responsible manner This principle is based on the fact that the basic aim of a business entity is to provide goods and services to its customers in a manner that creates value for both. The principle acknowledges that no business entity can exist or survive in the absence of its customers. The principle recognizes that customers have the freedom of choice in the selection and usage of goods and services and that the enterprises will strive to make available goods that are safe, competitively priced, easy to use and safe to dispose off, for the benefit of their customers. The principle also recognizes that businesses have an obligation to mitigating the long term adverse impacts that excessive consumption may have on the overall wellbeing of individuals, society and our planet.

(a) Section 135 read with Companies (Corporate Social Responsibility Policy) Rules, 2014 of the Companies Act, 2013 deals with the provisions, related to the Corporate Social Responsibility. As per the given facts, following are the answers in the given situations-

(i) Amount that Company has to spend towards CSR: According to section 135 of the Companies Act, 2013, the Board of every company shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy. Accordingly, net profits of Rapid Real Estate Ltd. for three immediately preceding financial years is 150 crores (30+70+50) and 2% of the average net profits of the company made during these three immediately preceding financial years will constitute 1 crore,-can be spent towards CSR in financial year 2016-2017.

(ii) Composition of CSR Committee: (a) In the case of listed company, the CSR Committee shall consist of three or more directors, out of which at least one director shall be an independent director. (b) Whereas in case of an unlisted public company or a private company, Is not required to appoint an independent director and shall have its CSR Committee without such director. A private company having only two directors on its Board shall constitute its CSR Committee with two such directors.

(iii) In case of failure to incur expenditure for CSR: If the company fails to provide such amount or incur expenditure for CSR, the Board shall, in its report, under section 134 of the Companies Act, 2013 specify the reasons for not spending the amount.

As no quantum of punishment is given under section 135, section 450 of the Companies Act, 2013 says that, the company and every officer of the company or any other person who is in default or contravenes in compliances with section 135 shall be punishable with fine which may extend to ₹ 10,000. In case of continuation of contravention with further fine extending to ₹ 1,000 for every day after the first during which the contravention continues.

3. (a) Corporate Social Responsibility (CSR) is also called Corporate Citizenship or Corporate Responsibility? — Discuss

(b) How to evaluate CSR Project?

Answer:

(a) Corporate Social Responsibility is a concept where by companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis. Corporate Social Responsibility can be explained as:

- Corporate - means organized and fairly big business houses.
- Social - means everything dealing with the people
- Responsibility - means accountability between the two.

The term corporate citizenship implies the behavior which would maximize company's positive impact and minimize the negative impact on its' social and physical environment.

The constitution of a CSR committee as per the specifications provided under Section 135 of the Companies Act, 2013 which requires a CSR committee to be constituted by the board of directors. Committee shall formulate and approve a CSR Policy of the company, plan of the CSR activities including, decisions regarding the expenditure, the type of activities to be undertaken, monitoring and reporting mechanism. This is an excellent starting point for any company new to CSR. In case a company already practices CSR, this committee should be set up at the earliest so that it can guide the alignment of the company's activities with the requirements of the Act. It may please be noted that CSR committee is recomendary in nature and do not have any deciding power, unless delegated by the Board.

(b) CSR project can be evaluated on the basis of the following –

(i) the benefit to poor and needy
(ii) the feasibility of implementation
(iii) cost vs. benefit which is expected
(iv) the capability of the implementing agency
(v) the credentials and track records of the implementing agency

4. Define e-Governance.

Answer:

Electronic governance (e-Governance) is generally understood as the use of Information and Communication Technology (ICT) at all the level of the Government in order to provide services to the citizens, interaction with business enterprises and communication and exchange of information between different agencies of the Government in a speedy, convenient efficient

5. Your company is having 6 directors, out of which 3 are independent and 3 are full time. Suggest an ideal CSR Committee with justification.

Answer:

I would suggest two independent directors to be members of the committee. The chairman should be an independent director. The chairman of the Audit committee or the chairman of the Company should not be the chairman of the committee for the reasons that they may dominate the decision making. As per the provision, there should be at least one independent director, but since we have more, we can induct them. Full time director in charge of Finance or HR should also be a member for obvious reasons.

6. The above committee is new and is not aware of its functions. Please advise the members.

Answer:

The committee shall examine the existing CSR Policy. IF not existing, a policy to be made with Board approval. They should meet from time to time and discuss plan of action. The areas where CSR activity can be taken up is mentioned in schedule VII of the Act.
The committee shall ensure that minimum amount as per the Act is budgeted and spent during the year. The statement of budget and expenditure shall be a part of Board report, signed by the Chairman of CSR committee. The Policy is supposed to be hosted on the website of the company and transparent manner.

