

## FINAL EXAMINATION

### GROUP - III

#### (SYLLABUS 2016)

### SUGGESTED ANSWERS TO QUESTIONS

#### JUNE - 2018

#### Paper-13: Corporate Laws & Compliance

Time Allowed : 3 Hours

Full Marks : 100

*The figures in the margin on the right side indicate full marks.*

*Answer Question No. 1 which is compulsory, carrying 20 marks and answer any 5 (five) Questions from Question No. 2 to Question No. 8.*

1. Answer all questions mentioned below. Mark the correct answer (Only indicate A or B or C or D) and give justification.

Multiple choice questions:

2x10=20

- (i) A company shall have its Registered Office from the date \_\_\_\_\_ of its incorporation.
- (A) 7th day
  - (B) 15th day
  - (C) 30th day
  - (D) one month
- (ii) During any financial year Corporate Social Responsibility Committees of the Board shall be constituted by every Company having
- (A) Turnover of ₹ 5,000 crores or more.
  - (B) A Net Profit of ₹ 2 crores or more.
  - (C) Net Worth of ₹ 5 crores or more.
  - (D) Authorized capital of ₹ 500 crores or more.
- (iii) Board of every Company shall ensure that the company spends in every financial year on account of CSR Policy at least
- (A) 5% of average Net Profit.
  - (B) 3% of average Net Profit.
  - (C) 2.5% of average Net Profit.
  - (D) 2% of average Net Profit.
- (iv) Under Insolvency Bankruptcy code 2016 where extension of time is requested, the Corporate Resolution process shall be completed within a period of \_\_\_\_\_ from the date of admission of the application to initiate such process.

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- (A) 60 days  
(B) 90 days  
(C) 180 days  
(D) 240 days
- (v) According to Banking Regulation Act 1949, no Banking Company shall pay dividend on its shares until all its
- (A) Depreciation is fully written off.  
(B) "Capitalized expenses" have been completely written off  
(C) Bad debts are provided in full.  
(D) Contingent liability is settled.
- (vi) The Director prepared the annual accounts in Director Responsibility Statement on a/an
- (A) Money measurement basis  
(B) Going concern basis  
(C) Accrual basis  
(D) Business Entity basis
- (vii) Accounts and Balance Sheet along with auditor's reports should be filed with Reserve Bank of India within \_\_\_\_\_ from the end of the period to which these relate.
- (A) 3 months  
(B) 6 months  
(C) 9 months  
(D) 12 months
- (viii) A minor can be nominated as a nominee in Life Insurance Policy by its
- (A) Drawer  
(B) Agent  
(C) Holder  
(D) Corporation
- (ix) Which of the following is not the type of unfair competition?
- (A) Collusive price fixing  
(B) Creation of barriers to entry  
(C) Tie in purchase  
(D) Predatory pricing
- (x) Business should \_\_\_\_\_ the interests of and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized.
- (A) Accept  
(B) Respect  
(C) Reject  
(D) Object

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**Answer:**

**1.**

(i)	B	15th day	Sec. 12 - A company shall on and from the fifteenth day of its incorporation have a Regd. Office to receive & acknowledge of communication & notices addressed to it.
(ii)	A	Turnover of ₹ 5000 crores or more	According to Section 135(1) of the Companies Act 2013, every Company having net worth of rupees five hundred crores or more, or turnover of ₹ One thousand crores or more or a net profit of rupees five crores or more during any financial year shall constitute a corporate social Responsibility Committee of the Board.  In view of the above, Option (A) Turnover of ₹ 5000 crores or more which is more than of rupees one thousand crores or more as per required provision stated above should be considered.
(iii)	D	2% of average Net Profit.	Towards CSR expense (Sec. 135)
(iv)	C	180 days	Where extension of time is requested, the corporate insolvency resolution process shall be completed within a period of 180 days [Sec 12 (2)].
(v)	B	"Capitalized expenses" have been completely written off	Sec. 15 prohibits every Banking Co. from paying any dividend on its share until all its capitalized expense completely written off.
(vi)	B	Going concern basis	The director prepared the annual accounts in Director Responsibility Statement on a going concern basis.
(vii)	A	3 months	Section 31, the accounts and balance sheet together with the auditor's report's shall be furnished as returns to the Reserve Bank within three months from the end of the period to which these relate.
(viii)	C	Holder	A minor can be nominated as a nominee in life insurance policy by its holder.
(ix)	C	Tie in purchase	Tie in purchase is not the type of unfair competition.
(x)	B	Respect	Business should respect the interests of and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized.

