CORPORATE LAW & COMPLIANCE

Group - III

Paper - XIII

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory body under an Act of Parliament)

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SYLLABUS - 2016

WORK BOOK

CORPORATE LAWS & COMPLIANCE

FINAL COURSE

GROUP – III

PAPER – 13

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA
(Statutory body under an Act of Parliament)
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First Edition : March 2018

Revised Edition : March 2019

Second Edition : September 2019

Third Edition : March 2020

Fourth Edition : April 2021

Published By :

Directorate of Studies
The Institute of Cost Accountants of India
CMA Bhawan, 12, Sudder Street, Kolkata – 700 016
www.icmai.in

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 fourth 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 fourth edition, we expanded the coverage in some areas and condensed others.

It is our hope and expectation that this fourth edition of work book will provide further an effective learning experience to the students like the third edition.

The Directorate of Studies,

The Institute of Cost Accountants of India

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INDEX

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) 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.

(d) All three above

(ii) State whether the following statements are true or false.

Statement - 1: Issue of Sweat Equity is defined under section 2(88).

Statement - 2: The companies to issue sweat equities within a period of one year from the date of commencement of business 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

(iv) A 'private company' means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of One Person Company, a private company limits the number of its members to two hundred, which excludes:

- **(a) persons who are in the employment of the company; and**
- **(b) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment cease;**
- **(c) both (a) (b) are correct;**
- **(d) none of the above is correct;**

(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**

(vi) The following cannot be member of a nidhi company.

- **(a) body corporate**
- **(b) trust**
- **(c) minor**
- **(d) all the above**

(vii) 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**

(viii) a foreign company is a company, is a company:

- **(a) Incorporated out of India;**
- **(b) Incorporated out of India and doing business in India, directly or indirectly;**
- **(c) Companies having 100 % equiy holding by a company registred outside India;**
- **(d) None of the above**

(xi) 'Government company' means any company in which not less than ..... per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

(a) 49

(b) 50

(c) 51

(d) 100

(x) 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:

(i) (d) all three above

justification: 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.

(ii) (a)

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

(iv) (c)

Justification: According to Section 2 (68) of Companies Act, 2013 a 'private company' means a company having a minimum paid-up share capital as may be prescribed, and which by its articles:

(1) restricts the right to transfer its shares.

(2) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member;

Provided further that:

(a) persons who are in the employment of the company, and

(b) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members.

(v) (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.

(v) (d)

Justification: As per Nidhi Rules, the entities mentioned from(a) to (c) above cannot be members of a nidhi.

(vii) (d)

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

(viii) (b)

Justification: as per section 2(42) of the Act a company Incorporated out of India and doing business in India, directly or indirectly is a foreign company.

(ix) (c) 51

Justification: According to Section 2 (45) of the Companies Act, 2013, a 'Government company' means any company in which not less than fifty one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

(x) (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 of Companies 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].

3. 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 under the rule of indoor management.
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].

4. Discuss the provisions relating to alteration of Memorandum of Association.

Answer:

Section 13 of the Companies Act, 2013 provides the provisions that deal with the alteration of the memorandum. The provision says that:

(1) Alteration by special resolution: Company may alter the provisions of its memorandum with the approval of the members by a special resolution.

(2) Name change of the company: Any change in the name of a company shall be effected only with the approval of the Central Government in writing:

However, no such approval shall be necessary where the change in the name of the company is only the deletion there from, or addition thereto, of the word 'Private', on the conversion of any one class of companies to another class.

The change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposits or debentures.

(3) Entry in register of companies: On any change in the name of a company, the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

(4) Change in the registered office: The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.

(5) Dispose of the application of change of place of the registered office: The Central Government shall dispose of the application of change of place of the registered office within a period of sixty days. Before passing of order, Central Government may satisfy itself that: a) the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company, or b) the sufficient provision has been made by the company either for the due discharge of all its debts and obligations, or c) adequate security has been provided for such discharge.

(6) Filing with Registrar: A company shall, in relation to any alteration of its memorandum, file with the Registrar: a) the special resolution passed by the company under Sub-Section (1). b) the approval of the Central Government under Sub-Section (2), if the alteration involves any change in the name of the company.

(7) Filing of the certified copy of the order with the registrar of the states: Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same.

(8) Issue of fresh certificate of incorporation: The Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.

(9) Change in the object of the company: A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution through postal ballot is passed by the company and: a) the details, in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change. b) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

(10) Registrar to certify the registration on the alteration of the objects: The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution.

(11) Alteration to be registered: No alteration made under this Section shall have any effect until it has been registered in accordance with the provisions of this Section.

(12) Only member have a right to participate in the divisible profits of the company: Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, intending to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

5. Discuss the procedure to be followed for incorporation of a company.

Answer:

Section 7 of the Companies Act, 2013 provides for the procedure to be followed for incorporation of a company.

(1) Filing of the documents and information with the registrar: For the registration of the company following documents and information are required to be filed with the registrar within whose jurisdiction the registered office of the company is proposed to be situated: Before that the company has to get approval of name.

(a) the memorandum and articles of the company duly signed by all the subscribers to the memorandum.

(b) a declaration by person who is engaged in the formation of the company (an advocate, a chartered accountant, cost accountant or company secretary in practice), and by a person named in the articles (director, manager or secretary of the company), that all the requirements of this Act and the rules made there under in respect of registration and matters precedent or incidental thereto have been complied with.

(c) a declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating that:

1) he is not convicted of any offence in connection with the promotion, formation or management of any company, or

2) he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years,

3) and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief.

(d) the address for correspondence till its registered office is established for which 30 days time is allotted after incorporation.

(e) the particulars (names, including surnames or family names, residential address, nationality) of every subscriber to the memorandum along with proof of identity, and in the case of a subscriber being a body corporate, such particulars as may be prescribed.

(f) the particulars (names, including surnames or family names, the Director Identification Number, residential address, nationality) of the persons mentioned in the articles as the first directors of the company and such other particulars including proof of identity as may be prescribed, and

(g) the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed. Particulars provided in this provision shall be of the individual subscriber and not of the professional engaged in the incorporation of the company [The Companies (Incorporation) Rules, 2014].

(2) Issue of certificate of incorporation on registration: The Registrar on the basis of documents and information filed, shall register all the documents and information in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act. (3) Allotment of corporate identity number (CIN): On and from the date mentioned in the certificate of incorporation, the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate. (4) Maintenance of copies of all documents and information: The company shall maintain and preserve at its registered office copies of all documents and information as originally filed, till its dissolution under this Act. (5) Furnishing of false or incorrect information or suppression of material fact: If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action under Section 447.

(3) Company incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact: where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, the promoters, the persons named as the first directors of the company and the persons making declaration under this Section shall each be liable for action under Section 447.

6. What are requirements of forming a nidhi company?

Answer:

(a) A Nidhi to be incorporated under the Act shall be a public company and shall have a minimum paid up equity share capital of five lakh rupees.

(b) On and after the commencement of the Act, no Nidhi shall issue preference shares.

(c) If preference shares had been issued by a Nidhi before the commencement of this Act, such preference shares shall be redeemed in accordance with the terms of issue of such shares.

(d) Except as provided under the proviso to sub-rule (e) to rule 6, no Nidhi shall have any object in its Memorandum of Association other than the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit.

(e) Every Company incorporated as a 'Nidhi' shall have the last words 'Nidhi Limited' as part of its name.

7. Discuss the features of a non-profit company.

Answer:

A Not-for-Profit organization also known as a non-business entity is an organization, the purpose of which is something other than making a profit. A Not-for-Profit organization is often dedicated to furthering a particular social cause or advocating for a particular point of view. In economic terms, a Not-for-Profit organization uses its surplus revenues to further achieve its purpose or mission, rather than distributing its surplus income to the organization's shareholders (or equivalents) as profit or dividends.

Registration:

Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company:

(a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object.

(b) intends to apply its profits, if any, or other income in promoting its objects, and

(c) intends to prohibit the payment of any dividend to its members, the Central Government may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this Section without the addition to its name of the word 'Limited', or as the case may be, the words 'Private Limited' , and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this Section.

(1) The company registered under this Section shall enjoy all the privileges and be subject to all the obligations of limited companies.

(2) A firm may be a member of the company registered under this Section.

(3) A company registered under this Section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.

(4) A company registered under this Section may convert itself into company of any other kind only after complying with such conditions as may be prescribed.

(5) Where it is proved to the satisfaction of the Central Government that a limited company registered under this Act or under any previous company law has been formed with any of the objects specified in clause (a) of Sub-Section (1) and with the restrictions and prohibitions as mentioned respectively in clauses (b) and (c) of that Sub-Section, it may, by license, allow the company to be registered under this Section subject to such conditions as the Central Government deems fit and to change its name by omitting the word 'Limited', or as the case may be, the words 'Private Limited' from its name and thereupon the Registrar shall, on application, in the prescribed form, register such company under this Section and all the provisions of this Section shall apply to that company.

(6) The Central Government may, by order, revoke the licence granted to a company registered under this Section if the company contravenes any of the requirements of this Section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and without prejudice to any other action against the company under this Act, direct the company to convert its status and change its name to add the word 'Limited' or the words 'Private Limited', as the case may be, to its name and thereupon the Registrar shall, without prejudice to any action that may be taken under Sub-Section (7), on application, in the prescribed form, register the company accordingly.

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard.

Provided further that a copy of every such order shall be given to the Registrar. (7) Where a licence is revoked under Sub-Section (6), the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this Section.

(8) The Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

(9) If on the winding up or dissolution of a company registered under this Section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company

(10) A company registered under this Section shall amalgamate only with another company registered under this Section and having similar objects.

(11) If a company makes any default in complying with any of the requirements laidown in this Section, the company shall, without prejudice to any other action under the provisions of this Section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty five lakh rupees, or with both.

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

(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:

(i) (d)

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

(ii) (d)

Justification: Duties of the trustees for depositors is mentioned under Rule 8 of Companies (AD) Rules. Since the trustees are supposed to take care of the interest of the deposit holders, they have, jointly or individually, the duty to ensure the above. Therefore, options from (a) to (c) are the duties of the trust.

2. Discuss few terms and conditions of acceptance of deposits by companies

Answer:

Terms and Conditions of Acceptance of Deposits by Companies

No eligible company shall accept or renew any deposit, whether secured or unsecured, which is repayable on demand or upon receiving a notice within a period of less than six months or more than thirty six months from the date of acceptance or renewal of such deposit.

Provided that a company may, for the purpose of meeting any of its short-term requirements of funds, accept or renew such deposits for repayment earlier than six months from the date of deposit or renewal, as the case may be, subject to the condition that:

(a) such deposits shall not exceed ten per cent of the aggregate of the paid up share capital and free reserves of the company, and

(b) such deposits are repayable not earlier than three months from the date of such deposits or renewal thereof.

(b) maximum not to exceed thirty five per cent, of the aggregate of the paid-up share capital reserves and security premium of the company.

(c) maximum deposit from its members, not to exceed ten per cent, of the aggregate of the paid-up share capital and free reserves of the company.

(d) brokerage rate not to exceed the maximum rate of interest or brokerage prescribed by the Reserve Bank of India for acceptance of deposits by non-banking financial companies.

(e) The company shall not reserve to itself either directly or indirectly a right to alter, to the prejudice or disadvantage of the depositor, any of the terms and conditions of the deposit, deposit trust deed and deposit insurance contract after circular or circular in the form of advertisement is issued and deposits are accepted.

(f) nothing in this Sub-Section shall apply to a banking company and non-banking financial company.

(g) 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 restrictions as per Rules.

3. What types of records and registers needs to be kept in by the company taking public deposits?

Answer:

Rule 14 of the Companies (AD) Rules, 2014 provides that every company accepting deposits shall maintain at its registered office one or more separate registers for deposits accepted or renewed, in which there shall be entered separately in the case of each depositor the following particulars, namely:

(1) name, address and PAN of the depositor/s.

(2) particulars of guardian, in case of a minor.

(3) particulars of the nominee.

(4) deposit receipt number.

(5) date and the amount of each deposit. (6) duration of the deposit and the date on which each deposit is repayable.

(7) rate of interest or such deposits to be payable to the depositor.

(8) due date for payment of interest.

(9) mandate and instructions for payment of interest and for non-deduction of tax at source, if any.

(10) date or dates on which the payment of interest shall be made.

(11) details of deposit insurance including extent of deposit insurance.

(12) particulars of security or charge created for repayment of deposits.

(13) any other relevant particulars. (b) The entries specified above shall be made within seven days from the date of issuance of receipt. The register is to preserved for 8 years from the last entry made.

4. Illustrate the duties of Trustees to depositors.

Answer:

The duties of the trustee to depositors are mentioned under Rule of the Companies (AD) Rules. 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.

PART C: DIVIDENDS

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

(i) Interim dividend is decided and declared by:

(a) Board of Directors

(b) shareholders in AGM.

(c) Audit committee

(d) shareholders in EGM.

(ii) Dividend can be paid by a company:

(a) Out of the profits of the company for that year arrived at after providing for depreciation.

(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

(iii) Unpaid dividend, after 7 years is transferred to

(a) Profit and loss account of the company

(b) Investor Education and Protection Fund

(c) Reserve Bank of India

(d) None of the above

Answer:

(i) (a)

Justification: Section 123(3) of the Act provides that Interim dividend is decided and declared by the Board of Directors anytime during the financial year or holding of the AGM out of profit generated in the year.

(ii) (d)

Justification: According to Section 123 (1) of the Act, dividend may be paid out of above resources.

