

FINAL EXAMINATION
GROUP III
(SYLLABUS 2012)
SUGGESTED ANSWERS TO QUESTIONS
DECEMBER 2015

Paper-13 : CORPORATE LAWS AND COMPLIANCE

Time Allowed : 3 Hours

Full Marks : 100

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

Answer all the questions.

Students are requested to read the instructions against each individual question also.

All workings must form part of your answer.

Assumptions if any, must be clearly indicated.

SECTION A

1. Answer all Question:

- (A) An association of 120 persons has been formed with the object of acquisition of gain. Now, due to an internal mismanagement, the said association has applied for being wound up under the provisions of the Companies Act, 2013. Advise. 3
- (B) PWL Limited is facing loss in business during the current Financial Year 2015-16. In the immediate preceding three financial years, the company had declared dividend at the rate of 8%, 10% and 12% respectively. To maintain the goodwill of the company, the Board of Directors has decided to declare 12% interim dividend for the current financial year. Examine the applicable provisions of the Companies Act, 2013 and state whether the Board of Directors can do so? 3
- (C) It is apprehended by the Directors of Minu Ltd. that they are likely to be prosecuted for an offence under the Companies Act, 2013 which is not compoundable. Explain the provisions of the Companies Act, 2013 under which the Directors can seek relief from the liability for offence. What will be the position in case prosecution has already been launched? 3
- (D) Referring to the provisions of the Securities contracts (Regulation) Act, 1956 state how a recognised stock exchange may delist the securities and how an appeal may be filed by an aggrieved investor against the decision of stock exchange for delisting of

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securities.

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- (E) Mr. Sekh, resided for a period of 150 days in India during the Financial Year 2013-2014 and thereafter went abroad. He came back to India on 1st April, 2014 as an employee of a business organization. What would be his residential status during the Financial Year 2014-2015 under Foreign Exchange Management Act, 1999. 2
- (F) What corporate governance measures are required to be implemented by the Indian companies as per Clause 49 of The Listing Agreement? Explain in brief. 5

Answer:

1. (A) According to section 464 of the Companies Act, 2013, no association or partnership consisting of more than prescribed number of persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under the Companies Act, or is formed under any other law for the time being in force. Further, the prescribed number of persons shall not exceed 100.

The association as mention in the question exceed the prescribed number of members i.e., it consists of 120 members and it is not registered as a company under the Companies Act, 2013. Where an association is formed, which has membership in excess of the number aforementioned, will be an illegal association except it is registered as company under Companies Act, 2013. Such a body will have no legal existence and it cannot be wound up under the Companies Act, 2013, or even as an unregistered company. Neither any member of it would be able to sue it nor would it be able to sue the member.

Further, every member of an association or partnership carrying on business in contravention of above law, shall be punishable with fine which may extend to one lakh rupees and shall also be personally liable for all liabilities incurred in such business.

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

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

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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 year [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.

- (C) Relief under Section 463: Under section 463(1) of the Companies Act, 2013 if in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the court hearing the case he is or maybe liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the court may relieve him, either wholly or partly, from his liability on such term, as it may think fit.

Provided that in a criminal proceeding under this sub-section the court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.

In the given case, the offence is not compoundable i. e. it carries imprisonment as a punishment either alone or with a fine. In either case, It would indicate that a criminal liability is indicated. Hence, the court will not have the power to grant relief under section 463. However, the nature of the offence will have to be examined.

- (D) According to section 21A of the Securities Contracts (Regulation) Act, 1956 the delisting of securities may take place in the following manner –

- (1) A recognized stock exchange may delist the securities, after recording the reasons therefor, from any recognized stock exchange on any of the ground or grounds as may be prescribed under this Act:

Provided that the securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard.

- (2) A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognized stock exchange delisting the securities within fifteen days from the date of the decision of the recognized stock exchange delisting the securities and the Provisions of section 22B to 22E of this Act, shall apply, as far as may be, to such appeals.

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Provided that the Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding one month

(E) According to the provisions of section 2(v) of the Foreign Exchange Management Act, 1999., a person in order to qualify for the purpose of being treated as a "Person Resident in India" in any financial year, must reside in India for a period of more than 182 days during the preceding financial year.