(b) e-governance is the application of ICT for delivering government services, exchange of information communication transactions, integration of various standalone systems and services between Government to Customer (G2C), Government to Employees (G2E), Government to Government (G2G) and Government to Business (G2B), as well as back office processes and interactions within the entire government framework.

(i) Government to Citizen (G2C) The goal of government to customer/citizen (G2C) e-governance is to offer a variety of ICT services to citizens in an efficient and economical manner and to strengthen the relationship between government and citizens using technology. There are several methods of government-to-customer e-governance. Two-way communication allows citizens to instant message directly with public administrators and cast remote electronic votes (electronic voting) and instant opinion poll. Transactions such as payment of services, such as city utilities, can be completed online

or over the phone. Mundane services such as name or address changes, applying for services or grants, or transferring existing services are more convenient and no longer have to be completed face to face. The launching of MyGov application as well as Digital India project by the current Union Government is a praiseworthy attempt in this regard.

(ii) Government to Employees (G2E) E-Governance to Employee partnership (G2E) is one of four main primary interactions in the delivery model of E-Governance. It is the relationship between online tools, sources, and articles that help employees maintain communication with the government and their own companies. E-Governance relationship with Employees allows new learning technology in one simple place as the computer. Documents can now be stored and shared with other colleagues online. E-governance makes it possible for employees to become paperless and makes it easy for employees to send important documents back and forth to colleagues all over the world instead of having to print out these records or fax G2E services also include software for maintaining personal information and records of employees.

(iii) Government to Government (G2G) It is an electronic sharing of data and/or information system between government agencies, departments or organizations. The goal of G2G is to support e-government initiatives by improving communication, data access and data sharing.

Government to business (G2B) It is an online non-commercial interaction between local and central government and the commercial business sector with the purpose of providing businesses information and advice on e-business 'best practices'. G2B is also refers to the conduction through the Internet between government agencies and trading companies. Public issue and share transfer records is mandatory to be kept in electronic form.

7. (a) Explain the concept of XBRL.
(b) Why XBRL is important?
(c) Elucidate the status of implementation of XBRL in India.

Answer:

(a) XBRL is a language for the electronic communication of business and financial data which is revolutionizing business reporting around the world. It provides major benefits in the preparation, analysis and communication of business information. It offers cost savings, greater efficiency and improved accuracy and reliability to all those involved in supplying or using financial data. XBRL stands for extensible Business Reporting Language. It is already being put to practical use in a number of countries and implementations of XBRL are growing rapidly around the world. XBRL is an open, royalty-free software specification developed through a process of collaboration between accountants and technologists from all over the world. Together, they formed XBRL International which is now made up of over 650 members, which includes global companies, accounting, technology, government and financial services bodies. XBRL is and will remain an open specification based on XML that is being incorporated into many accounting and analytical software tools and applications.

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.

India is now an established jurisdiction of XBRL International. A separate company, under Section 25 has been created, to manage the operations of XBRL India. The main objectives of XBRL in India are:

(1) To create awareness about XBRL in India.
(2) To develop and maintain Indian Taxonomies.
(3) To help companies, adopt and implement XBRL.

The mandate applies to the following companies:

(1) All public listed companies in India and their Indian Subsidiaries.
(2) All companies having a paid up capital of ₹ 5 crores and above.
(3) All companies having a turnover of ₹ 100 crores and above.

All the companies that fall under the mandate are required to file with MCA following information in XBRL:

(1) Balance Sheet.
(2) Profit and Loss Account.
(3) Cash Flow Statement.
(4) Schedules related to Balance Sheet and Profit and Loss Statement.
(5) Notes to Accounts.
(6) Statement relating to subsidiary companies.
(7) Auditors Report.
(8) Directors Report.
(9) Cost Audit Report.

In view of the advantages of XBRL reporting, now the Companies need to quickly gear-up to this new reporting challenge and also to gain benefits from the broader business uses of XBRL. Some of the key challenges that companies might encounter as they adopt XBRL reporting are:

(1) Requirement of training staff to understand XBRL and how it needs to be implemented including matters like timely tagging and validation processes.
(2) The software tool to be used for the purpose of tagging.
(3) The first-time efforts involved in tagging and resolving errors identified by validation checks.
(4) Smooth and timely closure of reporting within the prescribed timelines.

INSOLVENCY AND BANKRUPTCY CODE, 2016

Learning Objective: ***For understanding the various terms & functions of different entities in Insolvency & Bankruptcy Code, 2016.***

1. MARK THE CORRECT ANSWER AND STATE WITH JUSTIFICATION:

i. Insolvency and Bankruptcy code 2016 is not applicable on:

(i) Financial Service Providers

(ii) Partnership Firms and Individuals

(iii) Limited Liability Partnership (LLP)

(iv) Companies Incorporated under Companies Act.