(iii) (a)

Justification: Under section 124 of the Act, unpaid dividend shall be transferred to Investor Education and Protection Fund. Till that time, shareholder can claim from the company. Once it is transferred to funs, shareholders can claim from the Fund.

2. 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. The interim dividend has to be ratified in AGM.

3. Discuss the purpose, sources and applications of funds of IEPF.

Answer:

Investor Education and Protection Fund (IEPF) has been set-up under Section 205C of the Companies Act, 1956 by way of the Companies (Amendment) Act, 1999.

Sources of fund:

As per the Act, the following amounts which have remained unclaimed and unpaid for a period of seven years from the date they became due for payment shall be credited to the IEPF:

(1) Unpaid dividend accounts of the companies.

(2) The application moneys received and due for refund. (3) Matured deposits.

(4) The interest accrued in the amounts referred to in clauses (1) to (3).

(5) Matured debentures.

(6) Grants and donations by the Central Govt., State Govt., companies or any other institutions.

(7) The interest or other income received out of the investments made from the Fund.

The Fund has been established with a view to support the activities relating to investor education, awareness and protection. The Act provides for setting up of a Committee for taking decisions regarding spending moneys out of the Fund for carrying out the objects. For the purpose of administration of IEPF, the Investor Education and Protection Fund (awareness and protection of investors) Rules were notified which contain provisions relating to constitution and functions of the Committee, activities relating to investors' education, awareness and protection to be undertaken with the recommendation of the Committee, conditions for utilisation of Funds by the Committee, proforma for applications for registration of associations, institutions or organisations and also for seeking financial assistance under IEPF, etc.

Application of the fund: According to Sub-Section 3, the fund shall be utilised for:

(1) the refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon.

(2) promotion of investors' education, awareness and protection.

(3) distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement.

(4) reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 of the Act by members, debenture-holders or depositors as may be sanctioned by the Tribunal, and

(5) any other purpose incidental thereto, in accordance with such rules as may be prescribe.

4. What is the procedure which has to be followed by the company while transferring unpaid or unclaimed dividend from unpaid dividend account to IEPF.

Answer:

The following procedure should be followed by the company while transferring unpaid or unclaimed dividend from unpaid dividend account to IEPF:

(1) Section 124(5) of the Act, provides that any money transferred to the unpaid dividend account of a company which remains unpaid or unclaimed for a period of seven years from the date of such transfer is required to be transferred by the company along with interest accrued, if any, thereon to the Investor Education and Protection Fund (IEPF) established under Section 125.

(2) The amount shall be remitted into the specified branches of State Bank of India or any other nationalized bank along with challan (in triplicate) within a period of 90 days of such amount becoming due to be credited to the IEPF. The Bank will return two copies duly stamped to the Company as token of having received the amount and the company shall file one such copy of challan to the authority.

(3) The company shall send a statement of amount credited to Investor Education and Protection Fund in Form DIV 5 to the authority which administer the fund and the authority shall issue a receipt to the company as evidence of such transfer.

(4) On receipt of this statement, the authority shall enter the details of such receipts in a register maintained by it in respect of each company every year and reconcile the amount. (5) The company shall keep a record consisting of names, last known addresses of the persons entitled to receive the same, the amount to which each person is entitled, folio number/ client ID, certificate number, beneficiary details etc. of the persons in respect of whom amount has been remain unpaid or unclaimed for 7 years and transferred to IEPF. Such record shall be maintained for a period of 8 years from the date of such transfer to IEPF and authority shall have the powers to inspect such records.

5. What consequences can be there if dividend declared is not distributed?

Answer:

Section 124 of the Act, provides for unpaid dividend amount.

(i) Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years.

(ii) He shall also be liable for a fine which shall not be less than ` 1,000 rupees for every day during which such default continues.

(iii) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

(iv) However, the following are the exceptions under which no offence shall be deemed to have been committed:

(1) where the dividend could not be paid by reason of the operation of any law.

(2) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him.

(3) where there is a dispute regarding the right to receive the dividend.

(4) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder, or

(5) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

PART D: ACCOUNTS AND AUDIT

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

(i) "Books of Account" can be inspected by:

(a) Shareholders

(b) Board of Directors or any director

(c) Only Managing Director

(d) None of the above

(ii) 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

(iii) 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:

(i) (b) Board of Directors or any director

Justification: As per section 128 (3) of the Act, "Books of Account" can be inspected by any director, This implies that the Board of Directors can jointly also inspect the books and accounts.

(ii) (d)

Justification: Section 138 (1) of the Act provides the same. 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.

(iii) (d)

Justification: As stated in the definition of Financial Statement as per section 2(40) of the Companies Act, 2013, all three statements under option (a) to (c) shall be considered as financial statement.

2. Write a note 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) 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 and the audit shall be carried out as per the cost audit standards.

3. Explain "Financial Statement" as per section 129 of The Companies Act, 2013.

Answer:

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.

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.

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.

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.

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. Discuss the provision of keeping books of accounts in electronic mode.

Answer:

Provision relating to electronic form of Books of accounts are as follows:

(1) Remain accessible in India so as to be usable for subsequent reference.

(2) Be retained completely in the format in which they were originally generated, sent or received, or in a format which shall present accurately the information generated, sent or received and the information contained in the electronic records shall remain complete and unaltered.

(3) The information received from branch offices shall not be altered and shall be kept in a manner where it shall depict what was originally received from the branches.

(4) The information in the electronic record of the document shall be capable of being displayed in a legible form.

(5) There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law.

(6) The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis.

The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement:

(1) the name of the service provider.

(2) the internet protocol address of service provider.

(3) the location of the service provider (wherever applicable).

(4) where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.

5. Explain the requirement of Consolidated Financial Statements under the Companies Act, 2013.

Answer:

Considered Financial Statement is provided under section 129(3) of the Act read with Rule 6 of Companies (Accounts) Rules, 2014.

(a) Where a company has one or more subsidiaries, it shall, in addition to its own financial statements prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own.

(b) The Consolidated financial statements shall also be laid before the annual general meeting of the company along with the laying of its own financial statement.

(c) The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in Form AOC-1.

(d) For the purposes of consolidated financial statements, subsidiary shall include associate company.

(e) The consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III to the Act and the applicable accounting standards. However, a company which is not required to prepare consolidated financial statements under the Accounting Standards, it shall be sufficient if the company complies with provisions on consolidated financial statements provided in Schedule III of the Act. (Proviso to Rule 6)

Consolidated financial statements by a company will not be required if it meets the following conditions:

(i) It is a wholly owned subsidiary, or is a partially owned subsidiary of another company and all its other members, including those who are not otherwise entitled to vote, having been intimated in writing and for which proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statements;

(ii) it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; and

(iii) its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with applicable Accounting Standards.'

Provided also that nothing in this rule shall apply in respect of consolidation of financial statement by a company having subsidiary or subsidiaries incorporated outside India only for the financial year commencing on or after 1st April, 2014.

(f) The provisions applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, also apply to the consolidated financial statements [Section 129(4)].

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

Answer:

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.

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

(b) 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.

(c) In case of Govt. company, though the appointment is made by CAG, the remuneration is fixed by the company in general meeting or the manner in which shareholders decides.

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,

(b) An agreement with the company,

(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

(ii) A company has 15 directors but intends to appoint more. It has to take approval of:

(a) Board of Directors

(b) Shareholders through special rsolution

(c) Central Govt.

(d) None of the above

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

(a) Transparency

(b) Accountability

(c) Independence

(d) All of the above

(iv) A company has to keep KMPs on having paid up capital of ₹……. cr. or more.

(a) 5

(b) 10

(c) 15

(d) 20

(v) 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

(vi) As per Section 196(3), _____ the employment of any person as managing director, whole-time director or manager, who is below the age of 21 years or has attaired the age of 75 years.

(a) company shall appoint or continue

(b) no company shall appoint or continue

(c) depends on situation

(d) None of the above

(vii) In the first AGM after incorporation,……directors shall retire.

(a) 1/3rd will retire

(b) no one will retire

(c) all directors shall

(d) none of the above

(viii) 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

(ix) 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

(x) 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:

(i) (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) (b)

Justification: As per section 149(1)(b) of the Act, if a company intends to appoint more than 15 directors, it has to take approval of shareholders through special resolution.

(iii) (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.

(iv) (b)

Justification: As per section 203 and relevant rules, a company has to keep KMPs on having paid up capital of ₹10 cr. or more. However, in case of CS, the required paid up capital is ₹ 5 crore.

(v) (d)

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

(vi) (b)

Justification: This provision is mentioned in section 196(3) of the Companies Act, 2013 regarding the appointment of MD/whole time director.

(vii) (c)

Justification: As per section 156, in the first AGM after incorporation, all directors shall retire. However, they are eligible for reappointment.

(viii) (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.

(ix) (d)

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

(x) (d)

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

2. 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 fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

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).

In section 167 of the principal Act, in sub-section (1),—

(i) in clause (a), the following proviso shall be inserted, namely: —

Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.;

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.

3. Discuss the provisions relating to rotational directors and their retirement and reappointment.

Answer:

Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall:

(a) be persons whose period of office is liable to determination by retirement of directors by rotation, and

(b) save as otherwise expressly provided in this Act, be appointed by the company in general meeting.

(c) The remaining directors in the case of any such company shall, in default of, and subject to any regulations in the articles of the company, also be appointed by the company in general meeting.

(d) At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

(e) The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

(f) At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.

For the purposes of the above provisions: total number of directors' shall not include independent directors, whether appointed under this Act or any other law, on the Board of a company. (c) Vacancy in case of retiring director [Section 152 (7)] (a) If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place. (b) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless: (1) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost.

4. 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 provided that in case of newly incorporated company, the requirement under this subsection shall apply proportionately at the end of financial year in which it is in corporate.

5. Discuss in brief, the procedure of resignation of director.

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.

6. Can a person other than a director offer for directorship in a company?

Answer:

Right of persons other than retiring directors to stand for directorship (Section 160)

According to this section:

(1) A person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than 14 days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office.

(2) Such notice must come along with the deposit of ₹1,00,000 or such higher amount as may be prescribed. Such deposit shall be refunded to such person or, as the case may be, to the member, if the person proposed get selected as a director or gets more than 25% of the total valid votes cast either on show of hands or on poll on such resolution. Requirement of deposit shall not apply if the appointment of director is recommended by nomination and remuneration committee/board.

(3) The company shall inform its members of the candidature of a person for the office of director (as discussed above) in such manner as may be prescribed. Notice of candidature of a person for directorship: Rule 13 of the Companies (Appointment and Qualification of Directors) Rules, 2014 lays down the following points for giving notice of candidature of a person for directorship as under:

   (1) The company shall, at least 7days before the general meeting, inform its members of the candidature of a person for the office of a director or the intention of a member to propose such person as a candidate for that office.

(2) by serving individual notices, on the members through electronic mode to such members who have provided their email addresses to the company for communication purposes, and in writing to all other members, and

(3) by placing notice of such candidature or intention on the website of the company, if any. 4) However, it shall not be necessary for the company to serve individual notices upon the members as aforesaid, if the company advertises such candidature or intention, not less than 7days before the meeting at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district.

(4) Section 160 of the Companies Act, 2013, shall not apply to: (a) A Government company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments. (b) A subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by the Government company. (c) A Private company (d) Companies whose articles provide for election of directors by ballot. (f) Appointment of additional director, alternate director and nominee director (Section 161)

PART F: BOARD MEETINGS AND PROCEDURES

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

(i) 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**

(ii) in a public company,…….of the retiring directors shall retire in every AGM.

- **(a) 1/3rd**
- **(b) 2/3rd**
- **(c) all**
- **(d) none of the above.**

(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**

(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**

(v) Section 135(1) read with Rule 3 of the Companies (Corporate Social Responsibility Policy Rules, 2014, mandates every company having the following, shall come under the perview of CSR.

- **(a) Net worth of ₹ 500 crores or more, or**
- **(b) Turnover of ₹ 1000 crores or more, or**
- **(c) A net profit of ₹ 5 crores or more**
- **(d) Any of the above stipulation**

(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

(vii) 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) 119; non-statutory

(d) 118; non-statutory

Answer:

(i) (c)

Justification: This provision is mentioned in section 173(3) of the Companies Act, 2013. The notice may be sent by hand delivery or by post or by electronic means

(ii) (a) 1/3rd

Justification: As per Section 152(6) in a public company, 1/3rd of the retiring directors shall retire in every Annual General Meeting. Unless the articles provide for the retirement of all directors at every annual general meeting.

(iii) (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) (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) (d)

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

(vi) (d)

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

(vii) (a)

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

2. 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, 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 as follows.

Board Composition – to have various types of directors

Independent Directors – adequate in number, who have no personal interest in the company

Woman Director – for few categories of companies

Duties of Directors – to be defined

Training of directors – Company to train directors to make them more effective

Committees of The Board – The Board shall be split into various committees which will go deep into the issues to be dealt by that committee.

Board Meetings and Processes – to be defined

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 law, now defines positive attributes of independence and also requires every Independent Director to declare that he or she meets the criteria of independence. 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.