In the given case, Mr. Sekh has resided in India for a period of only 150 days, i.e. less than 182 days, during the financial year 2013-2014. Hence he cannot be considered as a "Person Resident in India" during the financial year 2014-2015 irrespective of the purpose or duration of his stay.

(F) Corporate Governance measure - In general, corporate governance measures include appointing non-executive directors, placing constraints on management power and ownership concentration as well as ensuring proper disclosure of financial information and executive compensation. Many companies have established ethics and/or social responsibility committees on their boards to review strategic plans assess progress and offer guidance on social responsibilities of their business. In addition to having committees and boards, some companies have adopted guidelines governing their own policies and practices around such issues like board diversity, independence and compensation.

Indian companies are required to comply with clause 49 of the listing agreement primarily focusing on following areas:

- i. Board composition and procedure.
- ii. Audit committee responsibilities.
- iii. Subsidiary companies
- iv. Risk management
- v. CEO/CFO certification of financial statements and internal controls
- vi. Legal compliance
- vii. Other disclosures

SECTION B

2. Answer any four question:

15 ×4= 60

(A) (i) A meeting of the Board of 'No Holiday Ltd.' was held on a national holiday. However due to lack of quorum, the proceedings of the meeting could not be held and therefore the Chairman of the meeting decided with the consent of the majority that the Board meeting be adjourned to next Monday. However, the date fixed for the adjourned meeting happened to be a 'national holiday'. Advise and draw your

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- analogy with reference to the provisions of the Companies Act, 2013, whether the adjourned meeting of the Board can be held on a day which is a public holiday. 4
- (ii) Write short notes on the Constitution of Audit Committee under Sec. 177 of the Companies Act, 2013. 3
- (iii) Which offences are deemed to be Non-cognizable under the Companies Act, 2013? Enumerate the relevant provisions. 5
- (iv) Mr. B. Pandey, a newly appointed director of Ankrit Ltd. applied for DIN (Director Identification Number). Advise him about the list of scanned documents required to be attached with Dir.3. 3

Answer:

2. (A)

- (i) The Companies Act 2013 vide section 173 (3) merely states that a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means. It further provides for the board meeting to be held on shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting.

Therefore, with reference to Section 96 and section 173(3) of Companies Act, 2013 as far as the holding of a board meeting is concerned, it may be held at any place on any day including a national holiday if agreed by the directors.

However, when a board meeting is adjourned due to lack of quorum, then under section 174(4) the meeting shall stand automatically adjourned to the same day at the same time and place in the next week or if that day is a national holiday till the next succeeding day, which is not a national holiday, at the same time and place, unless the Articles provide otherwise.

Therefore, the adjourned meeting cannot be held on a national holiday unless the Articles of the company provide that it can. The meeting will have to be held on the next working day to the national holiday.

- (ii) Constitution of Audit Committee: As per the section 177 of the Companies Act, 2013, every listed company and the following classes of companies shall constitute an Audit Committee-
- (a) all public companies with a paid up capital of ten crore rupees or more;
 - (b) all public companies having turnover of one hundred crore rupees or more

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(c) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

The paid up share capital or turnover or outstanding loans, or borrowings or debenture or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for the purposes of this rule.

As per section 139 of Companies Act, 2013, where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

(iii) Offences to be non-cognizable. A new section 439 of the Companies Act, 2013 came into force on 12th September, 2013 which provides for offences to be non-cognizable. According to this section:

(a) Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub-section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.

(b) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorized by the Central Government in that behalf.

(c) The court may take cognizance of offences relating to issue and transfer of securities and non-payments of dividend, on a complaint in writing, by a person authorized by the Securities and Exchange Board of India.

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

(e) Where the complainant is the Registrar or a person authorized by the Central Government, the presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.

(f) The above provisions shall not apply to any action taken by the liquidator of a Company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX or in any other provision of this Act relating to winding up of companies.

(g) The liquidator of a company shall not be deemed to be an officer of the company.

(iv) The following documents needs to be attached:

(a) High resolution photograph of the applicant.