**2. (a) ABC Ltd. having a networth of ₹ 80 crores and turnover of ₹ 30 crores wants to accept deposits from public other than its members. Referring to the provisions of the Companies Act, 2013, state the conditions and the procedures to be followed by ABC Ltd. for accepting deposits from public other than its members. 4**

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- (b) The Secretary of a company issued a share certificate to 'Prem' under the company's seal with his own signature and the signature of a Director forged by him. 'Prem' borrowed money from 'Amar' on the strength of this certificate. 'Amar' wanted to realise the security and requested the company to register him as a holder of the shares. Explain whether 'Amar' will succeed in getting the share registered in his name. Explain with the help of the doctrine of 'Indoor management' in brief. **4**
- (c) (i) X Ltd. appointed CA Innocent as a statutory auditor for the company for the current financial year. Further the company offered him the services of actuarial, investment advisory and investment banking which was also approved by the Board of Directors. Comment.
- (ii) Universal, a foreign company, incorporated in Australia was carrying on its business in Delhi related to manufacturing of automobile parts. Due to failure of its compliance with the respective law of the country under which it was incorporated, it was ceased to exist. Decide in the light of the Companies Act, 2013 the status of the company and the effect on the Conduct of Business in India. **5+3=8**

### Answer:

2. (a) Acceptance of deposit from public: According to section 76 of the Companies Act, 2013, a public company, having net worth of not less than 100 crore rupees or turnover of not less than 500 crore rupees, can accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (2) of section 73 and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe.

Provided that such a company shall be required to obtain the rating (including its networth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits.

Provided further that every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

Since, ABC Ltd. has a net worth of ₹ 80 crores and turnover of ₹ 30 crores, which is less than the prescribed limits, hence, it cannot accept deposit from public other than its members. If the company wants to accept deposits from public other than its members, it has to fulfill the eligibility criteria of net worth or Turnover or both and then the other conditions as stated above.

- (b) The doctrine of Indoor Management is laid down in the Royal British Bank vs. Turquand (1956) 6E&B 327 case in which the directors of RBB (Royal British Bank) gave

a bond to one T (Turquand) without the required resolution being passed. The Articles empowered the directors to issue such bonds under the authority of a proper resolution. In fact no such resolution was passed. It was decided in the case that notwithstanding the non passing of the required resolution, T could sue on the bonds on the ground that he was entitled to assume that the resolution had been duly passed. Thus, the persons dealing with the company are entitled to assume that the acts of the directors or the officers of the company are validly performed, if they are within the scope of their apparent authority.

However, this doctrine is not applicable where the person dealing with the company has notice of irregularity or when an instrument purporting to be enacted on behalf of the company is a forgery.

In the instant problem, the doctrine of indoor management will not apply as the certificate is a forgery which does not give a good title to Prem and thereby to Amar. Hence, Amar will not succeed in getting the share registered in his name.

- (c) (i) Services not to be Rendered by the Auditor:** Section 144 of the Companies Act, 2013 prescribes certain services not to be rendered by the auditor. An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company), namely:
- (i) accounting and book keeping services;
  - (ii) internal audit;
  - (iii) design and implementation of any financial information system;
  - (iv) actuarial services;
  - (v) investment advisory services;
  - (vi) investment banking services;
  - (vii) rendering of outsourced financial services;
  - (viii) management services; and
  - (ix) any other kind of services as may be prescribed.

Further section 141(3)(i) of the Companies Act, 2013 also disqualify a person for appointment as an auditor of a company who is engaged as on the date of appointment in consulting and specialized services as provided in section 144.