4. Discuss the provisions relating to appointment of additional director, alternate director and nominee director.

Answer:

Appointment of additional director, alternate director and nominee director (Section 161) (1) Additional Director [Section 161 (1)]

Section 161(1) of the Companies Act, 2013 provides for appointment of additional director. According to this section: a) The articles of a company may confer on its Board of Directors the power to appoint any person as an additional director at any time. b) A person, who fails to get appointed as a director in a general meeting, cannot be appointed as an additional director. c) Additional director shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier. (2) Alternate Director [Section 161 (2)]

Section 161(2) of the Companies Act, 2013 provides for appointment of Alternate director. According to this section: a) The Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person to act as an alternate director in place of another director (original director) during his absence for a period of not less than 3 months from India. b) A person who is holding any alternate directorship for any other director in the company cannot be considered for appointment as above. c) No person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act. d) An alternate director shall not hold office for a period longer than that permissible to the original director in whose place he has been appointed and shall vacate the office if and when the original director returns to India. e) If the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director. (3) Nominee Director [Section 161 (3)]. Sometimes the Govt./Financial Institutions/Banks may hold substantial equity in the company and may nominate persons to be appointed director in the company. However, these persons are to be appointed either in Board meeting or Annual General Meeting.

5. Powers of the Board to be exercised by the Board by means of the resolution passed at a duly convened Board meeting.

Answer:

Powers of the Board to be exercised by the Board by means of the resolution passed at a duly convened Board meeting [Section 179 (3)]:

(1) to make calls on shareholders in respect of money unpaid on their shares;

(2) to authorise buy-back of securities under section 68;

(3) to issue securities, including debentures, whether in or outside India;

(4) to borrow monies;

(5) to invest the funds of the company;

(6) to grant loans or give guarantee or provide security in respect of loans;

(7) to approve financial statement and the Board's report;

(8) to diversify the business of the company;

(9) to approve amalgamation, merger or reconstruction;

(10) to take over a company or acquire a controlling or substantial stake in another company;

(11) any other matter which may be prescribed (e) Additionally, Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014 has prescribed certain more powers that shall also be exercised by the Board of Directors only by means of resolutions passed at meetings of the Board: (1) to make political contributions; (2) to appoint or remove KMP (3) to appoint internal auditors and secretarial auditor;

PART G: INSPECTION, INQUIRY AND INVESTIGATION

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

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

(a) on the basis of information available with or furnished to him, or

(b) on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act, or

(c) the grievances of investors are not being addressed.

(d) all the above

(ii) The report on inspection made has to be submitted to

(a) Central Govt.

(b) RBI

(c) NCLT

(d) None of the above.

Answer:

(i) (d)

Justification: Under Section 206(4) of the Act, the Registrar may call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard, if the Registrar is satisfied:

(a) on the basis of information available with or furnished to him, or

(b) on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act, or

(c) the grievances of investors are not being addressed.

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

(i) (a)

Justification: Under section 208 of the Act, the inquiry/inspection report has to be submitted to Central Govt.

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

Answer:

Section 211 of provides for The Constitution of Serious Fraud Investigating Office (SFIO) which 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. What do you mean by investigating of ownership? How is it conducted?

Answer:

Section 216 of the Act provides for Investigation of ownership of company as under:

(a) As per Section 216 (1), where it appears to the Central Government that there is a reason so to do, it may appoint one or more Inspectors to investigate and report on matters relating to the company, and its membership for the purpose of determining the true persons:

(1) who are or have been financially interested in the success or failure, whether real or apparent, of the company, or

(2) who are or have been able to control or to materially influence the policy of the company or

(3) who have or had beneficial interest in shares of a company or have been significant beneficial owner of the company.

(b) While appointing an Inspector under sub-section (1), the Central Government may define the scope of the investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular, may limit the investigation to matters connected with particular shares or debentures [Sub section (3)].

(c) Subject to the terms of appointment of an Inspector, his powers shall extend to the investigation of any circumstances suggesting the existence of any arrangement or understanding which, though not legally binding, is or was observed or is likely to be observed in practice and which is relevant for the purposes of his investigation [Sub section (4)].

4. Discuss the power of inspectors for investigation on ownership of a company under section 216 of the Act.

Answer:

Section 217 of the Act provides for procedure, powers, etc., of Inspectors as under: (a) As per sub- section (1), it shall be the duty of all officers and other employees and agents including the former officers, employees and agents of a company which is under investigation in accordance with the provisions contained in this Chapter XIV, and where the affairs of any other body corporate or a person are investigated under section 219, of all officers and other employees and agents including former officers, employees and agents of such body corporate or a person:

(1) to preserve and to produce to an Inspector or any person authorised by him in this behalf all books and papers of, or relating to, the company or, as the case may be, relating to the other body corporate or the person, which are in their custody or power, and

(2) otherwise to give to the Inspector all assistance in connection with the investigation which they are reasonably able to give. (b) The Inspector may require any body corporate, other than a body corporate referred in point (a) to furnish such information to, or produce such books and papers before him or any person authorised by him in this behalf as he may consider necessary, if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation (c) The Inspector shall not keep in his custody any books and papers produced under point (a) or point (b) for more than 180 days and return the same to the company, body corporate, firm or individual by whom or on whose behalf the books and papers were produced [Sub section (3)].

However, the books and papers may be called for by the Inspector if they are needed again for a further period of 180 days by an order in writing. (d) An Inspector may examine on oath: (1) any of the persons referred to in point (a), and (2) any other person with the prior approval of the Central Government, in relation to the affairs of the company, or other body corporate or person, as the case may be, and for that purpose may require any of those persons to appear before him personally. The Inspector shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908.

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**

(ii) Merger of an Indian company with a foreign Company is mentioned in section of the Act.

- **(a) 234**
- **(B) 235**
- **(c) 236**
- **(d) 237**

(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**

(iv) the books and papers of amalgamated company shall not be disposed off:

- **(a) before 8 years of amalgamation order**
- **(b) before 15 years**
- **(c) without the permission of Central Govt.**
- **(d) none of the above.**

(v) 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:

(i) (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) (a) 234

Justification: Merger of an Indian company with a foreign Company is mentioned under section 234 of the Companies Act.

(iii) (d)

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

(iv) (c)

Justification: Under section 239 of the Act, the books and papers of amalgamated company shall not be disposed off without the permission of Central Govt.

(v) (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 power of the Central Govt. to merge companies in public interest.

Answer:

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

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

As per Section 237 (3), every member or creditor, including a debenture holder, of each of the transferor companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the transferee company as he had in the company of which he was originally a member or creditor, and in case the interest or rights of such member or creditor in or against the transferee company are less than his interest in or rights against the original company, he shall be entitled to compensation to that extent, which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the Official Gazette, and the compensation so assessed shall be paid to the member or creditor concerned by the transferee company.

Appeal to tribunal: As per Section 237 (4) Any person aggrieved by any assessment of compensation made by the prescribed authority under Sub-Section (3) may, within a period of thirty days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the Tribunal and thereupon the assessment of the compensation shall be made by the Tribunal. 1.8.2 Conditions for order under Section 237

As per Section 237 (5) No order shall be made under this Section unless:

(a) a copy of the proposed order has been sent in draft to each of the companies concerned;

(b) the time for preferring an appeal under Sub-Section (4) has expired, or where any such appeal has been preferred, the appeal has been finally disposed off; and

(c) the Central Government has considered, and made such modifications, if any, in the draft order as it may deem fit in the light of suggestions and objections which may be received by it from any such company within such period as the Central Government may fix in that behalf, not being less than two months from the date on which the copy aforesaid is received by that company, or from any class of shareholders therein, or from any creditors or any class of creditors thereof.

As per Section 237 (6) the copies of every order made under this Section shall, as soon as may be after it has been made, be laid before each House of Parliament.

3. Discuss the process of Merger or Amalgamation of an Indian 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.

4. 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) Section 245 Class Action Suit is mentioned under the Companies Act, 2013 under Section 245.

(a) 245

(b) 255

(c) 265

(d) None of the above.

Answer:

(i) (a)

Justification: Class Action Suit is mentioned under the Companies Act, 2013 under Section 245.

According to this Section: (a) Such number of member or members, depositor or depositors or any class of them, as the case may be, as are indicated in Sub-Section (2) may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for seeking relief.

(ii) Members right to vote is recognized as right of proportion which the shareholder may exercise it as he as he thinks fit according to his/her -

(a) choice

(b) interest

(c) choice and interest both

(d) None of the above

Answer:

(ii) (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. What is "oppression" under the Act? What are the relief available to an an oppressed shareholder?

Answer:

The words 'Oppression' and 'mismanagement' are not defined in the Act. The meaning of these words for the purpose of Company Law should be used in a broad generic sense and not in any strict literal sense. The meaning of the term 'oppression' as explained by Lord Cooper in the Scottish case of Elder v. elder & Western Ltd. [(1952) Scottish Cases 49], which has been cited with approval by Wanchoo. J (afterwards C.J.) of the Supreme Court in Shanti Prasad v. Kalinga Tubes [(1965) 1 Comp L.J. 193 at 204], is as under: 'The essence of the matter seems to be that the conduct complained of should at the lowest, involve a visible departure from the standards of fair dealing, on which every shareholders who entrusts his money to the company is entitled to rely.' The complaining shareholder must be under a burden which is unjust or harsh or tyrannical.

'A persistent course of unjust conduct must be shown' [In Re. H.R. Harmer Ltd . [(1958) 3 All ER 689]]. 'The result of application under Section 210 of English Companies Act, 1948, in different cases must depend on the particular facts of each case, the circumstances in which oppression may arise being infinitely various that it is impossible to define them with precision.'

An attempt to force new and more risky objects upon an unwilling minority may in circumstances amount to oppression. This was held in Re. Hindustan Co-operative Insurance Society Ltd, [AIR. 1961 Cal. 443] wherein the life Insurance business of a company was acquired in 1956 by the Life Insurance Corporation of India on payment of compensation.

The directors, who had the majority voting power, refused to distribute this amount among shareholders, rather they passed a special resolution changing the objects of the company to utilize the compensation money for the new objects, and this was held to be 'Oppression'. The court observed: 'The majority exercised their authority wrongfully, in a manner burdensome, harsh and wrongful. They attempted to force the minority

shareholders to invest their money in different kind of business against their will. The minority had invested their money in a life insurance business with all its safeguards and statutory protections. But they were being forced to invest where there would be no such protections or safeguards.'

Application to Tribunal for relief in cases of oppression, Section 241 of the Act provides the relief in case of oppression and mismanagement. Further, the Central Government may also file application to the Tribunal, if it is satisfied that the affairs of the company are being conducted in a manner prejudicial to the public interest. According to this Section:

(a) Any member of a company who complains that:

(1) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company, or

(2) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under Section 244, for an order under this Chapter.

(b) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter. 1.2.3 Powers of Tribunal (Section 242) Section 242 of the Act deals with the Powers of the Tribunal. This Section provides more powers to the Tribunal for the purpose of bringing to an end the oppression or mismanagement in a company. Under Section 242 (2) (k) of the Act the Tribunal may appoint such number of persons as directors, who may be required to report to the Tribunal on such matters as the Tribunal may direct. There are no overriding provisions governing this appointment.

4. Discuss the powers of NCLT to grant relief in case of oppression.

Answer:

According to Section 242,

(a) If, on any application made under Section 241, the Tribunal is of the opinion: (1) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company, and (2) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit which may provide for -

(1) the regulation of conduct of affairs of the company in future.

(2) the purchase of shares or interests of any members of the company by other members thereof or by the company.

(3) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital.

(4) restrictions on the transfer or allotment of the shares of the company.

(5) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case.

(6) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (5): Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned.

(7) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this Section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference.

(8) removal of the managing director, manager or any of the directors of the company.

(9) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims.

(10) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (8).

(11) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct.

(12) imposition of costs as may be deemed fit by the Tribunal.

(13) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

PART J : REVIVAL AND REHABILATION OF SICK INDUSTRIAL COMPANIES

Provisions relating to sick industries which were provided in section 2253 to 269 of The Companies act have been repealed with the introduction of Insolvency and Bankruptcy Code, 2016.(IBBC)

Students may refer the chapter on IBBC mentioned elsewhere in this work book.

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:

(i) (c)

Justification: Chapter XX of the Companies Act, 2013 deals with Corporate Winding-Up. The purpose of winding up of a company is to (a) realize the assets of the company and (b) to pay the debts of the company.

(ii) where an account referred to in Sub-Section (4) relates to a Government company, the Company Liquidator shall forward a copy thereof:

(a) to the Central Government, if that Government is a member of the Government company, or

(b) to any State Government, if that Government is a member of the Government company, or

(c) to the Central Government and any State Government, if both the Governments are members of the Government company.

(d) all the above.

Answer:

(ii) (d)

Justification: Section 294 (5) states that where an account referred to in Sub-Section (4) relates to a Government company, the Company Liquidator shall forward a copy accounts to the Govts. as mentioned.

(iii) State whether true or false:

(1) Effect of floating charge is covered under section 332.

(2) 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:

(iii) (a)

Justification: Both the statements are true as per section 332 of the Companies Act, 2013.

(iv) The Company Liquidator may, with the sanction of the Tribunal, appoint one or more…… to assist him in the performance of his duties and functions under this Act.

(a) Chartered Accountants

(b) Company Secretaries

(c) Cost Accountants

(d) Any one or all the above

Answer:

(iv) (d)

Justification: As per 291 (1), the Company Liquidator may, with the sanction of the Tribunal, appoint one or more Chartered Accountants or Company Secretaries or Cost Accountants or legal practitioners or such other professionals on such terms and conditions, as may be necessary, to assist him in the performance of his duties and functions.

(v) 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:

(v) (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.

(vi) 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:

(vi) (c)

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

2. Discuss the powers and duties of company liquidator.

Answer:

Section 290 (1) states that Subject to directions by the Tribunal, if any, in this regard, the Company Liquidator, in a winding up of a company by the Tribunal, shall have the power:

(1) to carry on the business of the company so far as may be necessary for the beneficial winding up of the company.