Answer: (i) Financial Service Providers

Justification:

(Note: The Insolvency and Bankruptcy Code, 2016 (IBC) is the bankruptcy law of India. The aim of this code is to consolidate the existing framework by creating a single law for insolvency and bankruptcy. The provision of this code is applicable to any company incorporated under the companies act 2013, or under any previous law, limited liability partnership (LLP) incorporated under LLP Act, 2008. Partnership firm and individuals, and any other body incorporated under any law for the time being in force. The I&B Code is applicable to the corporate person only when the amount of default is not less than one lakh rupees and not more than one crore rupees.)

ii. Constitution of Insolvency and Bankruptcy Board of India has been specified under section:

(i) Section 185 of IBC

(ii) Section 182 of IBC

(iii) Section 189 of IBC

(iv) Section 178 of IBC

Answer: (iii) Section 189 of IBC

Justification:

Note : Section 189 of IBC

(1) The Board shall consist of the following members who shall be appointed by the Central Government, namely:—

(a) A Chairperson;

(b) Three members from amongst the officers of the Central Government not below the rank of Joint Secretary or equivalent, one each to represent the Ministry of Finance, the Ministry of Corporate Affairs and Ministry of Law, ex officio;

(c) One member to be nominated by the Reserve Bank of India, ex officio;

(d) Five other members to be nominated by the Central Government, of whom at least three shall be the whole-time members.

(2) The Chairperson and the other members shall be persons of ability, integrity and standing, who have shown capacity in dealing with problems relating to insolvency or bankruptcy and have special knowledge and experience in the field of law, finance, economics, accountancy or administration.

(3) The appointment of the Chairperson and the members of the Board other than the appointment of an ex officio member under this section shall be made after obtaining the recommendation of a selection committee consisting of—

- Cabinet Secretary—Chairperson;
- Secretary to the Government of India to be nominated by the Central Government—Member;
- Chairperson of the Insolvency and Bankruptcy Board of India (in case of selection of members of the Board)—Member;
- Three experts of repute from the field of finance, law, management, insolvency and related subjects, to be nominated by the Central Government—Members.

(4) The term of office of the Chairperson and members (other than ex officio members) shall be five years or till they attain the age of sixty-five years, whichever is earlier, and they shall be eligible for reappointment.

(5) The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and members (other than the ex officio members) shall be such as may be prescribed.

iii. The Insolvency and Bankruptcy Board has power of ________ Court in respect of issue of summons, discovery and production of books, inspection of books/registers and issue of commissions for examination of witnesses:

(i) Session Court

(ii) High Court

(iii) Supreme Court

(iv) Civil Court

Answer: (iv) Civil Court

Justification:

Note: The Insolvency and Bankruptcy Board of India has been established under the Code as an Insolvency Regulator. Sections 196, 207 and 208 read with section 240 of the Insolvency and Bankruptcy Code, 2016 spell out powers that are conferred on the Board. In pursuance of these

powers and functions15, the Board is expected to register and regulate insolvency professional agencies, insolvency professionals and information utilities. The Board has made the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 201616 to lay down guidelines for the eligibility, registration and conduct of Insolvency Professionals. The Board exercises the powers of a **Civil Court** under the Code of Civil Procedure, 1908 while trying a suit in matters pertaining to Insolvency Agencies and concerning:

- The discovery and production of books of account and other documents, at such place and such time as may be specified by the Board.
- Summoning and enforcing the attendance of persons and examining them on oath
- Inspection of any books, registers and other documents of any person at any place.
- Issuing of commissions for the examination of witnesses or documents.

iv. Insolvency and Bankruptcy Board consists of _____________ members.

(i) 10 members
(ii) 12 members
(iii) 11 members
(iv) 14 members

Answer: (i) 10 members

Justification:

Note: Insolvency and Bankruptcy Board of India is constituted by 10 (ten) member committee which includes:

- 1 (One) chairman,
- 3 (Three) members from Central Government who cannot be below the rank of Joint Secretary or equivalent,
- 1 (One) member is nominated by RBI (Reserve Bank of India) in this committee, and
- Remaining 5 (Five) members are nominated by Central Government of which three should function as full time members.

*****The current chairmen of IBBI is Dr. M. S. Sahoo**

v. _____________shall be the adjudicating authority for Individuals and firms u/s 179(1) of Insolvency and Bankruptcy Code 2016.

(i) Debt Recovery Tribunal (DRT)
(ii) NCLT
(iii) Regional Director
(iv) Civil Court

Answer: (i) Debt Recovery Tribunal (DRT)

Justification:

Note: Section 179-Adjudicating Authority for individuals and partnership firms.