(b) PAN is mandatory now. So copy of pan is mandatory for identity, name, father's name and date of birth. Proof of father's name is not required in the case of foreign nationals.

(c) Copy of passport is mandatory as an id proof in the case of foreign nationals.

(d) Present Address proof which should not be older than 2 months.

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(e) Verification as perform DIR-4 as per the format given on the MCA website.

2. (B) (i) XYZ Ltd. made an initial public offer of certain number of equity shares. Examine whether these shares can be considered as 'Goods' under the Competition Act, 2002 before allotment. 3

(ii) The Board of Directors of MKR Ltd., a banking company incorporated in India, for the accounting year ended 31-03-2015 transferred 15% of its net profit to its Reserve Fund. Certain shareholders of the company object to the above act of the Board of Directors on the ground that it is violative of the provisions, of the Banking Regulation Act, 1949. Examine the provision of Banking Act and decide:

(a) Whether contention of the Shareholders is tenable.

(b) Would your answer be still the same in case the Board of Directors transfer 30% of the company's net profits to Reserve Fund. 5

(iii) M, wants to nominate Mr. S, his 10 years old son, as a nominee for his life insurance policy. Advise him under the provisions of the Insurance Act, 1938. 3

(iv) Explain the meaning of the term "Money Laundering", x, a known smuggler was caught in transfer of funds illegally exporting narcotic drugs from India to some countries in Africa. State the maximum punishment that can be awarded to him under prevention of Money Laundering Act, 2002. 4

Answer:

2. (B)

(i) Section 2 (i) of the Competition Act, 2002 defines 'goods' as follows:

'Goods' means goods as defined in the Sale of Goods Act, 1930 and includes:

(a) products manufactured, processed or mined;

(b) debentures, stock and shares after allotment

(c) in relation to goods supplied, distributed or controlled in India, goods imported into India.

Hence, debentures and shares can be considered as 'goods' within the meaning of section 2(i) of the Competition Act, 2002 only after allotment and not before allotment.

(ii) In accordance with the provisions of the Banking Regulation Act, 1949 as contained in Section 17, every banking company incorporated in India must create a reserve fund and transfer a sum equivalent to not less than 20% of its net profits each year (as disclosed in the Profit and Loss Account prepared under section 29 and before any dividend is declared).

However, Central Government is empowered to exempt any banking company from this requirement on the recommendation of the RBI. Such exemption will be allowed only:

1. When the amount in the reserve fund and the share premium account are equal to the

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paid-up share capital of the banking company.

2. When the Central Govt., feels that its paid-up share capital and reserves are adequate to safeguard the interest of the depositors.

If the banking company appropriates any sum from the Reserve Fund or the Share Premium account, it must be reported to RBI within 21 days from the date of such appropriation explaining the circumstances leading to such appropriation.

Therefore, applying the above provisions:

- (a) Contention of share holders shall be tenable since the 15% of transfer of profits to Reserve Fund is lower than statutory limits, as provided in the Act.
 - (b) In the second case the contention of shareholders shall not be tenable, since 30% is more than the minimum statutory limit of 20% of the net profits.
- (iii) Section 39 of the Insurance Act, 1938 deals with the nomination by policy holder. According to which, the holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate, the person or persons to whom the money secured by the policy shall be paid in the event of his death.

Provided that, where any nominee is a minor, it shall be lawful for the policy holder to appoint any person in the manner laid down by the insurer, to receive the money secured by the policy in the event of his death during the minority of the nominee.

The given problem is based on above provision i.e. minor as a nominee. Here, Mr. M wants to nominate S his minor son as a nominee for his life insurance policy. He can do so after fulfilling the requirement of the above provision.

- (iv) Money Laundering: Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting it as untainted property shall be guilty of offence of money laundering. [Section 3 of the Prevention of Money Laundering Act, 2002]

Paragraph 2 of Part A of the Schedule to the Prevention of Money Laundering Act, 2002, covers offences under the Narcotic Drugs and Psychotropic Substances Act, 1985. Whereby, illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances (section 23) is covered under paragraph 2 of Part A.