(2) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose, to use, when necessary, the company's seal.

(3) to sell the immovable and movable property and actionable claims of the company 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.

(4) to sell the whole of the undertaking of the company as a going concern.

(5) to raise any money required on the security of the assets of the company.

(6) to institute or defend any suit, prosecution or other legal proceeding, civil or criminal, in the name and on behalf of the company.

(7) to invite and settle claim of creditors, employees or any other claimant and distribute sale proceeds in accordance with priorities established under this Act.

(8) to inspect the records and returns of the company on the files of the Registrar or any other authority.

(9) to prove rank and claim in the insolvency of any contributory for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and ratably with the other separate creditors.

(10) to draw, accept, make and endorse any negotiable instruments including cheque, bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if such instruments had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business.

(11) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the Company Liquidator to take out the letters of administration or recover the money, be deemed to be due to the Company Liquidator himself.

(12) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities and for protection of the assets of the company, appoint an agent to do any business which the Company Liquidator is unable to do himself.

(13) to take all such actions, steps, or to sign, execute and verify any paper, deed, document, application, petition, affidavit, bond or instrument as may be necessary:

(a) for winding up of the company.

(b) for distribution of assets.

(c) in discharge of his duties and obligations and functions as Company Liquidator. and

(14) to apply to the Tribunal for such orders or directions as may be necessary for the winding up of the company.

Sub-Section (2) states that the exercise of powers by the Company Liquidator under Sub-Section (1) shall be subject to the overall control of the Tribunal.

Sub-Section (3) states that notwithstanding the provisions of Sub-Section (1), the Company Liquidator shall perform such other duties as the Tribunal may specify in this behalf.

3. Discuss the constitution, role and functions of winding up committee.

Answer:

Section 277(4) states that within three weeks from the date of passing of winding up order, the Company Liquidator shall make an application to the Tribunal for constitution of a winding up committee to assist and monitor the progress of liquidation proceedings by the Company Liquidator in carrying out the function as provided in Sub-Section (5) and such winding up committee shall comprise of the following persons, namely:

(a) Official Liquidator attached to the Tribunal.

(b) nominee of secured creditors. and

(c) a professional nominated by the Tribunal.

Functions of winding up committee

Section 277(5) states that the Company Liquidator shall be the convener of the meetings of the winding up committee which shall assist and monitor the liquidation proceedings in following areas of liquidation functions, namely:

(a) taking over assets.

(b) examination of the statement of affairs.

(c) recovery of property, cash or any other assets of the company including

(d) benefits derived therefrom.

(e) review of audit reports and accounts of the company.

(f) sale of assets.

(g) finalization of list of creditors and contributories.

(h) compromise, abandonment and settlement of claims.

(i) payment of dividends, if any. and

(j) any other function, as the Tribunal may direct from time to time.

(k) Report and minutes of the meeting of the winding up committee

As per Section 277 (6) the Company Liquidator shall place before the Tribunal a report along with minutes of the meetings of the committee on monthly basis duly signed by the members present in the meeting for consideration till the final report for dissolution of the company is submitted before the Tribunal.

As per 277 (7), the Company Liquidator shall prepare the draft final report for consideration and approval of the winding up committee. As per 277 (8), the final report so approved by the winding up committee shall be submitted by the Company Liquidator before the Tribunal for passing of a dissolution order in respect of the company.

4. Who are the entities who can make petition for winding up?

Answer:

An application for the winding up of a company has to be made by way of petition to the Tribunal. A petition may be presented under Section 272 by any of the following entities:

(a) the company, or

(b) any creditor or creditors, including any contingent or prospective creditor or creditors.

(c) any contributory or contributories.

(d) all or any of the parties specified above in clauses (a), (b), (c) together

(e) the Registrar

(f) any person authorized by the Central Government in that behalf.

(g) by the Central Government or State Government in case falling under clause (c) of Section 271(1) i.e., Company acing against the interest of the sovereignty and integrity of India.

***5.* 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.

6. 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.

7. 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 the Companies (Registration of Foreign Companies) Rules, 2014, 'electronic mode' means carrying out electronically based, whether main server is installed in India or not, including, but not limited to:

(a) business to business and business to consumer transactions, data interchange and other digital supply transactions.

(b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India.

(c) Both (a) and (b)

(d) none of the above.

Answer:

(i) (c)

Justification: According to the Companies (Registration of Foreign Companies) Rules, 2014, 'electronic mode' means a mentioned above.

2. What documents are supposed to be delivered to ROC?

Answer:

Every foreign company shall, within 30 days of the establishment of its place of business in India, deliver to the Registrar for registration:

(1) a certified copy of the Charter, Statutes or Memorandum and Articles, of the company or other instrument constituting or defining the constitution of the company. If the instrument is not in the English language, a certified translation thereof in the English language.

(2) the full address of the Registered or Principal Office of the company.

(3) a list of the directors and secretary of the company containing such particulars as may be prescribed.

In relation to the nature of particulars to be provided as above, the Companies (Registration of Foreign Companies) Rules, 2014, provide that the list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely:

(a) personal name and surname in full.

(b) any former name or names and surname or surnames in full.

(c) father's name or mother's name and spouse's name.

(d) date of birth.

(e) residential address.

(f) nationality.

(g) if the present nationality is not the nationality of origin, his nationality of origin.

(h) passport Number, date of issue and country of issue. (if a person holds more than one passport then details of all passports to be given)

(i) income-tax permanent account number (PAN), if applicable.

(j) occupation, if any.

(k) whether directorship in any other Indian company, (Director Identification Number (DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship).

(l) other directorship or directorships held by him.

(m) membership number (for Secretary only), and

(n) e-mail ID.

(4) the name and address or the names and addresses of one or more persons resident in India authorized to accept, on behalf of the company, service of process and any notices or other documents required to be served on the company.

(5) the full address of the office of the company in India which is deemed to be its principal place of business in India.

(6) particulars of opening and closing of a place of business in India on earlier occasion or occasions.

(7) declaration that none of the directors of the company or the authorized representative in India has ever been convicted or debarred from formation of companies and management in India or abroad, and

(8) any other information as may be prescribed.

According to the Companies (Registration of Foreign Companies) Rules, 2014, the above information shall be filed with the Registrar within 30 days of the establishment of its place of business in India, in Form FC-1 along with prescribed fees and documents required to be furnished as provided in section 380(1).

The application shall also be supported with an attested copy of approval from the Reserve Bank of India under the Foreign Exchange Management Act or Regulations, and also from other regulators, if any, approval is required by such foreign company to establish a place of business in India or a declaration from the authorized representative of such foreign company that no such approval is required.

3. When a foreign company is treated as Indian company?

Answer:

Under section 379 of the Companies Act, 2013, 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) Penalties have been made stringent and fines have been increased by:

(a) Companies Act, 2013

(b) companies (Amendment) Act, 2017

(c) Companies (Amendment Act) 2019

(d) none of the above.

Answer:

(i) (c)

Justification: Companies (Amendment Act) 2019, has introduced stringent penalties and fines have been increased.

(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:

(ii) (d)

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

2. Discuss and differentiate between:

(a) Bailable or Non-Bailable Offence

(b) Cognizable offence and Non-Cognizable Offences

(c) Compoundable and Non-Compoundable Offences

Answer:

(a) Bailable or Non-Bailable Offences

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. 'Nonbailable 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.

(b) Cognizable offence and Non-Cognizable Offences

'Cognizable offence' is an offence and 'Cognizable case' is a case for which a police officer may arrest without warrant, while 'Non-cognizable offence' is an offence and 'Non-cognizable case' is a case for which a police officer has no authority to arrest without warrant. Schedule I specifies which offences are cognizable and which are non-cognizable under the Indian Penal Code and under other statutes. Non-cognizable cases are considered less grave than cognizable cases. Likewise, non-cognizable offences are considered less serious than cognizable offences. A police officer can investigate a cognizable case without an order of a magistrate, but he cannot investigate without such order if the case is non-cognizable one. If a case involves one or more cognizable offence it would be a cognizable case even if other offence or offences may be non-cognizable.

(c) Compoundable and Non-Compoundable Offences

A composition is an arrangement or settlement of different between the injured party and the person against whom the complaint is made. Ordinarily, it is the State that has the right or power to punish offenders, although individuals might be directly and personally aggrieved by the commission of the offences. The Criminal Law regards the punishment imposed by the law at the instance of the State on the offender as the proper and sufficient satisfaction not only for the society as a whole, but also for individual or individuals personally aggrieved by the offence. But in case of certain offences the law permits aggrieved person himself to agree to receive satisfaction other than actual punishment in substitution of the punishment. 1.1.2 Types of Penalties.

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

(ii) order of NCLT can be appealed at:

(a) NCLAT

(b) Supreme Court

(c) None of the above

(d) Any one of (a) or (b)

(iii) Which section of the companies mentions about Special Court.

(a) section 435

(b) section 436

(c) section 437

(d) section 438

(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:

(i) (a)

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

(ii) (a)

Justification: Section 421 (1) mentions that a person aggrieved by the order of the Tribunal may prefer an appeal to NCLAT.

(iii) (b)

(iv) (d)

Justification: Chapter XXVII of the Companies Act, 2013 deals with the National Company Law Tribunal and Appellate Tribunal. All functions of the three quasi-judicial bodies are now vested to NCLT.

2. Discuss provisions relating constitution of NCLT.

Answer:

Selection of Members of Tribunal and Appellate Tribunal (Section 412) Section 412 of the Act contains the provisions as to Selection of Members of Tribunal and Appellate Tribunal.

According to this Section:

(a) The President of the Tribunal and the chairperson and Judicial Members of the Appellate Tribunal shall be appointed after consultation with the Chief Justice of India. [Section 412(1)].

(b) The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee. [Section 412 (2)].

(c) Constitution of selection Committee: The selection committee shall consist of:

(1) Chief Justice of India or his nominee Chairperson.

(2) a senior Judge of the Supreme Court or a Chief Justice of High Court - Member.

(3) Secretary in the Ministry of Corporate Affairs - Member.

(4) Secretary in the Ministry of Law and Justice – Member, and whereas, the Secretary, Ministry of Corporate Affairs shall be the Convener of the Selection Committee [Section 412 (3)].

(d) Functioning of the Selection committee: The Selection Committee shall determine its procedure for recommending persons for the appointment of the members of the Tribunal and the technical members of the Appellate Tribunal [Section 412 (4)].

(e) No appointment of members shall be invalid: No appointment of the Members of the Tribunal or the Appellate Tribunal shall be invalid merely by reason of any vacancy or any defect in the constitution of the Selection Committee. [Section 412(5)].

Therefore, the President of the Tribunal and the Chairperson and the Judicial Members of the Appellate Tribunal shall be appointed after consultation with the Chief Justice of India. The members of the Tribunal and the

Technical Members of the Appellate Tribunal shall be appointed on recommendation of a Selection committee.

The constitution of the selection committee has been provided in the Act. Convener to Selection Committee shall be the Secretary, Ministry of Corporate Affairs. Selection Committee has been allowed to determine its procedure for recommending persons. However, in case of tie on any matter a chairman shall have a casting vote. 1.1.7 Term of office of President, Chairperson and other Members (Section 413) Section 413 of the Act contains the provisions as to Term of office of President, Chairperson and other

3. Discuss role and functions of Special Courts.

Answer:

The Central Govt. may for speedy trial, establish Special Courts. Single judge of Sessions Court or equivalent shall be appointed as judge in consultation with Chief Justice of respective High court.

Offences triable by Special Courts (Section 436) This Section provides a new provision as to offences triable by Special Courts, notwithstanding anything contained in the Code of Criminal procedure, 1973. Under this Section:

(a) all offences under this Act shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

(b) Where a person accused of, or suspected of the commission of, an offence under this Act is forwarded to a Magistrate under Sub-Section (2) or Sub-Section (2A) of Section 167 of the Code of Criminal Procedure, 1973, such Magistrate may authorize the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate. When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial. The Special Court may try in a summary way any offence if it is punishable with imprisonment up to 3 years.

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) A 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

(ii) An independent director cannot serve in more than ….listed entities.

(a) 3 (b) 5 (c) 7 (d) 10

(iii) The CEO certification in Annual Report relates to:

(a) accounting standards (b) listing guidelines

(c) compliance of code of conduct (d) composition of Board.

(iv) For recognition of stock exchange, application by the Stock exchange has to be made to:

(a) Central Govt. (b) SEBI (c) RBI (d) none of the above

(v) (a) In case of an initial public offer, the minimum contribution of the promoters should not be less than……:of the post issue capital:

(a) 10% (b) 20% (c) 30% (d) 40%

(vi) 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 …….. of the floor price.

(a) 10% **(b) 5%** **(c) 15%** **(d) 20%**

(vii) 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**

(viii) 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**

(ix) Who is the compliance officer responsible for ensuring conformity with the regulatory provisions, Coordination 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**

(x) in case of an IPO, the issue shall be open for minimum …..days:

(a) 3 **(b) 5** **(c) 7** **(d) 10**

Answer:

(i) (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) (b)

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

(iii) (c)

Justification: The CEO certification in Annual Report relates to compliance of code of conduct (D) composition of Board.

(iv) (a) Central Govt.

Justification: Any stock exchange, desirous of being recognised for the purposes of this Act may make an application in the prescribed manner to the Central Government.

Every application under Sub-Section (1) shall contain such particulars as may be prescribed, and shall be accompanied by a copy of the bye-laws of the stock exchange for the regulation and control of contracts and also a copy of the rules relating in general to the constitution of the stock exchange.