(1) Subject to the provisions of section 60, the Adjudicating Authority, in relation to insolvency matters of individuals and firms shall be the **Debt Recovery Tribunal** having territorial jurisdiction over the place where the individual debtor actually and voluntarily resides or carries on business or personally works for gain and can entertain an application under this Code regarding such person.

(2) The Debt Recovery Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain or dispose of—
   a. Any suit or proceeding by or against the individual debtor;
   b. Any claim made by or against the individual debtor;
   c. Any question of priorities or any other question whether of law or facts, arising out of or in relation to insolvency and bankruptcy of the individual debtor or firm under this Code.

(3) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application in the name and on behalf of a debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.

vi. The Adjudicating Authority shall appoint an Interim Resolution Professional within ____________ days of the insolvency commencement date.

(i) 07
(ii) 14
(iii) 21
(iv) 28

Answer: (ii) 14

Justification:

Note:

The Insolvency and Bankruptcy Code (IBC) provides that the Adjudicating Authority shall appoint an Interim Resolution Professional (IRP) within 14 (fourteen) days from the insolvency commencement date. The issue with regard to the appointment of an IRP is whether the appointment shall commence from the date of the admission i.e. the insolvency commencement date or from the date of knowledge of the IRP. It is apparent from the ongoing practice that IRPs consider the date of receipt of order as the date of the appointment.

ANSWER THE FOLLOWING QUESTIONS:

2. **(a) Explain the applicability of Insolvency and Bankruptcy Code, 2016. Also mention the sectors where the insolvency and bankruptcy code is not applicable?**

(b) What are the composition of Insolvency and Bankruptcy Board of India? Explain the functions of Insolvency and Bankruptcy Board of India?

Answer:

(a) The provisions of Insolvency and Bankruptcy Code, 2016 applies to the following, in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be (Section 2 of Insolvency and Bankruptcy Code, 2016).

•

Companies incorporated under Companies Act

Companies governed under special Act (so far as of Insolvency and Bankruptcy Code, 2016 is consistent with those special Acts i.e. provisions of Special Act will prevail over of Insolvency and Bankruptcy Code, 2016)

Limited Liability Partnership (LLP)

Other body corporates as may be notified by Central Government

Partnership firms and individuals.

The Insolvency and Bankruptcy Code is not applicable to corporates in finance sector. Section 3(7) of Insolvency and Bankruptcy Code, 2016states that "Corporate person" shall not include any financial service provider. Thus, the Code does not cover Bank, Financial Institutions, Insurance Company, Asset Reconstruction Company, Mutual Funds, Collective Investment Schemes or Pension Funds.

(b) The Composition of Board of Insolvency and Bankruptcy Board of India are that the Board will be headed by Chairperson. It will consist of ten members out of which at least three will be whole-time members.

Function of the Board is to exercise regulatory oversight over insolvency professionals, insolvency professional agencies and information utilities. Some of the main functions of the Board are enumerated as follows:

(a) Register insolvency professional agencies, insolvency professionals and information utilities and renew, withdraw, suspend or cancel such registrations;
(b) Specify the minimum eligibility requirements for registration of insolvency professional agencies, insolvency professionals and information utilities;
(c) Levy fee or other charges for the registration of insolvency professional agencies, insolvency professionals and information utilities;
(d) Specify by regulations standards for the functioning of insolvency professional agencies, insolvency professionals and information utilities;

(e) Lay down by regulations the minimum curriculum for the examination of the insolvency professionals for their enrolment as members of the insolvency professional agencies;

(f) Carry out inspections and investigations on insolvency professional agencies, insolvency professionals and information utilities and pass such orders as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

(g) Monitor the performance of insolvency professional agencies, insolvency professionals and information utilities and pass any directions as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

(h) Call for any information and records from the insolvency professional agencies, insolvency professionals and information utilities;

(i) Publish such information, data, research studies and other information as may be specified by regulations;

(j) Specify by regulations the manner of collecting and storing data by the information utilities and for providing access to such data;

(k) Collect and maintain records relating to insolvency and bankruptcy cases and disseminate information relating to such cases;

(l) Constitute such committees as may be required including in particular the committees laid down in Section 197;

(m) Promote transparency and best practices in its governance;

(n) Maintain websites and such other universally accessible repositories of electronic information as may be necessary;

3. (a) Corporate insolvency resolution process can be commenced when a corporate debtor commits a default - Section 4(1) of Insolvency and Bankruptcy Code, 2016.

The default should be minimum Rupees one lakh. The amount can be increased by Central Government but shall not exceed Rupees one Crore - proviso to Section 4(1) of Insolvency and Bankruptcy Code, 2016.

Nature India Limited filed a petition under the Insolvency and Bankruptcy Code, 2016 with NCLT against Tulip Limited and the petition was admitted. After that, Nature Indian Limited wanted to withdraw the petition based on a settlement arrived between the parties. Whether it is permissible to withdraw the petition after it has been submitted? Decide.