In the given case, CA Innocent was appointed as an auditor of X Ltd. He was offered additional services of actuarial, investment advisory and investment banking which was also approved by the Board of Directors. The auditor is advised not to accept the services as these services are specifically notified in the services not to be rendered by him as an auditor as per section 144 of the Act.

- (ii)** Section 376 of the Companies Act, 2013 provides the law related to the power of winding up Foreign Companies, although dissolved. Provision states that where a

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body corporate incorporated outside India which has been carrying on business in India, ceases to carry on business in India, it may be wound up as an unregistered company under this Part (i.e., Part I of the Chapter 21 which deals with the companies authorized to register under this Act), notwithstanding that the body corporate has been dissolved or otherwise ceased to exist as such under or by virtue of the laws of the country under which it was incorporated.

As per the facts given in the question, Universal, a foreign company, incorporated in Australia ceased to exist as per the law of the country, also ceased to carry on business in Delhi. Accordingly, Universal Company may be wound up as an unregistered company although it ceased to exist in Australia.

3. (a) **There are four directors in Shine Paper Limited. Mr. Madhav, being the director in station, has been authorized to draw and endorse cheque or other negotiable instruments on account of the company and also to direct registration of transfer of shares and signing the share certificates etc. Evaluate whether he will be treated as Managing Director of the company. Also recommend the procedure of appointment of a Managing Director in a company in the light of the Companies Act, 2013.** 6
- (b) **Examine the following aspect related to convening of board meeting with reference to the provisions of the Companies Act, 2013:**
- (i) **The Chairman of Greenhouse Limited convened a board meeting and two weeks' notice was served on all directors of the company. Two of the independent directors on the board objected on the grounds that no proper agenda for the meeting was circulated.**
- (ii) **Purple Florence Limited proposes to hold its board meeting at a shorter notice through video conferencing.** 7
- (c) **State briefly the composition of SERIOUS FRAUD INVESTIGATION OFFICE (SFIO) under the Companies Act, 2013.** 3

**Answer:**

3. (a) **Managing Director [Section 2(54)]:** Section 2(54) of the Companies Act, 2013 defines a "Managing Director" as a director who is entrusted with substantial powers of management of the affairs of the company by:
- (a) virtue of articles of a company, or
- (b) an agreement with the company, or
- (c) a resolution passed in its general meeting, or by its Board of Directors, and includes a director occupying the position of the managing director, by whatever name called.

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

- (i) the power to affix the common seal of the company to any document or
- (ii) to draw and endorse any cheque on the account of the company in any bank or
- (iii) to draw and endorse any negotiable instrument or
- (iv) to sign any certificate of share or
- (v) to direct registration of transfer of any share.

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

Hence, according to explanation to section 2(54), Mr. Madhav will not be treated as managing director of the company as he is authorized to do administrative acts of a routine nature.

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

1. Subject to the provisions of section 197 and Schedule V, a managing director shall be appointed, and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting.
  2. 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.
  3. 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.
  4. 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.
  5. A return in the prescribed form (Form No. MR.1) along with the prescribed fee shall be filed with the Registrar within sixty days of such appointment.
- (b) (i)** According to section 173 (3) of the Companies Act, 2013, a meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

According to the question, two of the independent directors on the Board has objected on the grounds that no proper agenda for the meeting was circulated.

The Companies Act, 2013 does not specifically provide for sending agenda along with the notice of the meeting. However, generally as a good secretarial practice, the notice is accompanied with the agenda of the meeting. Thus, the contention of the independent directors objecting on the grounds that no agenda for the meeting was circulated, does not hold good.

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Further, the Chairman of Greenhouse Limited has convened the Board meeting by serving a two weeks' notice (i.e. more than 7 days). Hence, the meeting shall be valid.

(ii) According to section 173 of the Companies Act, 2013,

(a) The directors can participate in a meeting of the Board either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time. Further, Central Government may provide for matters which cannot be dealt in a meeting through video conferencing or other audio visual means.

(b) A meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company.

Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting. Further, in case the independent directors are not present at such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

Hence, Purple Florence Limited can hold a board meeting at a shorter notice through video conferencing, for transacting urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting. Further, if the independent directors are absent from the meeting of the Board, decision taken at such a meeting shall be circulated to all the directors and shall be final, only on ratification thereof by at least one independent director, if any.

### (c) Composition of SFIO [Section 211(2)]

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;



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- (g) Law; or  
(h) Such other fields as may be prescribed.

4. (a) Winding up proceedings has been commenced by the Tribunal against Paramount Limited, a government company (Central Government is a member). Even after completion of one year from the date of commencement of winding up proceedings, it has not possible to conclude the same. The liquidator is of the opinion that the statement shall be filed with tribunal and registrar only.
- (i) Decide validity to the opinion made by the liquidator and penalty that can be imposed on the liquidator for contravention of the provision as per the Companies Act, 2013.
- (ii) Discuss, if the Paramount Limited is a non-government company. 7
- (b) State the law with respect to the Establishment of Special Court. Mr. A is Judicial Magistrate in a Lower Court. He was appointed to hold the office of the Special Court for the speedy disposal of the pending cases under the Act. Decide as per the applicable provisions of the Companies Act, 2013, whether the appointment of Mr. A is tenable. 4
- (c) (i) State the different types of Penalties prescribed under the Companies Act, 2013.
- (ii) State the provisions of the companies Act, 2013 relating to preservation of books and papers of amalgamated Companies. 3+2=5

**Answer:**

4. (a) Section 348 of the Companies Act, 2013 states that, if the winding up of a company is not concluded within one year after its commencement then the Company Liquidator shall file a statement in such form containing such particulars as may be prescribed. Such statement shall be filled within two months of the expiry of such year and it shall be filled continuously thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals as may be prescribed. The statement shall be duly audited, by a person qualified to act as auditor of the company and position of with respect to the proceedings in the liquidation.

The statement shall be filled with the tribunal in the case of a winding up by the Tribunal. A copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.

Where a statement relates to a Government company in liquidation, the Company Liquidator shall forward a copy thereof,

- to the Central Government, if that Government is a member of the Government company;
- to any State Government, if that Government is a member of the Government company; or
- to the Central Government and any State Government, if both the Governments are members of the Government company.

### **If Paramount Limited is a Government Company**

In the current scenario, we can understand that the Paramount Limited is a government company in which Central Government is a member and hence statement is also required to file to the Central Government along with the Tribunal and Registrar. So, the opinion by the Company Liquidator is not tenable in the eyes of the law and he is liable for penal action under the Act.

The company liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.

### **If Paramount Limited is a Non-Government Company**

In the current scenario, the Paramount Limited is a non-government company hence statement is only required to file with the Tribunal and Registrar only. So, the opinion by the Company Liquidator is tenable in the eyes of the law and he is not liable for any penal action under the Act.

**(b) Establishment of special court:** As per section 435 of the Companies Act, 2013, the Central Government may, for the purpose of providing speedy trial of offences punishable under this Act with imprisonment of two years or more, by notification, establish or designate as many Special Courts as may be necessary.

Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law.

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

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

### **(c) (i) Types of Penalties**

There are five types of penalties that have been contemplated under the Companies Act, 2013. They are:

- (1) fine only
- (2) Imprisonment or fine

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- (3) Imprisonment or fine or with both
- (4) Imprisonment and fine and
- (5) Imprisonment only

Of the above, the offences referred to in (1) to (3) are compoundable and others are not compoundable.

### **(ii) Preservation of Books and Papers of Amalgamated Companies (Section 239)**

As per Section 239, the books and papers of a company which has been amalgamated with, or whose share have been acquired by, another company under this Chapter shall not be disposed of without the prior permission of the Central Government and before granting such permission, that Government may appoint a person examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs of the transferor company or its amalgamation or the acquisition of its shares.