If the Central Government is satisfied after making such inquiry as maybe necessary in this behalf and after obtaining such further information, if any, as it may grant recognition.

(v) (b) 20%

Justification: Under Regulation 32(1 of the ICDR the promoters' minimum contribution varies from case to case but in normal case should be 20% of the post issue capital.

(vi) (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.

(vii) (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.

(viii) (b) 15 days

Justification: Listed entity shall submit a quarterly compliance report on corporate governance within 15 days from close of the quarter:

(ix) (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

(x) (a)

Justification: As per regulation 46(1) of ICDR, the issue shall be open for minimum three days.

2. Discuss the provisions regarding listing of Securities with regard to type of listing and benefits of listing.

Answer:

Listing of securities with stock exchange is a matter of great importance for companies and investors, because this provides the liquidity to the securities in the market.

Investors are able to know these price trends from such publications. Compared to listed securities the trading of unlisted securities is difficult. The price trends in respect of unlisted securities are seldom known to the investors and the contract between the seller and buyer takes places mostly on one to one basis.

It is open to companies to get their securities listed in their Recognised Stock Exchanges and one or more of the other stock exchanges in the country under this Act. Company seeking listing with stock exchanges in other countries shall have to follow the rules and regulations of those exchanges.

Both equity and debt securities of Private companies could be listed in stock exchanges.

Section 17A provides for public issue and listing of securities referred to in clause (h) of Section 2.

No securities of the nature referred to in clause (h) of Section 2 shall be offered to the public or listed on any recognised stock exchange unless the issuer fulfils such eligibility criteria and complies with such other requirements as may be specified by regulations made by the Securities and Exchange Board of India.

Every issuer to the public shall make an application, before issuing the offer document to the public, to one or more recognised stock exchanges for permission for such certificates or instruments to be listed on the stock exchange or each such stock exchange.

Where the permission for listing has not been granted or refused by the recognised stock exchanges or any of them, the issuer shall forthwith repay all moneys, if any, received from applicants in pursuance of the offer document, and if any such money is not repaid within eight days after the issuer becomes liable to repay it, the issuer and every director or trustee thereof, as the case may be, who is in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at the rate of fifteen percent per annum.

All the provisions of this Act relating to listing of securities of a public company on a recognised stock exchange shall, mutatis mutandis, apply to the listing of the securities of the nature referred to in clause (h) of Section 2 by the issuer, being a special purpose distinct entity (Section 17A)

Types of Listing are as follows.

(1) **Initial listing:** (IPO) 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:** (FPO) 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 on 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.

Benefits of Listing

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. (c) Multiple Listing

A company with a paid up capital of over ₹5 crores should list its securities or have its securities permitted for trading, on at least one stock exchange having nationwide Trading Terminals. Multiple listing provides arbitrage opportunities to the investors, whereby they can make profit based on the difference in the prices prevailing in the said exchanges.

Legal Provisions on listing

As per Section 40 of the Companies Act, 2013, every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus is required to make an application to one or more recognised stock exchanges before such issue for permission for the securities intending to be so offered to be dealt with in the stock exchange(s).

As per Section 40 of the Companies Act, 2013, prospectus should state the names of the stock exchanges where application for listing has been made and any allotment of securities made on the basis of such prospectus should be void if permission of listing is not granted by the stock exchange(s) before the expiry of 10 weeks from the closure of the issue.

Every recognised stock exchange has the powers to make bye-laws for the listing of securities on the stock exchange, inclusion of any security for the purpose of dealings and suspension or withdrawal of securities and the prohibition of trading in any specified security, subject to SEBI approval.

Every company while submitting its application for listing with the stock exchange(s) should produce a number of documents as enclosures to satisfy the requirements of the concerned stock exchange. It should also give a number of under takings as a condition precedent before listing as a sought by the concerned stock exchange. Finally when the stock exchange(s) agree(s) to list the securities, the company shall execute a listing agreement with the stock exchange(s). The listing agreements of different stock exchanges have clauses ranging from 50 to 60.

When a company signs a listing agreement with a stock exchange, it means it has entered a legally binding contract with that exchange and it has to ensure compliance of each and every term and condition in the listing agreement. For failure to ensure such compliance the stock exchange can take an action against the company after giving an opportunity of being heard.

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

Answer:

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.

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 five 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. How a Stock exchange is granted recognition?

Answer:

Section 4 of SCRA lays down that if the Central Government is satisfied after making such inquiry as maybe necessary in this behalf and after obtaining such further information, if any, as it may require:

(1) that the rules and bye-laws of a stock exchange applying for registration are in conformity with such conditions as may be prescribed with a view to ensure fair dealing and to protect investors.

(2) that the stock exchange is willing to comply with any other conditions (including conditions as to the number of members) which the Central Government, after consultation with the governing body of the stock exchange and having regard to the area served by the stock exchange and its standing and nature of the securities dealt with by it, may impose for the purpose of carrying out the objects of this Act, and

(3) that it would be in the interest of the trade and also in the public interest to grant recognition to the stock exchange.

(4) It may grant recognition to the stock exchange subject to the conditions imposed upon it as aforesaid and in such form as may be prescribed. During July, 2016 the Government has increased the limit for foreign investment in Stock Exchanges from 5% to 15%; in pursuance of implementation of the Budget Announcement while presenting the Union Budget 2016-17 regarding reforms in FDI Policy with respect to enhancement of investment limit for foreign entities in Indian stock exchanges.

The conditions which the Central Government may prescribe under clause (a) of Sub-Section (1) for the grant of recognition to the stock exchanges may include, among other matters, conditions relating to:

(1) the qualifications for membership of stock exchanges.

(2) the manner in which contracts shall be entered into and enforced as between members.

(3) the representation of the Central Government on each of the stock exchanges by such number of persons not exceeding three as the Central Government may nominate in this behalf, and

(4) the maintenance of accounts of members and their audit by chartered accountants whenever such audit is required by the Central Government.

Every grant of recognition to a stock exchange under this Section shall be published in the Official Gazette of the State in which the principal office of the stock exchange is situated, and such recognition shall have effect as from the date of its publication in the Gazette of India.

No application for the grant of recognition shall be refused except after giving an opportunity to the stock exchange concerned to be heard in the matter; and the reasons for such refusal shall be communicated to the stock exchange in writing.

No rules of a recognised stock exchange relating to any of the matters specified in Sub-Section (2) of Section 3 shall be amended except with the approval of the Central Government. 2.1.2.5 Contracts and Options in Securities (a) Contracts in Securities

(1) If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area, that it is necessary so to do, it may, by notification in the Official Gazette, declare that Section to apply to such State or States or area, and thereupon every contract in such State or States or area which is entered into after date of the notification otherwise than between members of a recognised stock exchange or recognised stock exchanges in such State or States or area or through or with such member shall be illegal.

It has been provided that any contract entered into between members of two or more recognised stock exchanges in such State or States or area, shall:

(a) be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of Securities and Exchange Board of India.

(b) require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of Securities and Exchange Board of India (Section 13).

A stock exchange may establish additional trading floor with the prior approval of the Securities and Exchange Board of India in accordance with the terms and conditions stipulated by the said Board (Section 13A).

No member of a recognised stock exchange shall in respect of any securities enter into any contract as a principal with any person other than a member of a recognised stock exchange, unless he has secured the consent or authority of such person and discloses in the note, memorandum or agreement of sale or purchase that he is acting as a principal.

If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.

All contracts in contravention of the provisions of Sub-Section (1) entered into after the date of the notification issued there under shall be illegal (Section 16). (b) Options in securities.

An option contract conveys the right to buy or sell a specific security of commodity at specified price within a specified period of time. The right to buy is referred to as a call option whereas the right to sell is known as a put option. An option contract comprises of its type a put or call, underlying security or commodity expiry date, strike price at which it may be exercised. Options are generally described by the nature of underlying commodity. An option on common stock is said to be stock option; an option on a bond, a bond option; an option on a foreign currency, a currency option, an option on future contract, a future option; and so on. The specified price at which the underlying commodity may be bought (in the case of call) or sold (in the case of put) is called exercise price or the striking price of the option. To buy or sell the underlying commodity pursuant to option contract is to exercise the option. Most of the option may be exercised at any time, up to and including the expiration date.

It is of two different kinds such as calls and puts. Those who take calls option, they are not obligated to purchase given quantity of the underlying variable, at a mentioned price on or prior to a scheduled future date. On the other hand, buyers in case of puts option may not necessarily sell a mentioned quantity.

6. Discuss the Obligations pertaining to independent directors.

Answer:

The independent directors both have rights and obligations. The obligations are discussed below.

(i) not to serve as ID in more than 7 listed entities

(ii) At least 1 meeting in a year without the presence of non-independent director to evaluate the performance of WTD.

(iii) Review performance of non-independent directors

(iv) Review performance of chairperson

(v) Assess quality and timeliness of information flowing to the Board

(vi) In case of resignation/ removal of ID - Replacement at the next Board meeting or 3 months — There should be familiarization programmes for ID

(vii) Obligations applicable to directors under

(viii) Member in not more than ten committees

(ix) Chairperson of not more than five committees across all listed entities in which he is a director

(x) Disclosures to the Board relating to all material, financial and commercial transactions, where they have personal interest Disclose any further conflict of interest

(xi) NEDs to disclose their shareholding held directly or on behalf of others and the same shall be inserted in the

(xii) Written affirmation of the code of conduct.

7. 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.

8. 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.

Study Note – 3

THE COMPTITION 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

(ii) The Chairperson and every other Member shall hold office for a term of …… years from the date on which he enters upon his office.

(a) 2 (b) 3 (c) 5 (d) 10

(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%

(iv) 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 the following matters, namely:

(a) the transfer or vesting of property, rights, liabilities or obligations.

(b) the adjustment of contracts either by discharge or reduction of any liability or obligation or otherwise.

(c) the creation, allotment, surrender or cancellation of any shares, stocks or securities.

(d) all the above.

(v) If the Commission does not, on the expiry of a period of ……days from the date of notice given to the Commission referred to in Section 29(2), pass an order or issue direction in accordance with the provisions of sub-Section (1) or (2) or (7), the combination shall be deemed to have been approved by the Commission.

(a) 210 (B) 180 (c) 260 (b) 300

Answer:

(i) (c)

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

(ii) (c) 5 years

Justification: Under section 10 of the Act, 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.

(iii) (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) (d) all the above.

Justification: Under section 28 of the Act, 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.

(v) (a) 210 days

Justification : Under Section 12) if the Commission does not, on the expiry of a period of …….days from the date of notice given to the Commission referred to in Section 29(2), pass an order or issue direction in accordance with the provisions of sub-Section (1) or (2) or (7), the combination shall be deemed to have been approved by the Commission.

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 the Competition Commission. What kind or orders can be passed by the Commission?

Answer:

Duties of the Commission:

In terms of Section 18 of the Competition Act, 2002, it shall be the duty of the Commission to

(a) eliminate practices having adverse effect on competition;

(b) to promote and sustain competition in markets in India;

(c) 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.

Orders that can be passed by the Commission.

- During the course of enquiry, the Commission can grant interim relief restraining a party from continuing with anti competitive agreement or abuse of dominant position
- To impose a penalty of not more than 10% of turn-over of the enterprises and in case of cartel - 3 times of the amount of profit made out of cartel or 10% of turnover of all the enterprises whichever is higher
- After the enquiry, the Commission may direct a delinquent enterprise to discontinue and not to re-enter anti-competitive agreement or abuse the dominant position
- To award compensation
- To modify agreement
- To recommend to the Central Govt. for division of enterprise in case it enjoys dominant position.
- Declare an agreement to be void.
- Violation of orders may result to imprisonment.

4. What is the procedure for inquiry into certain agreements and dominant position under the Competition Act, 2002?

Answer:

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 fit 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, shall 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 fit 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.

5. What kind of orders can be passed by The Commission in case of dominancy?

Answer:

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 defined 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. What is the objective of the Competition Act?

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. 3.1.7

Extent and applicability of the Act: The Competition Act, 2002 extends to whole of India except the State ore than US$ 2250 millions, including at least ₹ 2,250 crores in India. Appreciable Adverse effect: The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition, have due regard to all or any of the following factors, namely:

(1) creation of barriers to new entrants in the market.

(2) driving existing competitors out of the market.

(3) foreclosure of competition by hindering entry into the market.

(4) accrual of benefits to consumers.

(5) improvements in production or distribution of goods or provision of services.

(6) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

Dominant position of enterprise: The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not, have due regard to all or any of the following factors, namely:

(1) market share of the enterprise.

(2) size and resources of the enterprise.

(3) size and importance of the competitors.

(4) economic power of the enterprise including commercial advantages over competitors.

(5) vertical integration of the enterprises or sale or service network of such enterprises.

(6) dependence of consumers on the enterprise.

(7) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise.

(8) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers.

(9) countervailing buying power.

(10) market structure and size of market.

(11) social obligations and social costs.

(12) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition.

(13) any other factor which the Commission may consider relevant for the inquiry.

9. Define and discuss Appreciable Adverse Effect.

Answer:

Appreciable Adverse effect: The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition, have due regard to all or any of the following factors, namely:

(1) creation of barriers to new entrants in the market.

(2) driving existing competitors out of the market.

(3) foreclosure of competition by hindering entry into the market.

(4) accrual of benefits to consumers.

(5) improvements in production or distribution of goods or provision of services.

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(6) dependence of consumers on the enterprise.

(7) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise.

(8) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers.

(9) countervailing buying power.

(10) market structure and size of market.

(11) social obligations and social costs.