Also explain the rules relating to the admission and rejection of application by an adjudicating authority under the insolvency and Bankruptcy Code, 2016.

(b) Lenux International Ltd. who is a foreign trade creditor having its office in China wanted to file a petition under the Insolvency and Bankruptcy Code, 2016 on default of the debtor in India. It moved a petition u/s 9 of the Code seeking commencement of insolvency process. The foreign company was not having any office or bank account in India. Because of this, it could not submit a "Certificate from a financial institution" as required under the Code. Whether the petition is permissible under the Insolvency and Bankruptcy Code, 2016? Decide.

Answer:

(a) As per the fact given in the question, Nature India Limited filed a petition under the Insolvency and Bankruptcy Code 2016 with NCLT against Tulip Limited and the petition was admitted. After that Nature India Limited wanted to withdraw the same due to settlement between the parties.

As per Rule 8 of the Insolvency and Bankruptcy Code 2016 (Application to Adjudicating Authority) Rule 2016, the Adjudicating Authority may permit withdrawal of the application made under rules 4 (Application by financial creditor), 6 (Application by operational creditor) or 7 (Application by corporate applicant), as the case may be, on a request made by the applicant before its admission.

Since in the given instance, Nature India Limited wanted to withdraw the petition after it was admitted by the adjudication authority. So it was not permissible to withdraw the petition after been admitted.

Provisions related to admission or rejection of application by an adjudicating authority in the Insolvency and Bankruptcy Code, 2016 are as follows:

The Adjudicating Authority shall, on the receipt of the application within the given time period under the relevant provisions, ascertain the existence of a default and pass the order [under Section 9(5) of the IBC, 2016].

Where the Adjudicating Authority is satisfied, either—

Admit application when-	**Reject application when**
> A default has occurred and, > and the application is complete > no disciplinary proceeding spending > against the proposed resolution professional	> Default has not occurred or > The application is incomplete any disciplinary proceeding is pending against the proposed resolution professional > Adjudicating Authority shall, before rejecting the application, give a notice to the applicant to rectify the defect.

Further, the Adjudicating Authority shall communicate order of admission or rejection of such application within given time, as the case may be.

(b) As per the definition of the Creditor given in Section 3(10) of the Insolvency and Bankruptcy Code, 2016, it means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor, and a decree holder. So, Lenux International Ltd. is a creditor under the purview of the Code.

As per the facts given in question, Lenux International Ltd., is a foreign trade creditor.

He wanted to file a petition under the under Section 9 of the Insolvency and Bankruptcy Code, 2016 for commencement of Insolvency process against the defaulter in India. Lenux International Ltd. was not having any office or bank account in India.

As per the requirement of section 9 of the Code, along with application certain documents were needed to be furnished by the creditor to the Adjudicating authority. Being a foreign trade creditor, Lenux International Ltd was also required to provide a copy of certificate from the financial institutions maintaining accounts of the creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor. Since, Standard International Ltd. was not having any office or bank account in India, it cannot furnish certificate from financial institution. So, Petition under Section 9 of the Code is not permissible.

4. What are the cases when prior approval of committee of creditors for certain actions by resolution professional under Insolvency and bankruptcy code 2016?

Answer:

In following cases, resolution professional can take action only with prior approval of committee of creditors, with 66% voting in favour [Section 28(1) of Insolvency and Bankruptcy Code, 2016].

(a) Raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting.
(b) Create any security interest over the assets of the corporate debtor.
(c) Change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company.
(d) Record any change in the ownership interest of the corporate debtor.
(e) Give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting.
(f) Undertake any related party transaction
(g) Amend any constitutional documents of the corporate debtor.
(h) Delegate its authority to any other person.
(i) Dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties.
(j) Make any change in the management of the corporate debtor or its subsidiary.
(k) Transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business.
(l) Make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or
(m) Make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.

5. Write short notes on:

Financial Debts as per Insolvency and Bankruptcy code, 2016.

Note:

To understand financial Debt one should understand the term Creditors:

"Creditor" means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder;

The Code, 2016 differentiates between Financial Creditors and Operational Creditors. Financial creditors are those whose relationship with the entity is a pure financial contract, such as a loan or a debt security. Operational creditors are those whose liability from the entity comes from a transaction on operations.

The difference between the two are as follows:-

Particulars	Financial Creditors	Operational Creditors
Meaning	Section 5 (7) - Financial creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.	Section 5 (20) – Operational creditor means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.
Meaning of the term 'debt'	Section 5 (8) - financial debt means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes items referred to in sub-clauses (a) to (i).	Section 5 (21) - operational debt means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.
Voting Share	Section 5 (28) - Voting right of a financial creditor is based on the proportion of the financial debt owed to such financial creditor. The approval of committee of creditor shall be obtained by a vote of not less than seventy five percent of the voting shares.	Operational creditor shall not have any right to vote at the meeting of committee of creditor.
Initiation of corporate insolvency resolution process	Section 7 (1) – On occurrence of a default, a financial creditor shall either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority.	Section 8 (1) – On occurrence of a default the operational creditor may, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor. The operation creditor may file an application after the expiry of 10 days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8.