5. (a) List out the main features of a qualified and independent audit committee to be set up under SEBI (listing obligations and disclosure Requirements) Regulations, 2015. 5

- (b) Upon an enquiry made by the Competition Commission of India it was found that Huge Limited is enjoying dominant position in the market and there is every possibility that the company may abuse its dominant position. In order to overcome such a possible situation, the Competition Commission of India wants to order for division of Huge Limited. Referring to the provisions of the Competition Act, 2002, describe the matters which may be provided in the said order. 5

- (c) (i) A group of shareholders consisting of 25 members decide to file a petition before the Tribunal for relief against oppression and mismanagement by the Board of Directors of M/s Fly By Night Operators Ltd. The company has a total of 300 members and the group of 25 members holds one-tenth of the total paid-up share capital accounting for one-fifteenth of the issued share capital. The main grievance of the group is that due to mismanagement by the board of directors, the company is incurring losses and the company has not declared any dividend even when profits were available in the past years for declaration of dividend. In the light of the provisions of the Companies Act, 2013, advise the group of shareholders regarding the success of (I) getting the petition admitted and (II) obtaining relief from the Tribunal.

- (ii) Mr. Arnab, one of the Directors of Aim Insurance Company Limited had taken some life insurance policies from the company. He, now, wants to avail a temporary loan from the company. The company refused to grant such loan on the ground that there is a prohibition in this regard. Mr. Arnab, approached you, now, about the matter. Advise him with reference to the Insurance Laws Amendment Act, 2015 as

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well as Section 185 of the Companies Act, 2013, whether such loan can be obtained by him. 3+3=6

**Answer:**

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

1. The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors;
2. All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise;

Explanation (I): The term "financially literate" means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

Explanation (ii): A member will be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

3. The Chairperson of the Audit Committee shall be an independent director;
4. The Chairperson of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries;
5. The Audit Committee at its discretion shall invite the finance director or the head of the finance function, head of internal audit and a representative of the statutory auditor and any other such executives to be present at the meetings of the committee; provided that occasionally, the Audit Committee may meet without the presence of any executives of the listed entity.;
6. The Company Secretary shall act as the secretary to the committee.

(b) According to section 28 of the Competition Act, 2002, the Commission, may, notwithstanding anything contained in any other law for the time being in force, by order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position. The order may provide for all or any of the following matters, namely:—

- (i) the transfer or vesting of property, rights, liabilities or obligations;
- (ii) the adjustment of contracts either by discharge or reduction of any liability or

obligation or otherwise;

- (iii) the creation, allotment, surrender or cancellation of any shares, stocks or securities;
- (iv) the formation or winding up of an enterprise or the amendment of the memorandum of association or articles of association or any other instruments regulating the business of any enterprise;
- (v) the extent to which, and the circumstances in which, provisions of the order affecting an enterprise may be altered by the enterprise and the registration thereof;
- (vi) any other matter which may be necessary to give effect to the division of the enterprise.
- (vii) The payment of compensation to any person who suffered any loss due to dominant position of such enterprise.

**(c) (i)** Section 244 of the Companies Act, 2013 provides the right to apply to the Tribunal for relief against oppression and mis-management. This right is available only when the petitioners hold the prescribed limit of shares as indicated below:

- (i) In the case of company having a share capital, not less than 100 members of the Company or not less than one tenth of the total number of its members whichever is less or any member or members holding not less than one tenth of the issued share capital of the company, provided that the applicant(s) have paid all calls and other dues on the shares.
- (ii) In the case of company not having share capital, not less than one-fifth of the total number of its members.

Since the group of shareholders do not number 100 or hold  $\frac{1}{10}$ <sup>th</sup> of the issued share capital or constitute  $\frac{1}{10}$ <sup>th</sup> of the total number of members, they have no right to approach the Tribunal for relief.

However, the Tribunal may, on an application made to it waive all or any of the requirements specified in (i) or (ii) so as to enable the members to apply under section 241.

As regards obtaining relief from Tribunal, continuous losses cannot, by itself, be regarded as oppression (*Ashok Betelnut Co. P. Ltd. vs. M.K. Chandrakanth*).

Similarly, failure to declare dividends or payment of low dividends also does not amount to oppression. (*Thomas Veddon V.J. (v) Kuttanad Robber Co. Ltd.*)

Thus the shareholders may not succeed in getting any relief from Tribunal.