(12) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition.

(13) any other factor which the Commission may consider relevant for the inquiry. (c) Relevant

10. What are combinations? How they are treated under the Competition Act?

Answer:

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.

Thresholds for Combinations

India is one of the fastest growing economies in the world. The growth process is driven both by organic and inorganic (through the mergers and acquisition route) growth of enterprises. It is neither feasible nor advisable to review all the mergers and acquisitions. It is natural to presume that in the case of small size combinations there is less likelihood of appreciable adverse effect on competition in markets in India. The Act provides for sufficiently high thresholds in terms of assets/turnover, for mandatory notification to the Commission.

The Act also provides for revision of the threshold limits every two years by the government, in consultation with the Commission, through notification, based on the changes in Wholesale Price Index (WPI) or fluctuations in exchange rates of rupee or foreign currencies. The Government has enhanced the value of assets and turnover mentioned in Section 5, by fifty percent. The current thresholds for the combined assets/turnover of the combining parties are as follows:

For acquisition –

- Combined assets of the firms (acquirer and the enterprise) is more than ₹ 2,000 Cr. or turnover is more than ₹6,000 Cr. (these limits are US$ 1 billion including at least ₹1,000 Cr. in India and 3 billions including at least 3000 cr. in India in case one of the firms is situated outside India).
- The limits are more than ₹8,000 Cr or ₹ 24,000 Cr and US$ 4 billion including at least ₹1,000 Cr. in India and 12 billions including at least ₹3,000 Cr. in India in case acquirer is a group in India or outside India respectively.
- CG has exempted enterprise whose control, shares, voting rights or assets are being acquired has assets of value of not more than ₹ 250 Cr. and turnover of not more than ₹ 750 Cr.

Turnover means amount on sale of product or rendering of services of similar or substitutable goods or services. Group means two or more enterprise which directly or indirectly exercise 26% or more of voting right in other enterprise or appoint more than 50% of the directors or control affairs of the other enterprise.

For merger/amalgamation –

- the above limit will be valid for mergers also.

Asset means written down book value and shall include intellectual property.

A firm proposing to enter into a combination, may, at its option, notify the Commission in the specified form disclosing the details of the proposed combination within 30 days of such proposal i.e. approval of the board of directors or execution of the agreement or other document for acquisition. No combination shall come into

effect until 210 days have passed from the day on which the notice has been given to the Commission or Commission has given no objection, whichever is earlier.

The turnover shall be determined by taking into account the values of sales of goods or services. The value of assets shall be determined by taking the book value of the assets as shown in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed merger falls, as reduced by any depreciation. The value of assets shall include the brand value, value of goodwill, or Intellectual Property Rights etc., referred to in explanation (c) to Section 5 of the Act.

Study Note – 4

FOREIGN EXCHANGE MANAGEMENT ACT, 1999

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

1. Who is an "authorised person" under FEMA? How it is regulated by RBI?

Answer:

The Reserve Bank may, on an application made to it in this behalf, authorise any person to be known as authorised person to deal in foreign exchange or in foreign securities, as an authorised dealer, money changer or off-shore banking unit or in any other manner as it deems fit. [Sub-section (1)].

An authorisation under this section shall be in writing and shall be subject to the conditions laid down therein [Sub-section (2)].

An authorisation granted under sub-section (1) may be revoked by the Reserve Bank at any time if the Reserve Bank is satisfied that:

(1) it is in public interest so to do, or

(2) the authorised person has failed to comply with the condition subject to which the authorisation was granted or has contravened any of the provisions of the Act or any rule, regulation, notification, direction order made thereunder.

The authorised person shall be given a reasonable opportunity of making a representation.

An authorised person shall, in all his dealings in foreign exchange or foreign security, comply with such general or special directions or orders as the Reserve Bank may, from time to time, think fit to give and except with the previous permission of the Reserve Bank, an authorised person shall not engage in any transaction involving any foreign exchange or foreign security which is not in conformity with the terms of his authorisation under this section.

An authorised person shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declaration and to give such information as will reasonable satisfy him that the transaction will not involve and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder and where the said person refuses to comply with any such requirement or makes only unsatisfactory compliance therewith, the authorised person shall refuse in writing to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank.

Any person, other than an authorised person, who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to authorised person under sub-section (5) does not use it for such purpose or does not surrender it to authorised person within the specified period or uses the foreign exchange so acquired or purchased for any other purpose for which purchase or acquisition of foreign exchange is not permissible under the provisions of the Act or the rules or regulations or direction or order made thereunder shall be deemed to have committed contravention of the provision of the Act for the purpose of this section. 4.5.1 Reserve Bank's powers to issue directions to authorised person (Section 11)

The Reserve Bank may, for the purpose of securing compliance with the provisions of this Act and of any rules, regulations, notifications or directions made thereunder, give to the authorised persons any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security.

The Reserve Bank may direct any authorised person to furnish such information, in such manner, as it deems fit.

Where any authorised person contravenes any direction given by the Reserve Bank under this Act or fails to file any return as directed by the Reserve Bank, the Reserve Bank may, after giving reasonable opportunity of being head, impose on the authorized person a penalty which may extend to ten thousand rupees and in the case of continuing contravention with an additional penalty which may extend to two thousand rupees for every day during which such contravention continues.

The Reserve Bank may, at any time, cause an inspection to be made by any officer of the Reserve Bank specially authorised in writing by the Reserve Bank in this behalf, of the business of any authorised person as may appear to it to be necessary or expedient.

2. Explain the right of a citizen to obtain foreign exchange under "current account transaction".

Answer:

Current account transaction means any transaction which is not a capital account transaction and includes:-

(i) Trade payments and short term banking and credit facilities in the ordinary course of business;

(ii) Payment of interest and income from investment;

(iii) Remittance of living expenses of parents, spouse and children residing abroad on their foreign travel for medical facilities and education of children;

Any citizen can draw foreign exchange from authorised person, subject to any restriction imposed by RBI.

3. Define (a) Capital account transaction (b) Depository receipt

Answer:

(a) Under FEMA , '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. Depository Receipt (DR)

(b) Depository Receipt (DR) means a negotiable security issued outside India by a Depository bank, on behalf of an Indian company, which represent the local Rupee denominated equity shares of the company held as deposit by a Custodian bank in India. In other words, it is a foreign currency denominate instrument, issued by foreign depositary on the books of securities transferred to it by the company. DRs are traded on Stock Exchanges in the US, Singapore, Luxembourg, etc. DRs listed and traded in the US markets are known as American Depository Receipts (ADRs) and those listed and traded anywhere/elsewhere are known as Global Depository Receipts (GDRs). DRs are governed by Notification No. FEM

4. Explain the meaning and purpose of Foreign Currency Convertible Bond.

Answer:

'Foreign Currency Convertible Bond' (FCCB) means a bond issued by an Indian company expressed in foreign currency, the principal and interest of which is payable in foreign currency. FCCBs are issued in accordance with the Foreign Currency Convertible Bonds and ordinary shares (through depository receipt mechanism) Scheme, 1993 and subscribed by a non-resident entity in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part. The money being raised by the company in foreign currency. These bonds give an option to be convertible into share.

5. 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.

6. 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.

7. 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.

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. However, return to RBI is to be filed on receipt of foreign exchange as capital.

(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.

8. 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 (TD₹).

(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. 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 non-resident 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.

9. What is external commercial borrowings? Discuss the purpose for which it is taken.

Answer:

External Commercial Borrowings (ECB): ECBs are commercial loans raised by eligible resident entities from recognised non-resident entities and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc. The parameters apply in totality and not on a standalone basis. The framework for raising loans through ECB (herein after referred to as the ECB Framework) comprises the following three tracks:

(1) Medium term foreign currency denominated ECB with minimum average maturity of 3/5 years.

(2) Long term foreign currency denominated ECB with minimum average maturity of 10 years.

(3) Indian Rupee (₹) denominated ECB with minimum average maturity of 3/5 years.

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),

Department of Economic Affairs, Ministry of Finance and RBI make policy and monitor ECB.

Study Note – 5

LAW RELATED TO BANKING SECTOR

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

PART A: THE BANKING REGULATION ACT, 1949

1. Discuss the Power of Reserve Bank to appoint Chairman of the Board of Directors appointed on a whole-time basis or a Managing Director of a banking company.

Answer:

As per section 10BB where the office, of the Chairman of the board of Directors appointed on a whole-time basis or a Managing Director of a banking company is vacant, the Reserve Bank may, if it is of opinion that the continuation of such vacancy is likely to adversely affect the interests of the banking company, appoint a person eligible to be so appointed, to be the Chairman of the board of Directors appointed on a whole-time basis or a Managing Director of the banking company and where the person so appointed is not a Director of such banking company, he shall, so long as he holds the office of the Chairman of the board of Directors appointed on a whole-time basis or a Managing Director, be deemed to be Director of the banking company. The Chairman of the Board of Directors of a Banking Company shall hold office for a period of five years.

2. Discuss the Limitation for payment of dividends.

Answer:

As per section 15 prohibits every banking company from paying any dividend on its shares unless it has completely written off the capitalized expenses specified therein.

According to this section no banking company shall pay any dividend on its shares until all its capitalized expenses such as Preliminary Expenses, Brokerage and Commission on issue of shares, etc., have been completely written off.

However, as per the Banking Companies (Amendment) Act 1959, Banking Company may pay dividend on its shares without writing off the following:

The depreciation in the value of investments in the approved securities provided such depreciation has not been actually capitalized or accounted for a loss.

The depreciation in the value of its investments in shares, debentures, bonds, etc., (other than approved securities) where adequate provision has been made for such depreciation. The auditor of the banking company should approve such provision.

The bad debts where the adequate provision has been made in this behalf and the auditor of the banking company should approve such provision.

Banks pay dividends after taking specific approval of the Reserve Bank of India.

3. Short note on Amalgamation of Banking Companies. [Section 44A]

Answer:

As per section 44A the procedures for amalgamation of banking companies are given under this section. As per this section the scheme of amalgamation (i.e., the terms and conditions of amalgamation) is to be approved by 2/3 majority of the total voting ratios of the shareholders in a general meeting.

The unwilling shareholders are entitled to receive the value of their shares as may be determined by the RBI. The RBI has to sanction the scheme of amalgamation after the shareholders' approval.

The assets and liabilities are transferred to the acquiring bank according to the directions of RBI mentioned in the sanction order. The RBI issues order for the dissolution of the first bank on a specified date. During preparation of scheme of amalgamations RBI may suspend business with approval with Central Government.

As per the amendment in October, 2020, RBI may initiate a scheme for reconstruction and amalgamation without imposing moratorium.

PART B: SARFESI ACT

1. Discuss the purpose of SARFESI Act.

Answer:

Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 or SARFAESI Act lets the banks as well as other financial institutions of India sell commercial or residential properties for the purpose of loan recovery.

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 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, which was the procedure before the act was enacted.

2. What are the various processes to recover money under the SARFESI Act?

Answer:

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, which are discussed below.

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.

3. What is an asset reconstruction company? How they ae regulated?

Answer:

"Asset reconstruction" means acquisition by any securitisation company or reconstruction company of any right or interest of any bank or financial institution in any financial assistance for the purpose of realization of such financial assistance. Asset Reconstruction Company [Section 2(ba)]

The company needs to be registered with Reserve Bank under section 3 for the purposes of carrying on the business of asset reconstruction or securitisation, or both. A company can commence or carry on the business of securitisation or asset reconstruction only after obtaining a certificate of registration granted under this section and having the owned fund of not less than two crore rupees or such other higher amount as the Reserve Bank, may be notification specify.

The Reserve Bank may, by notification, specify different amounts of owned fund for different class or classes of securitisation companies or reconstruction companies. However, the term "owned fund" is not defined in the Act and hence we have to refer to the definition of "net owned fund" as mentioned in the explanation to Section 45I of the Reserve Bank of India Act, 1935. Every securitisation company or reconstruction company shall make an application for registration to the Reserve Bank in such form and manner as it may specify.

The Reserve Bank may, for the purpose of considering to grant its approval for the application for registration of a securitisation company or reconstruction company to commence or carry on the business of securitisation or asset reconstruction, as the case may be, require to be satisfied, by an inspection of records or books of such securitization company or reconstruction company, or otherwise, that the following conditions are fulfilled, namely:

(1) that the securitisation company or reconstruction company has not incurred losses in any of the three preceding financial years.

(2) that such securitisation company or reconstruction company has made adequate arrangements for realisation of the financial assets acquired for the purpose of securitisation or asset reconstruction and shall be able to pay periodical returns and redeem on respective due dates on the investments made in the company by the qualified institutional buyers or other persons.

(3) that the directors of securitisation company or reconstruction company have adequate professional experience in matters related to finance, securitisation and reconstruction.

(5) that any of its directors has not been convicted of any offence involving moral turpitude.

(6) that a sponsor of an asset reconstruction company is a fit and proper person in accordance with the criteria as may be specified in the guidelines issued by the Reserve Bank for such person.

(7) that securitisation company or reconstruction company has complied with or is in a position to comply with prudential norms specified by the Reserve Bank.

(8) that securitisation company or reconstruction company has complied with one or more conditions specified in the guidelines issued by the Reserve Bank for the said purpose.

A certificate of registration is thereafter granted to the securitisation company or the reconstruction company to commence or carry on business of securitisation or asset reconstruction, and it must be noted that the Reserve Bank may also prescribe any other conditions, which it may consider, fit to impose. In case the Reserve Bank is of the opinion that the above conditions are not satisfied then it may reject the application, after the applicant is given a reasonable opportunity of being heard.