Appointment of Interim Resolution Professional	Section 7 (3) - The financial creditor shall along with the application furnish the name of the resolution professional proposed to act as an interim resolution professional.	Section 9 (4) - An operational creditor may propose a resolution professional to act as an interim resolution professional.
Constitution of committee of creditor	Section 21 (2)-The committee Operational creditors shall not form part of creditors shall consist solely of committee, financial creditors, and all financial creditors of the corporate debtor.	
Submission of financial information	Section 215 (2) - A financial creditor shall submit financial information and information relating to assets in relation to which any security interest has been created.	Section 215 (3) - An operational creditor may submit financial information to the information utility.

Case Study

The Delhi Bench of the NCLT in the case of Nikhil Mehta v AMR Infrastructure Limited, while interpreting the vital definitions of 'financial creditor' and 'financial debt', has rejected the application on the grounds of the applicant and the amount claimed to be unpaid not falling within the scope of the respective definitions.

The applicant, Nikhil Mehta (HUF) along with the other applicants, had fled an insolvency application against AMR Infrastructure Limited for failing to pay 'Assured Returns'. Assured Returns, as per several memorandums of understanding entered among the corporate debtor and the applicants (at the time of booking of several real estate units), were the sums of money that the applicants were promised to be paid on a monthly basis until the possession of real estate units booked by them was handed over.

The applicants had argued that since the amount was in the form of an Assured Return, the failure to make such payment entitled the applicants to initiate the CIR Process under the Code. The NCLT rejected the application on the ground that the Assured Returns promised to be paid to the applicants and defaulted upon by the corporate debtor did not satisfy the definition of 'financial debt' and the applicants therefore, were not entitled to prefer an application under the Code as 'financial creditors'.
Requirements of resolution plan under Insolvency and Bankruptcy code, 2016.

Note:

Resolution plan

A resolution plan is a proposal that aims to provide a resolution to the problem of the corporate debtor's insolvency and its consequent inability to pay off debts. It needs to be approved by 75% of the committee of creditors ("COC"), and comply with some mandatory requirements prescribed in the IBC (that we will explore in a later article). Once approved, the Resolution Professional ("RP") will send the plan to the National Company Law Tribunal ("NCLT") after certifying that the plan meets those requirements. If the NCLT is also satisfied that the plan meets the requirements, it will pass an order approving the plan.

Other than the mandatory requirements, the IBC does not restrict the form and manner of a resolution plan. A plan could therefore, involve the purchase of the equity or assets of the corporate debtor, the infusion of additional debt, the de-merger of debtor's businesses, "financial haircuts" taken by creditors, or the extinguishment of some liabilities. Needless to say, since the plan must be first approved by the COC — a body that comprises all the financial creditors of the corporate debtor, the proposals regarding debts owed to financial creditors will be an important consideration in whether it is approved.

6. Who can propose a resolution plan?

Answer:

Since the IBC emphasizes maximising the number of resolution solutions, its definition of a ""resolution applicant" is simply, "any person who submits a resolution plan to the resolution professional". While the expectation from this wide definition is that the market at large will be the primary source of resolution plans, it is also open to creditors, and until very recently, the erstwhile promoters of the corporate debtor, to propose resolution plans. The RP moreover, does not have any discretion regarding which plans to present to the COC – he or she is statutorily bound to present all plans that meet the mandatory requirements. In practice, the COC typically authorises the RP to prescribe eligibility and evaluation criteria for resolution applicants so as to ensure that only serious applicants submit plans.

The RP is not expressly prohibited from submitting a resolution plan, but given that the RP also has the statutory duty to verify whether a plan meets the mandatory requirements, it could lead to a conflict of interest for the RP.

One of the main complaints in the working of the IBC so far has been the allegations that erstwhile promoters have, in collusion with RPs and members of the COC, tried to subvert the IBC process to regain control of the corporate debtor. "Soft" legislative attempts to guide the COC in selecting resolution plans, culminated ultimately in what is commonly referred to as the "anti-promoter ordinance" (although the government has been keen not to portray it as such), which takes the issue out of the hands of the COC altogether. The ordinance sets out eligibility criteria for resolution applicants that would, in most cases, restrain erstwhile promoters from proposing a resolution plan for the corporate debtor.