**(ii)** Section 29 of the Insurance Act, 1938 as amended by the Insurance Laws (Amendment) Act, 2015 provides for the Prohibition of loans. According to this section, no Insurer shall grant loans or temporary advances either on

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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.

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.

Accordingly such loan can be obtained by the Mr. Arnab, director of Aim Insurance Company Limited.

6. (a) Popular Limited defaulted in the repayment of term loan taken from a Bank against security created as a first charge on some of its assets. The Bank issued notice pursuant to Section 13 of the SARFAESI Act, 2002 to the Company to discharge its liabilities within a period of 60 days from the date of the notice. The company failed to discharge its liabilities within the time limit specified. Identify and explain the measures to be taken by the Bank to enforce its security interest under the said Act. 4
- (b) Ms. Ashima, daughter of Mr. Mittal (an exporter), is residing in Australia since long. She wants to buy a flat in Australia. Since she is unmarried, she wants to make her father Mr. Mittal a joint holder in that flat, for which entire proceeds are to be paid by her.
- (i) State the provisions of FEMA governing such type of transaction.
- (ii) On Applying the relevant provisions, can Mr. Mittal join his daughter in acquiring such a flat in Australia? 4
- (c) (i) State the manner of initiation of corporate insolvency resolution process by financial creditor under the Insolvency and Bankruptcy Code, 2016.
- (ii) State the qualification for appointment as Presiding Officer or member of securities Appellant Tribunal (Section 15M). 5+3=8

**Answer:**

6. (a) Sub-section (4) of section 13 of SARFAESI Act, 2002, provides that if the borrower fails to discharge his liability in full within the 60 days, the secured creditor may take recourse to one or more of the following measures to recover his secured debt:
- (i) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;
- (ii) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

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Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;

- (iii) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;
- (iv) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

In the instant case, the Bank may take the above mentioned procedure to enforce its security interest in case Popular Limited has failed to discharge its liabilities within the time limit specified.

**(b)** (i) The provisions governing the acquisition and transfer of immovable property outside India.

(1) A person resident in India may acquire immovable property outside India:

(a) By way of gift or inheritance from a person referred to in sub-section (4) of Section 6 of the FEMA or referred to in clause (b) of regulation 4 acquired by a person resident in India on or before 8<sup>th</sup> July, 1947 and continued to be held by him with the permission of Reserve Bank.

(b) by way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account maintained in accordance with the foreign exchange management (Foreign Currency accounts by a person resident in India) Regulations 2015,

(c) Jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India.

(2) A person resident in India may acquire immovable property outside India, by way of Inheritance or gift from a person resident in India who has acquired such property in accordance with the foreign exchange provision in force at the time of such acquisition.

(3) A Company incorporated in India having overseas offices, may acquire Immovable property outside India for its business and for residential purposes of its staff, in accordance with the direction issued by the Reserve Bank of India from time to time.

(ii) In the light of above discussions in 1(c), it is quite clear that Mr. Mittal, a resident in

India, can join his daughter who is a resident outside India, in acquiring a flat in Australia.

**(c) (i) Initiation of corporate insolvency resolution process by financial creditor**

Section 7 of Insolvency and Bankruptcy Code deals with initiation of corporate insolvency resolution process by a financial creditor. The process can be explained as under:

**(1) Filing of application before the Adjudicating Authority for initiating corporate insolvency resolution process**

A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

For this purpose, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

**(2) Form and manner of making application**

The application shall be in such form and manner and accompanied with such fee as may be prescribed.

**(3) Enclosures to application**

Following documents and information shall be furnished along with the application:

- (a) Record of the default recorded with the information utility or such other record or evidence of default as may be specified.
- (b) The name of the resolution professional proposed to act as an interim resolution professional.
- (c) Any other information as may be specified by the Board.

**(4) Duty of Adjudicating Authority to ascertain the existence of a default**

The Adjudicating Authority shall, within 14 days of the receipt of the application, ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor.