Punishment: Section 4 of the said Act provides for the punishment for Money-Laundering. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine. But where the proceeds of crime involved in money-

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laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to 10 years instead of 7 years

2. (C) (i) **The Board of Directors of Sunrise Ltd. want to circulate unaudited accounts before the Annual General Meeting of the Shareholders of the company. Examine the validity of the act of the Board of Directors under the provisions of the Companies Act, 2013. 3**
- (ii) **Under provisions of Companies Act, 1956, relating to producer company, examine whether the office of director of such company shall fall vacant in the following circumstances:**
- (a) **X, a Director of P.K.R. Ltd., a producer company has made a default in payment of loan taken from a company and default continues for 60 days.**
- (b) **Z, a Director of the above company could not call the Annual General Meeting for the company due to some natural calamity which occurred three days before the schedule date. 4**
- (iii) **Mr. Rana an allottee of shares in a company brought action against a Director in respect of false statement in prospectus. The Director contended that the statements were prepared by the promoters and he has relied on them. Is the Director liable under the circumstances? Decide referring to the provisions of the Companies Act, 2013. 5**
- (iv) **Speciality Chemicals Private Limited is controlled by two groups of members. The group holding majority of shares made an application to Company Law Board alleging oppression by the minority group. Give your answer according to the provisions of the companies Act, 1956. 3**

Answer:

2. (C)
- (i) Section 129 (2) of the Companies Act, 2013 provides that at every annual general meeting of a company, the Board of Directors of the company shall lay financial statements for the financial year. Further section 134 (7) provides that signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of:
- (a) Any notes annexed to or forming part of such financial statement
- (b) The auditor's report; and
- (c) The Board's report

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It, therefore, follows that unaudited accounts cannot be sent to members or unaudited accounts cannot be filed with the Registrar of Companies. So the act of the Board of Directors of sunrise limited is not valid.

(ii) Producer company – Vacation of Office of a Director:

(a) According to provisions of Companies Act, 1956, as contained in section 581Q, if the producer company in which a director has made a default in repayments of any advances or loans taken from any company or institution or any other person and such default continues for 90 days, the office of such director shall become vacant. In the given case the default on the part of X, the director continues for less than 90 (i.e. only 60 days) days, the office of director shall not fall vacant.

(b) The office of director of a producer company shall become Vacant if the Annual General Meeting or extraordinary general meeting of the producer company, in which he is a director, is not called in accordance with the provisions of this Act except due to natural calamity or such other reason. In the given case since the Annual General Meeting could not be held due to some natural calamity, the office of Z, the director shall not fall vacant. This is an exception.

(iii) Yes, the Director shall be held liable for the false statements in the prospectus under sections 34 and 35 of the Companies Act, 2013. Section 34 imposes a criminal punishment on every person who authorizes the issue of such prospectus. Whereas section 35 more particularly includes a director of the company in the imposition of civil liability for such mis-statements,

The only situations when a director will not incur any liability for mis-statements in a prospectus are as under:

(a) No criminal liability under section 34 shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

(b) No civil liability for any mis-statement under section 35 shall apply to a person if he proves that:

- (I) Having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent: or
- (II) The prospectus was issued without his knowledge or consent, and that on becoming aware of its issue; he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

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Therefore, in the present case the director cannot hide behind the excuse that he had relied on the promoters for making correct statements in the prospectus. He will be liable for mis-statements in the prospectus.

- (iv) Right not confined to minority: According to section 399 of the Companies Act, 1956, the right to apply for relief under section 397 or 398 is given to 100 members or 1/10th of the total number of members or any member or members holding not less than 1/10 of the issued share capital of the company.

There is nothing in this section which suggests even indirectly that unless the application is made by minority shareholders it is not maintainable. The right to apply is, therefore, not confined to oppressed minority of the shareholders alone.

As per Re Sindhri Iron Foundry (P) Ltd., the oppressed majority also might apply for relief under section 397. Therefore, the petitioners are likely to succeed in getting relief provided the other condition laid down in section 397 (i.e. that to wind up the company would unfairly prejudice such members, but that otherwise the facts would justify the making of a winding-up order on just and equitable ground) is satisfied.