That the government felt an ordinance was required to address this concern points to a lack of faith in the institutions and processes involved to prevent collusion and corruption. While erstwhile promoters may not be desirable resolution applicants in many cases given the number of cases where creditor fraud and mismanagement of accounts is suspected, they remain a key source of resolution plans. Insolvencies are not caused only by mala fide intentions and actions, but could also be due to other business factors. In some cases therefore, the erstwhile promoters may not only be credible applicants, but the best qualified ones, given their knowledge and emotional connection with the corporate debtor and its business. It remains to be seen whether there are any further changes to the ordinance.

7. Who can be affected by a resolution plan?

Answer:

Section 31(2) of the IBC makes the resolution plan, once approved by the NCLT, binding on "the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan". The term "other stakeholders" here, is unclear.

The term "stakeholders' has been defined in the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 to mean all persons entitled to receive a distribution upon a liquidation of the corporate debtor, but it applies only in the context of those regulations. In any case, people affected under a resolution plan would be wider than in the case of a liquidation, which is only concerned with distribution to various creditors. Other categories of stakeholders, such as customers of the corporate debtor, would be affected by a resolution plan.

The question of who is a stakeholder also assumes importance when considering what can be achieved under a resolution plan. Regulation 37 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 lists some of the measures that may be taken, including the sale of all or part of the assets whether subject to any security interest or not, and the transfer of all or part of the assets of the corporate debtor to one or more persons.

To what extent can a resolution plan can interfere with the pre-existing rights of a third party who does not participate in the CIRP? Take the example of security created by a corporate debtor over its assets in favour of a lender to its group company. Since the lender is not a creditor of the corporate debtor itself, it may not be able to participate in the process of approval of a resolution plan, but at the same time, Regulation 37 suggests that its security can be extinguished and the asset transferred as part of a resolution plan.

Similarly, take the case of a lessee conducting its business on the property of the corporate debtor under a lease granted by the corporate debtor. Given that the corporate debtor's assets can be transferred as part of a resolution plan, what would be the effect on the lease? Can the resolution plan provide for the termination of the lease? Would such a lessee, or the lender in the previous example, be considered a "stakeholder" upon whom the resolution plan is binding?

It would seem arbitrary that the rights of a third party, without any of the rights and protections available to a creditor in the CIRP process, can be unilaterally modified or extinguished by a resolution plan. It could be debated whether such arbitrariness would place a plan "in contravention of the law". A fairer interpretation may be that third party rights should be protected when a resolution plan provides for the transfer of assets or extinguishment of security interests – thus, in the above example, perhaps a transfer of the corporate debtor's property could be made subject to the lessee's rights to continue to use the property under the terms of its lease. However, the flipside of such a position would be a restriction on the resolution applicant's use of the property, which may perhaps affect how good a resolution plan it can offer. For the moment, these questions remain unanswered.

8. Requirement of Resolution Plan Section 31 of Insolvency and Bankruptcy Code read with Regulation 37 and 38 of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016.

Under Regulation 37 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016.

A resolution plan may provide for the measures required for implementing it, including but not limited to the following:-

(a) Transfer of all or part of the assets of the corporate debtor to one or more persons;
(b) Sale of all or part of the assets whether subject to any security interest or not;
(c) The substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;
(d) Satisfaction or modification of any security interest;
(e) Curing or waiving of any breach of the terms of any debt due from the corporate debtor;
(f) Reduction in the amount payable to the creditors;
(g) Extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;
(h) Amendment of the constitutional documents of the corporate debtor;
(i) Issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose; and
(j) Obtaining necessary approvals from the Central and State Governments and other authorities.

Under Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016

(1) A resolution plan shall identify specific sources of funds that will be used to pay the -
  (a) Insolvency resolution process costs and provides that the insolvency resolution process costs will be paid in priority to any other creditor;
  (b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority; and
  (c) Liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.

(1A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor

(2) A resolution plan shall provide:
  (a) The term of the plan and its implementation schedule;
  (b) The management and control of the business of the corporate debtor during its term; and
  (c) Adequate means for supervising its implementation

Note:

Liquidation:

Unlike the CIRP which aims to sell a composite business, the liquidation of a corporate debtor involves the selling of its assets piecemeal and the distribution of the sale proceeds among its various creditors. The National Company Law Tribunal ("NCLT") can order a liquidation under Section 33 of the IBC if no resolution plan has been submitted to it before the expiry of the CIRP period, or if it rejects a plan because it does not comply with the provisions of the IBC.

The NCLT can also order a liquidation after a resolution plan is approved. Under Section 33(4), any person (other than the corporate debtor) whose interests are prejudicially affected by a contravention of the resolution plan, can make an application to the NCLT. Judicial decisions have not yet provided colour to when interests can be considered prejudicially affected and it remains to be seen whether the courts establish some threshold principles to avoid liquidation being ordered for minor contraventions or frivolous litigation.