**(5) Admission of application by the Adjudicating Authority**

The Adjudicating Authority may, by order, admit such application, if it is satisfied that -

- (a) a default has occurred;
- (b) the application for initiating corporate insolvency resolution process is complete; and



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- (c) no disciplinary proceedings are pending against the proposed resolution professional.

### **(6) Rejection of application by the Adjudicating Authority**

The Adjudicating Authority may, by order, reject such application, if it is satisfied that -

- (a) default has not occurred; or  
(b) the application for initiating corporate insolvency resolution process is incomplete; or  
(c) any disciplinary proceeding is pending against the proposed resolution professional.

Before rejecting the application, the Adjudicating Authority shall give a notice to the applicant to rectify, within 7 days, the defect in his application.

### **(7) Commencement of corporate insolvency resolution process**

The corporate insolvency resolution process shall commence from the date of admission of the application by the Adjudicating Authority.

- (ii) Qualification for appointment as presiding officer or member of Securities Appellant Tribunal (Section 15M)** - A person, shall not be qualified for appointment as the Presiding Officer or a Judicial Member or a Technical Member of the Securities Appellate Tribunal, unless he — (a) is, or has been, a Judge of the Supreme Court or a Chief Justice of a High Court or a Judge of High Court for at least seven years, in the case of the Presiding Officer; and (b) is, or has been, a Judge of High Court for at least five years, in the case of a Judicial Member; or (c) in the case of a Technical Member— (i) is, or has been, a Secretary or an Additional Secretary in the Ministry or Department of the Central Government or any equivalent post in the Central Government or a State Government; or (ii) is a person of proven ability, integrity and standing having special knowledge and professional experience, of not less than fifteen years, in financial sector including securities market or pension funds or commodity derivatives or insurance.

7. (a) **Vijay, a director, resigns after giving due notice to the company and he forwards a copy of resignation in e-form DIR-11 to the Registrar of Companies (RoC) within the prescribed time. What would be the status of Vijay if the company fails to intimate about the resignation of Vijay to RoC?** **4**

- (b) **Sohan Lal, a farmer, was found involved in embezzlement of opium cultivated by him. State the punishment that can be awarded to him under the Prevention of Money Laundering Act, 2002.** **3**

- (c) (i) **Explain the concept of Corporate Social Responsibility and its meaning to different people.**

- (ii) **State the causes and methods adopted for generation of Black Money.** **6+3=9**

**Answer:**

**7. (a) Resignation of Director (Section 168 of the Companies Act, 2013)**

A director may resign from his office by giving a notice in writing to the company. The Board shall on receipt of such notice take note of the same. The company shall within 30 days from the date of receipt of notice of resignation from a director, intimate the Registrar in Form DIR -12 and post the information on its website, if any.

Such director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30 days from the date of resignation in FORM DIR-11 along with the prescribed fee. The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

In the present case, Vijay, a director resigns after giving due notice to the company and he forwards a copy of resignation in e-form DIR-11 to the RoC within the prescribed time.

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

**(b)** Section 4 of the Prevention of Money Laundering Act, 2002 provides for the punishment for Money-Laundering. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine. But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of, Part A of the Schedule, the maximum punishment may extend to 10 years instead of 7 years.

Paragraph 2 of Part A of Schedule to the Prevention of Money Laundering Act, 2002, covers Offences under the Narcotic Drugs And Psychotropic Substances Act, 1985 Whereby, embezzlement of opium by cultivator (section 19) is covered under paragraph 2 of Part A.

In the present case, Sohan Lai, a farmer, who was involved in embezzlement of opium cultivated by him shall be liable for the rigorous imprisonment for a term which may extend to 10 years and shall also be liable to fine.

**(c) (i) Corporate Social Responsibility (CSR):** It is a concept that organizations, have an obligation to consider the interests of customers, employees, shareholders, communities, and ecological considerations in all aspects of their operations. This obligation is seen to extend beyond their statutory obligation to comply with legislation. CSR is closely linked with the principles of Sustainable Development,

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which argues that enterprises should make decisions based not only on financial factors such as profits or dividends, but also based on the immediate and long-term social and environmental consequences of their activities, especially taking into consideration the needs of future generations. It is an integrated combination of policies, programs, education, and practices which extend throughout a corporation's operations and into the communities in which they operate, about how companies voluntarily manage the business processes to produce an overall positive impact on society.