Once a company is registered as a securitisation company or reconstruction company, it must obtain prior approval of the Reserve Bank for the following purposes:

(1) any substantial change in its management including appointment of any direction on the Board of Directors of the asset reconstruction company or managing director or Chief Executive Officer thereof.

(2) change of location of its registered office.

(3) change in its name.

The decision of the Reserve Bank, whether the change in management of a securitisation company or a reconstruction company is a substantial change in its management or not, shall be final and binding. The expression "substantial change in management" means the change in the management by way of transfer of shares or change affecting the sponsorship in the company by way of transfer of shares or amalgamation or transfer of the business of the company.

4. Can the registration be cancelled? If so, what is the procedure?

Answer:

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 fulfill any of the conditions referred to in clauses (a) to (g) of subsection (3) of section 3; or e. fails to-

(a) comply with any direction issued by the Reserve Bank under the provisions of this Act;

(b) 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;

(c) submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank;

(d) obtain prior approval of the Reserve Bank required under sub-section (6) of section 3:

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.

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.

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.

5. Define (i) default (ii) financial asset (iii) non performing asset:

Answer:

(i) "Default" means –

(a) non-payment of any debt or any other amount payable by the borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor; or

(b) Non-payment of any debt or any other amount payable by the borrower with respect to debt securities after notice of ninety days demanding payment of dues served upon such borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of such debt securities.

"Financial asset" means debt or receivables and includes:

(i) a claim to any debt or receivables or part thereof, whether secured or unsecured, or

(ii) any debt or receivables secured by, mortgage of, or charge on, immovable property, or

(iii) a mortgage, charge, hypothecation or pledge of movable property, or

(iv) any right or interest in the security, whether full or part underlying such debt or receivables, or

(v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent, or

(vi) any beneficial right, title or interest in any tangible asset given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire such tangible asset; or

(vii) any right, title or interest on any tangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain licence of the intangible asset; (vi) any financial assistance.

"Non-performing asset" means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset, (a) in case such bank or financial institution is administered or regulated by any authority or body established, constituted or appointed by any law for the time being in force, in accordance with the directions or guidelines relating to assets classifications issued by such authority or body. (b) in any other case, in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank. Qualified

6. What is the meaning of security interest as per SARFAESI Act? 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.

7. Discuss few measures for assets reconstruction.

Answer:

Without prejudice to the provisions contained in any other law for the time being in force, an asset reconstruction company may for the purposes of asset reconstruction, provide for any one or more of the following measures, namely:

(a) the proper management of the business of the borrower, by change in or takeover of, the management of the business of the borrower;

(b) the sale or lease of a part or whole of the business of the borrower;

(c) rescheduling of payment of debts payable by the borrower;

(d) enforcement of security interest in accordance with the provisions of this Act.

(e) settlement of dues payable by the borrower;

(f) taking possession of secured assets in accordance with the provisions of this Act;

(g) conversion of any portion of debt into shares of a borrower company.

Provided that conversion of any part of debt into shares of a borrower company shall be deemed always to have been valid, as if the provisions of this clause were in force at all material times.

The Reserve bank for this purpose shall determine the policy and issue necessary directions including the directions for regulation of management of the business of the borrower and fees to be changed. The asset reconstruction company shall take measures as per the directions of RBI.

8. Discuss the role of the following authorities where an asset reconstruction company may seek relief 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.

(a) 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.

PART C: PREVENTION OF MONEY LAUNDERING ACT (PMLA)

1. Write a note on of shell companies.

Answer:

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".

2. 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.

3. 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.

4. Define (a) scheduled offence (b) Predicate Offence

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. The scheduled offences are divided into two parts - Part A & Part C.

(a) In part A, offences to the Schedule have been listed in 28 paragraphs and it comprises of offences under Indian Penal Code, offences under Narcotic Drugs and Psychotropic Substances, offences under Explosive Substances Act, 1908, offences under Unlawful Activities (Prevention) Act, 1967, offences under Arms Act, 1959, offences under Wild Life (Protection) Act, 1972, offences under the Immoral Traffic (Prevention) Act,1956, offences under the Prevention of Corruption Act, 1988, offences under the Explosives Act, 1884 and offences under Antiquities & Arts Treasures Act, 1972 etc.

Part 'C' deals with trans-border crimes, and is a vital step in tackling Money Laundering across International Boundaries.

Prior to 15th February, 2013, i.e., the date of notification of the amendments carried out in PMLA, the Schedule also had Part B for scheduled offences where the monetary threshold of rupees thirty lakhs was relevant for initiating investigations for the offence of money laundering. However, all these scheduled offences, hitherto in Part B of the Schedule, have now been included in Part A of Schedule w.e.f 15.02.2013. Consequently, there is no monetary threshold to initiate investigations under PMLA.

(b) Every Scheduled Offence is a Predicate Offence. The Scheduled Offence is called Predicate Offence and the occurrence of the same is a pre requisite for initiating investigation into the offence of money laundering

3. What are the major Acts covered in the Schedule?

Answer:

The following acts are covered under the schedule.

(a) Indian Penal Code, 1860.

(b) NDPS Act, 1985.

(c) Unlawful Activities (Prevention) Act, 1967.

(d) Prevention of Corruption Act, 1988.

(e) Customs Act, 1962.

(f) SEBI Act, 1992.

(g) Copyright Act, 1957.

(h) Trade Marks Act, 1999.

(i) Information Technology Act, 2000.

(j) Explosive Substances Act, 1908.

(k) Wild Life (Protection) Act, 1972.

(l) Passport Act, 1967.

(m) Environment Protection Act, 1986.

(n) Arms Act, 1959.

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

(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

(iii) The principle of _____ ensures that an insured does not profit by insuring with multiple insurers.

(a) Subrogation

(b) Contribution

(c) Co-insurance

(d) Indemnity

(iv) 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

(v) The Insurance Laws (Amendment) Act, was passed in the year

(a) 2015

(b) 2016

(c) 2017

(d) 2018

(vi) "life insurance business" means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include:

(a) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance.

(b) the granting of annuities upon human life, and

(c) the granting of superannuation allowances and benefits payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons.

(d) all the above

Answer:

(i) (d) all of the above

Justification: 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) (a) nine months

Justification: 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.

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.

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) (b) Contribution

Justification: 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).

(iv) (b) Make a reasonable forecast of the future liabilities of policies

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.

(v) (a) 2015

Justification: The Insurance Laws (Amendment) Act, 2015 received the assent of the President on the 20th March, 2015 paved the way for major reform related amendments in the Insurance Act, 1938, the General Insurance Business (Nationalization) Act, 1972 and the Insurance Regulatory and Development Authority (IRDA) Act, 1999. This Act is deemed to have come into force on 26th December 2014.

(vi) (d) All the above

Justification: Life Insurance Business: Section 2(11): "life insurance business" means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include.

Answer the following questions:

2. Discuss in brief, the composition of IRDA.

Answer:

The Authority (IRDA) 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.

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:

(1) 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.

3. Explain the principle of insurable interest.

Answer:

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. There should direct relation between the person and the asset which is insured by him.

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.

4. State the powers and functions of IRDA.

Answer:

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 organisations 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

(o) Specifying the percentage of premium income of the insurer to finance schemes for promoting and regulating professional organizations

(p) Specifying the percentage of insurance business to be undertaken by insurers in rural or social sectors

(q) Monitor the compliance of the Insurance Act.

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) **Insurance Advisory Committee –** 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 Constitution of 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. Discuss the provisions of Insurance act regarding investment of assets.

Answer:

Investment of Assets is stipulated under Section 27 of the Insurance Act. Every insurer shall invest and at all times keep invested assets equivalent to not less than the sum of the amount of his liabilities to holders of life insurance policies in India on account of matured claims, and the amount required to meet the liability on policies of life insurance maturing for payment in India, less the amount of premiums which have fallen due to the insurer on such policies but have not been paid and the days of grace for payment of which have not expired, and any amount due to the insurer for loans granted on and within the surrender values of policies of life insurance maturing for payment in India issued by him or by an insurer whose business he has acquired and in respect of which he has assumed liability in the following manner namely: (a) 25% of the said sum in Government securities, a further sum equal to not less than twenty-five per cent of the said sum in Government securities or other approved securities, and (b) the balance in any of the approved investments as may be specified by the regulations subject to the limitations, conditions and restrictions specified therein. In the case of an insurer carrying on general insurance business, 25% of the assets in Government Securities, a further sum equal to not less than ten per cent of the assets in Government Securities or other approved securities and the balance in any other investment in accordance with the regulations of the Authority and subject to such limitations, conditions and restrictions as may be specified by the Authority in this regard. No insurer carrying on life insurance business shall invest or keep invested any part of his controlled fund and no insurer carrying on general business shall invest or keep invested any part of his assets otherwise than in any of the approved investments as may be specified by the regulations subject to such limitations, conditions and restrictions therein. (Section 27A). All assets of an insurer carrying on general insurance business shall subject to such conditions, if any, as may be prescribed, be deemed to be assets invested or kept invested in approved investments specified in section 27. (Section 27B).

An insurer may invest not more than five per cent in aggregate of his controlled fund or assets in the companies belonging to the promoters, subject to such conditions as may be specified by the regulations. (Section 27C) (f) Prohibition of loans (Section 29).

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. This shall not apply to such loans made by an insurer to a banking company, as may be specified by the Authority.

Further this shall not be applicable 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.

Study Note – 7

CORPORATE GOVERNANCE

Learning Objective: *This 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:

(a) ₹ 15,000
(b) ₹ 20,000
(c) ₹ 25,000
(d) ₹ 30,000

(ii) The CSR committee shall have at least ……..independent director.

(a) One
(b) Two
(c) Three
(d) Not required

(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.

(a) Director
(b) Manager
(c) Managing Director
(d) both (b) and (c) above

(iv) The majority of the members of the audit committee shall be :

(a) Full time directors
(b) Nominee directors
(c) Promoter directors
(d) Independent director.

(v) Every company shall hold the first meeting of the Board of Directors within how many days of the date of incorporation:

(a) 15 days

(b) 30 days

(c) 45 days

(d) 60 days

(vi) Every listed Public Company shall have at least one:

(a) Independent Director

(b) Women director

(c) Nonexecutive director

(d) Non of the above

(vii) 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

(viii) _____ 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

(ix) 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:

(i) (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.

(ii) (a)

Justification: As provided section 135, only one independent director is required in CSR committee.

(iii) (c)

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) (d) Independent directors

Justification: As per section 177(2) of the Companies act, 2013, the majority of the members of the audit committee shall be Independent directors.

(v) (b)

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) (b)

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 shall have 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)].

(vii) (b)

Justification: 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.

(viii) (a)

Justification: 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.

(ix) (a)

Justification: 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. Discuss the provisions under the Companies Act relating to composition and function of (a) audit committee and (b) Nomination and Remuneration committee, for better Corporate governance.

Answer:

(a) **Audit Committee (section 177 of Co, Act 2013)**

The following class of companies shall constitute an Audit Committee of the Board:-

(i) Every listed Company.

(ii) All public companies with paid up capital ₹10 crore or more.

(iii) All public companies having turnover of ₹100 crore or more.

(iv) All public companies having in aggregate, outstanding loans or borrowings or debenture or deposit exceeding ₹ 50 crore or more.

Audit Committee shall consist of minimum of 3 directors with independent directors forming a majority.

There are many functions of Audit committee > some of them are enumerated below.

(i) Recommend appointment, remuneration and terms of appointment of auditors of the company.

(ii) Review and monitor the auditor's independence and performance and effectiveness of audit process.

(iii) Examination of the financial statement and the auditors' report.

(iv) Scrutiny of inter-corporate loans and investments

(v) Valuation of undertaking or assets of the company, wherever it is necessary.

(vi) Evaluation of internal financial control and risk management system.

(a) Under section 178 of the Co, Act 2013, the following class of companies shall constitute an Nomination and Remuneration Committee of the Board:-

(i) Every listed Company.

(ii) All public companies with paid up capital ₹10 crore or more.

(iii) All public companies having turnover of ₹100 crore or more.

All public companies having in aggregate, outstanding loans or borrowings or debenture or deposit exceeding ₹ 50 crore or more.

Functions of Nomination and Remuneration Committee shall be as follows.

(i) identify persons to be appointed as director

(ii) Formulate qualification, positive attributes and independence of a director.

(iii) Recommend to the Board a policy, relating to the remuneration for the directors, KMPs and other employees.

(iv) Policy recommended by Remuneration and Nomination Committee shall be disclosed in the Board's report.

3. What do you mean by "Small Company?

Answer:

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 ten crore rupees.

(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 one hundred 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)).

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. 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. 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. In case of PSUs, the appoint of any type of director is made by the Govt. who is the majority shareholder.

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. Write a detailed note on "Director's Responsibility Statement".

Answer:

The "Directors Responsibility Statement" under section 134(5) which provides for financial statement and Board Report 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.

6. 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.

(b) 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.

(c) 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.

7. Discuss the role of family business in Indian corporate.

Answer:

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.

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,

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. It may be mentioned, in some of the family managed companies the directors who are family members are academically, and professionally qualified.

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.

9. Discuss about the "Legal Framework of Corporate Governance".

Answer:

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 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.

10. 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),

11. Discuss in brief the purpose and procedure of MOU system.

Answer:

The Concept of MOU In India the Memorandum of Understanding is a negotiated document between the Government, acting as the owner of Public Sector Enterprise (PSE) and a specific PSE. It should contain the intentions, obligations and mutual responsibilities of the Government and the PSE. Further, MOU makes an attempt to move the management of PSEs from management by controls and procedures to management by results and objectives.