The resolution professional will be appointed as the liquidator unless the Insolvency and Bankruptcy Board of India (IBBI) recommends otherwise, or if the resolution professional submits a plan that is rejected for failing to meet the requirements under Section 30(2) of the IBC.

The liquidator is ordinarily required to sell the assets of the company through an auction process, as this is generally considered to be the best, and most transparent, price discovery mechanism. However, in certain circumstances, such as if the asset is perishable or likely to deteriorate in value if it is not sold quickly, a private sale can be conducted. Regulation 44 (1) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 require a liquidator to liquidate the corporate debtor within a period of two years.

Priority in Liquidation

Section 53 of the IBC sets out the priority in which the proceeds of a liquidation will be distributed. The priority is:

the insolvency resolution process costs and the liquidation costs;

the following debts which rank equally:

(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and

(ii) debts owed to a secured creditor in the event such secured creditor has relinquished its security to the liquidation estate;

wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

financial debts owed to unsecured creditors;

ranking equally,

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
any remaining debts and dues;
preference shareholders, if any; and
equity shareholders or partners, as the case may be.

The order of priority under the IBC is similar to the order for distribution under a winding up under the Companies Act, but with a couple of significant differences. Unsecured financial creditors have greater primacy under the IBC, and now take ahead of both crown debts, that is, debts owed to government, and other unsecured creditors.

While these changes are consistent with the general theme of the IBC, which seeks to provide greater protection to financial creditors, the considerations for this particular preference are not easily apparent. To begin with, it is unclear what class of financial creditors this order is trying to protect. Institutional lenders, which provide most of the debt financing in the economy, typically take security over a debtor's assets and are protected as secured creditors. Thus, the broader justification for providing a more effective recovery mechanism for banks does not seem to apply here. It is possible the framers envisaged protection of individual bond and debenture holders, but this seems contrary to the thinking in other legislative attempts, such as the Companies Act, 2013, which seek to protect them by mandating the creation of security for such creditors.

Regardless of the rationale, prioritising unsecured financial creditors over crown debts clearly signals a shift in economic rationale. Crown debts, which are essentially public debt, are less important than unsecured financial creditors. As discussed above however, it is unclear how big this class of unsecured financial creditors is likely to be, and so perhaps the impact of this change may not be significant.

Financial debt [Section 5(8)] means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—
(a) Money borrowed against the payment of interest;
(b) Any amount raised by acceptance under any acceptance credit facility or its De-Materialised equivalent;
(c) Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
(d) The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
(e) Receivables sold or discounted other than any receivables sold on non-recourse basis;
(f) Any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
(i) The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

The resolution plan shall contain following [Section 30(2) of Insolvency and Bankruptcy Code, 2016] —
(a) provision for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor.
(b) provision for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under Section 53 of Insolvency and Bankruptcy Code, 2016.
(c) provision for the management of the affairs of the Corporate debtor after approval of the resolution plan.
(d) the implementation and supervision of the resolution plan
(e) the plan should not contravene any of the provisions of the law for the time being in force.
(f) plan should conform to such other requirements as may be specified by the Board of Insolvency and Bankruptcy of India.

The liquidator will work under overall directions of the Adjudicating Authority. He will have the following powers and duties [Section 35(1) of Insolvency and Bankruptcy Code, 2016].
(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) subject to Section 52, 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 maybe 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 question administration or recover the money, be deemed to be due to the liquidator himself.

9. In a resolution plan, there was a provision of demerger of an unit which is an independent profit centre. Some COC members feel this is not permissible as per the provisions of the code. Answer Express your opinion

Answer:

Under the Code, it was unclear whether resolution plans could include restructuring provisions such as mergers, demergers or amalgamations. The market practice was to utilize these modes of corporate restructuring in various permutations and combinations. The Amendment of 2019 clarifies that a '*resolution plan*' may include provisions for restructuring by way of merger, amalgamation, and demerger. This clarification can be seen as legitimising existing practices being used to arrive at a commercial resolution. Therefore, the contention of few members of COC that demerger cannot be in plan is not correct. However, it is up to the COC to approve such plan which requires 66% consent of the creditors.

10. Mr. Sumit has been appointed as Interim Resolution Professional. Few creditors want him to be replaced whereas others don't. What do you suggest?

Answer:

As per section 16 of the Code, adjudicating authority can appoint an IRP within 14 days of resolution commencing date and shall continue till the date of appointment of RP. The COC may, in the first meeting or in subsequent meeting, decide to confirm him as Rp or replace him with another RP. In case of confirming IRP as RP, COC has to inform corporate debtor, adjudicating authority and to IRP.

In case of replacement, file an application to adjudicating authority for approval of such appointment. Authority may ask for reasons for such replacement.

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