CSR can mean different things to different people:

- for an employee it can mean fair wages, no discrimination, acceptable working conditions etc.
- for a shareholder it can mean making responsible and transparent decisions regarding the use of capital.
- for suppliers it can mean receiving payment on time.
- for customers it can mean delivery on time, etc.
- for local communities and authorities it can mean taking measures to protect the environment from pollution.
- for non-governmental organisations and pressure groups it can mean disclosing business practices and performance on issues ranging from energy conservation and global warming to human rights and animal rights, from protection of the rainforests and endangered species to child and forced labour, etc.

For a company, however, it can simply be seen as responding to the needs and concerns of people who can influence the success of the company and/or whom the company can impact through its business activities, processes and products.

### **(ii) Causes and Methods Adopted for Generation of Black Money**

- (a) Suppression of receipts, inflation of expenditure, etc.
- (b) Land and real estate transactions
- (c) Corruption
- (d) Financial market transactions
- (e) Bullion and jewellery transactions
- (f) Cash economy and use of counterfeit currency
- (g) NPO Sector
- (h) Participatory Notes
- (i) Trade Based Money Laundering

### **8. Write short notes on any four of the following:**

**4x4=16**

- (a) Types of listing**
- (b) Guidance on implementation of principles and Core Elements. (National Voluntary Guidelines 2011)**
- (c) Disadvantages of the family Businesses over non-family Businesses**

**(d) Applicability of Insolvency and Bankruptcy Code 2016**

**(e) Activities not to be considered as CSR Activities**

**Answer:**

### **8. (a) Types of Listing**

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.

### **(b) Guidance on Implementation of Principles and Core Elements**

Successful implementation of the Principles and Core elements require that all of them need to be integrated and embedded in the core business processes of an enterprise. This requires, specifically that the following actions are taken:

- (a) Leadership: The Chairman/CEO/Owner/Manager should play a proactive role in convincing the board/Top Management and staff within the business that adopting these principles is crucial-for success. The board and senior management need to ensure that the principles are fully understood across the organization and comprehensively executed.
- (b) Integration: These principles and core elements must be embedded in the Business policies and strategies emanating from the core business purpose of the organization. For this to happen, these must align with each businesses internal values and/or must provide clear business benefits.
- (c) Engagement: Building strong relationships and engaging with stakeholders on a consistent, continuous basis is crucial.
- (d) Reporting: Implementation process includes disclosure by companies of their impact on society an environment to their stakeholders.

### **(c) Disadvantages of the Family Businesses over Non-Family Businesses**

- (a) Staff recruitment: External talent can be reluctant to join the family businesses as

they would not enjoy the same freedom that the other businesses offer.

- (b) Raising funds for growth: Access to capital is required to grow and evolve. However, it is difficult to raise the required funds for the family businesses than non-family businesses.
- (c) Family conflicts: Conflict among the family members is the major setback for the family businesses.
- (d) Ownership vs. Management: Separating the ownership from the management and reaching a consensus on the roles of family members in the business are two important issues for the family businesses to address.

### **(d) Applicability of Insolvency and Bankruptcy Code, 2016**

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).

- (a) Companies incorporated under Companies Act
- (b) 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)
- (c) Limited Liability Partnership (LLP)
- (d) Other body corporates as may be notified by Central Government
- (e) Partnership firms and individuals.

### **(e) Activities not to be considered as CSR Activities: The Companies (CSR Policy) Rules, 2014 provides for some activities which are not considered as CSR activities:**

- (1) The CSR projects or programs or activities undertaken outside India.
- (2) the CSR projects or programs or activities that benefit only the employees of the company and their families.
- (3) Contribution of any amount directly or indirectly to any political party under section 182 of the Act.
- (4) Expenses incurred by companies for the fulfillment of any Act/Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.