The present institutional arrangement envisages to put in place an objective and transparent mechanism to evaluate the performance of the managements of the PSEs. It provides a system through which the commitments of both the parties to the MOU can be evaluated at the end of the year besides improving the technical inputs required to finalize the MOUs.

The details of this institutional arrangement and their inter-linkages are as follows.

High Power Committee At the apex of this institutional arrangement is the High Power Committee (HPC) consisting of following members: (a) Cabinet Secretary, Chairman (b) Finance Secretary, Member (c) Secretary(Expenditure), Member (d) Secretary(Planning Commission), Member (e) Secretary(Programme Implementation), Member (f) Chairman(Public Enterprises Selection Board), Member (g) Chief Economic Adviser, Member (h) Secretary(Public Enterprises), Member-Secretary The functions of this committee are to review the draft MOUs before the final draft is signed and to make an end-of-the-year evaluation to judge how far the commitments made by both parties of the MOU have been met. Now, the power to approve the final MOUs has been delegated to TF/DPE and only in those cases where TF is not able to take a decision is referred to HPC.

The main objective behind the creation of a Task Force was to provide technical expertise for MOU negotiations and evaluation. The main functions of the Task Force are to:

(a) examine the design of MOU at the beginning of the year. For this purpose the draft MOU agreed upon by the PSE and the relevant Administrative Ministry is examined by the Task Force. If Task Force has any comments or questions regarding the draft MOUs, they seek clarifications via MOU Division. Once the signatories to MOUs have responded to the concerns expressed by the Task Force on their draft MOUs, the MOU negotiation meetings are organized. These meetings are attended by the executives of PSEs, senior officials of the concerned Administrative Ministry and the representatives from the nodal agencies such as Planning Commission, Ministry of Statistics & Programme Implementation, Ministry of Finance, OCC, etc. The draft MOUs are discussed and finalized during these meetings.

(b) evaluate the determine the composite score for each enterprise at the end of the year.

The Task Force consists of retired civil servants, executives of public sector, management professionals and independent members with considerable experience. It was decided by the High Power Committee that no one belonging to the Government should be a member of this Task Force. The HPC and Task Force are assisted by the MOU Division in the Department of Public Enterprises. It also acts as the permanent secretariat to this HPC and Task Force. The main functions of this Division are to:

(a) provide logistical, technical and administrative support to the Task Force.

(b) act as buffer between the Task Force members and the two signatories to the MOUs - PSEs and Administrative Ministries.

(c) develop information and data base on MOU signing PSEs.

(d) assist the High Power Committee.

(e) monitor the progress of MOUs.

(f) advise and counsel to the MOU signatories on methodological and conceptual aspects of the MOU policy.

(g) coordinate research and training on various aspects of MOU policy.

(h) Working of MOU System

The process of signing of MOU is initiated with the issue of guidelines by the MOU Division for drafting of MOUs. These guidelines indicate the broad structure and the aspects to be covered in the draft MOU including the weights to be assigned to the financial parameters. These guidelines reflect the main concerns of the Government and contain the general direction to the PSEs.

On the basis of these Guidelines, the draft MOUs are prepared by PSEs and submitted to DPE after due discussions in Board and with the concerned Administrative Ministry/Department in the month of December. The draft MOUs received in DPE are examined in detail in consultation with Task Force. During the process of examination of these draft MOUs all possible relevant information/sources of information are utilized to ensure that the targets proposed in the draft documents are realistic. Wherever possible inter-firm comparison is carried out and the proposed targets are viewed in the context of the past performance of the PSE.

Objectives of MoU System

The specific objectives of the MoU system are to:

(a) Improve the performance of CPSEs though increased management autonomy.

(b) Remove the haziness in goals and objectives.

(c) Evaluate management performance through objective criteria; and

(d) Provide incentives for better future performance. 7.4.3.7 MOU Negotiation Meetings

(e) to prepare a definite target oriented annual plan of CPSU.

Under the present system efforts are made to ensure that all the MOUs are signed well before the beginning of the financial year. In view of this, the draft MOUs submitted by the PSEs are discussed in the MOU negotiation meetings. Besides Task Force members, these meetings are attended by senior officials of the Administrative Ministries, top executives of PSEs and the representatives from the nodal agencies of the Government of India such as Planning Commission, Ministry of Finance & Dept. of Programme Implementation. As mentioned earlier, all possible inputs provided by the professionals, Ministries and the DPE are utilized to finalise the targets. In addition to this the general aspects of existing economic situation relating to the performance of the PSE are also discussed in detail before finalizing the targets.

The parameters to measure the performance of the managements of the PSEs are selected after a great deal of thought and the weights are assigned to these performance parameters keeping in view their importance and the nature of operation of the PSE.

The targets proposed by the PSEs are discussed freely and are finalized broadly on consensus basis. In fact, the MOU negotiation meeting also provide a forum to discuss certain good practices adopted in other PSEs and in a way these innovative ideas are disseminated through this process. The MOUs finalised during these meetings are signed by the Chief Executive of the PSE and the Secretary of the concerned Ministry before 31st of March.

Evaluation of MOU

Performance of MOU signing PSEs is evaluated with reference to their MOU targets twice in a year. First the performance is evaluated on the basis of provisional results and secondly on the basis of audited data. The performance evaluation exercise is also carried out in an extensive manner.

As mentioned earlier this performance evaluation exercise is not carried out purely through a mechanical procedure. In fact, at the end of the year the review meetings are held which provides an opportunity to consider the proposals to adjust the criteria values for factors which were not predicted and could not have been predicted by either party.

Thus, the MOU evaluation is finalised on the basis of the actual performance and the PSEs are graded as "EXCELLENT", "VERY GOOD", "GOOD", "FAIR" & "POOR". 7.4.3.9 Coverage of PSEs under the MOU System

(a) The focus, under the MOU system, has shifted to achievements of results.

(b) Operational autonomy has also been encouraged and increased by delegation of more financial and administrative powers to the MOU signing PSEs.

(c) By laying stress on marketing effort and comparing with private sector enterprises MOU are helping PSEs to face competition.

(d) The quarterly performance review (QPR) meetings have become more focused since the introduction of MOUs. Discussion is confined to overall achievement as outlined in the MOUs. 7.4.3.11 Impact on the functioning of the MOU signed CPSEs

The MOU System has had a positive impact on the functioning of the CPSEs by not only increasing the top-and-bottom line performance but also increasing their net worth as stated above. Further, the MOU

System has also enabled the CPSEs to adapt to the business scenario changes that have come about due to the economic liberalization reforms undertaken in the country and the resultant enhanced coupling of India with the global economy.

The MOU system has enabled CPSEs to focus on achievements and results associated with increased operational autonomy and more financial and administrative powers. By laying stress on marketing effort and comparing with private sector enterprises MOU are helping CPSEs to face competition and lay bench marks of corporate performance.

Study Note – 8

SOCIAL ENVIRONMENTYAL 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.***

Answer the following questions:

1. **State the National Voluntary Guidelines, 2011 on Social, Environmental and Economic Responsibilities of Business.**

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 behaviour, 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.

2. Discuss main issues to be complied in relation to CSR under section 135 of the Companies Act, 2013.

Answer:

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. In case company is not existing for 3 years then the average of immediately financial years shall be considered.

(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, and the unspent amount related to any outgoing project, shall have to transferred to a fund specified under Schedule VII within a period of six months of close of financial year.

3. How do companies should evaluate a CSR Project?

Answer:

The following steps should be taken for proper evaluation of CSR projects which would be taken up/ funded by a company.

(i) Scrutiny of documents of the implementing agency/ beneficiary

(ii) Inspection, on satisfaction with documents

(iii) Need analysis: nature of beneficiaries

(iv) Feasibility of the project

(v) Track record of the implementing agency

(vi) Financials: capital/ revenue expenses: matching of capital and revenue expenses of the beneficiary.

(vii) Parallel financing by govt.: to check whether Govt. / other agency is also financing the same project.

(viii) Joint financing: collaborative project: with other companies

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.

4. Discuss the concept of e-Governance.

Answer:

(a) 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

(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 My Gov 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 governance 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.

5. Discuss the role, functions and authority of CSR Committee.

Answer:

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. In many companies this Committee is delegated upto a certain amount to be spent on C without reference to Board of Directors.

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.

6. What do you think are the benefits of CSR initiatives taken by the company to the company.

Answer:

Benefits of CSR programme.

As the business environment gets increasingly complex and stakeholders become vocal about their expectations, good CSR practices can only bring in greater benefits, some of which are as follows:

(a) *Communities provide the licence to operate:* Apart from internal drivers such as values and ethos, some of the key stakeholders that influence corporate behaviour include governments (through laws and regulations), investors and customers. In India, a fourth and increasingly important stakeholder is the community and many companies have started realising that the 'licence to operate' is no longer given by governments alone, but communities that are impacted by a company's business operations. Thus, a robust CSR programme that meets the aspirations of these communities not only provides them with the licence to operate, but also to maintain the licence, thereby precluding the 'trust deficit'.

(b) Attracting and retaining employees: Several human resource studies have linked a company's ability to attract, retain and motivate employees with their CSR commitments. Interventions that encourage and enable employees to participate are shown to increase employee morale and a sense of belonging to the company.

(c) Communities as suppliers: There are certain innovative CSR initiatives emerging, wherein companies have invested in enhancing community livelihood by incorporating them into their supply chain. This has benefitted communities and increased their income levels, while providing these companies with an additional and secure supply chain. (d) Enhancing corporate reputation: The traditional benefit of generating goodwill, creating a positive image and branding benefits continue to exist for companies that operate effective CSR programmes. This allows companies to position themselves as responsible corporate citizens.

(d) Society as consumer: we sale product and services on the society not in the market. Therefore, social values create demand and therefore business units exist and survive.

INSOLVENCY AND BANKRUPTCY CODE, 2016

Learning Objective: *For understanding the various terms & functions of different entities in Insolvency and Bankruptcy Code, 2016*

1. Mark the correct answer and state with justification:

(i) Insolvency and Bankruptcy code 2016 is not applicable on:

- **(a) Financial Service Providers**
- **(b) Partnership Firms and Individuals**
- **(c) Limited Liability Partnership (LLP)**
- **(d) Companies Incorporated under Companies Act.**

(ii) With the introduction of IB code , the following laws have been repealed:

- **(a) Chapter XIX and Chapter XX of Companies Act, 2013**
- **(b) Part VIA, Part VII and Section 391 of Companies Act, 1956**
- **(c) SICA Act, 1985**
- **(d) All the above.**

(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:

- **(a) Session Court**
- **(b) High Court**
- **(c) Supreme Court**
- **(d) Civil Court**

(iv) The following institutions are insolvency professional agency

- **(a) Institute of Cost accountants**
- **(b) Institute of Chartered accountants**
- **(c) Institute of Company Secretaries**
- **(d) All of them.**

(v) The authority provided under the IBBI to administer and regulate the Law is:

(a) IBBI

(b) Insolvency professional

(c) Insolvency professional agency

(d) None of the above.

Answer:

(i) (a) Financial Service Providers

Justification: 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. Therefore, the Code will not apply to financial service providers.

(ii) (d)

Justification: IBBC has repealed the following laws:

(a) Chapter XIX and Chapter XX of Companies Act, 2013

(b) Part VIA, Part VII and Section 391 of Companies Act, 1956

(c) RDDBFI Act, 1993

(d) SARFAESI Act, 2002

(e) Sick Industrial Companies (Special Provisions) Act, 1985

(f) The Presidency Towns Insolvency Act, 1909

(g) The Provincial Insolvency Act, 1920

(iii) (d) Civil Court

Justification: 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.

(iv) (d)

Justification: All the three institutes are registered as Insolvency professional agencies.

(v) (a)

Justification: The authority provided under the IBBI to administer and regulate the Law is the Board itself.

2. Discuss the constitution of IBBI.

Answer:

Central Govt. shall appoint a Chairperson and 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 Q 2. 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.

3. Discus the powers and functions of the IBBI.

Answer:

The Board shall perform various functions, some of which are listed below:

(i) Register and regulate insolvency professional agencies, insolvency professionals and information utilities.
(ii) The Board exercises the powers of a Civil Court under the Code of Civil Procedure.
(iii) Levy of fees
(iv) Regulate standard of functioning of insolvency professional agencies and information utilities
(v) Conducting and lying down eligibility and curriculum for Insolvency Professional examination
(vi) Carryout investigation of IPs
(vii) Call for information
(viii) Publish information etc.

4. Explain the applicability of Insolvency and Bankruptcy Code, 2016.

Answer:

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).

(i) Companies incorporated under Companies Act Companies and other company 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)

(ii) 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, 2016 states 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.

(iii) Personal Guarantees of corporate directors

(iv) Partnership firms and proprietorship firms

(v) Individuals

5. Explain the functions of Insolvency and Bankruptcy Board of India?

Answer:

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.

6. Explain the role of committee of creditors under Insolvency and bankruptcy code 2016.

Answer:

Committee of Creditors are constituted under section of the code by The Interim Resolution Professional. 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.

7. What is a resolution plan? Who is supposed to make the plan? Who has to approve?

Answer:

A Resolution plan 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 66% of the committee of creditors and comply with some mandatory requirements prescribed in the IBC. Once approved, the Resolution Professional will send the plan to the National Company Law Tribunal 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.

The RP 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.

8. 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 pla. 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.

The question is 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.

(a) 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;

(b) 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;

9. Discuss few contents of Resolution Plan.

Answer:

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.

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