- 2. (D) (i) Bank of India, a Nationalised Bank, wants to acquire the Financial Assets of MARS LTD. Is the Bank or Financial Institutions bound to give notice of acquisition of financial assets to the obligor?**

State the Provisions in this regard with reference to the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. 6

- (ii) SHRIJA LTD. secures residential accommodation for the use of its Managing Director by entering into a license arrangement under which the company has to deposit a certain amount with the Landlord to secure compliance with the terms of the license agreement.**

Can it be considered as a loan to a Director? Discuss with reference to the Companies Act, 2013. 3

- (iii) On the complaint of Mr. X, SEBI after enquiry finds that Mr. Y a Chief Executive Officer of the company, on the basis of unpublished price sensitive information, has indulged in the trading of the securities of that company. Explain, on the basis of the said finding, what action SEBI can take against Mr. Y under the Securities and Exchange Board of India Act, 1992. 4**

- (iv) State whether the following statements are correct or incorrect:**

- (i) As per Companies Act, 2013, listed company means a Public Company which has any of its securities listed on any recognised stock exchange.**

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- (ii) **Foreign Exchange drawal to the extent of US Dollars 80,000 for cultural tours in Wasington does not require prior permission / approval of the Government of India.** 1+1=2

Answer:

2. (D)

- (i) The provision under the SARFAESI Act, 2002 relating to giving of notice of acquisition of financial asset by the bank or financial institution are explained below:

(a) **Notice of acquisition of financial asset to obligor [Section 6(1)]:**

The bank or financial institution may, if it considers appropriate, give a notice of acquisition of financial assets by any securitization company or reconstruction company, to the concerned obligor and any other concerned person and to the concerned registering authority (including Registrar of Companies) in whose jurisdiction the mortgage, charge, hypothecation, assignment or other interest created on the financial assets had been registered.

(b) **Duty of obligor to make payments to the securitization or reconstruction company [Section 6 (2)]**

Where a notice of acquisition of financial asset under sub-section (1) is given by a bank or financial institution, the obligor, on receipt of such notice, shall make payments to the concerned securitization company or reconstruction company, as the case may be and payment made to such company in discharge of any of the obligations in relation to the financial asset specified in the notice shall be a full discharge to the obligor making the payment from all liability in respect of such payment.

(c) **Money received by lender to be held in trust [Section 6(3)]**

Where no notice of acquisition of financial asset under sub-section (1) is given by any bank or financial institution, any money or other properties subsequently received by the bank or financial institution, shall constitute monies or properties held in trust for the benefit of and on behalf of the securitization company or reconstruction company, as the case may be and such bank or financial institution shall hold such payments or property which shall forthwith be made over or delivered to such securitization company or reconstruction company, as the case may be, or its agent duly authorized in this behalf.

Hence, the above procedures are required to be followed by Bank of India before acquisition of the assets of MARS Ltd.

- (ii) As per section 185 of the Companies Act, 2013, no company shall directly or indirectly make any loan to a director.

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In the present case, the company has provided the managing director with a housing accommodation. It does not amount to a loan because of the following reasons:-

- ❖ The company has not given any deposit or advance to the managing director. The amount deposited with the landlord cannot be said to be an indirect loan to the managing director.
- ❖ It is a usual practice to give a security deposit to the landlord with whom a rent or lease agreement is entered into. Thus, the company has made the security deposit on account of bonafide business considerations.
- ❖ It is of no concern of the managing director as to the terms on which the company secures residential accommodation for him.

It is the company and not the director who has entered into the lease agreement. Therefore, the company can at anytime use the accommodation for any other purpose and the managing director will have to vacate it, as and when desired by the company.

- (iii) Section 15G of the Securities and Exchange Board of India (SEBI) Act, 1992 deals with penalty for Insider Trading. According to this, if any insider –
- (a) either on his own behalf or on behalf of any other person, deals in securities of a body corporate on any stock exchange on the basis of any unpublished Price sensitive information; or
 - (b) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law, or
 - (c) counsels or procures for, any other person to deal in any securities of Anybody corporate on the basis of unpublished price sensitive information,

Shall be liable to penalty of twenty-five crore rupees or three time the amount of profits made out of insider trading, whichever is higher. As such SEBI can, after following the prescribed procedure, impose a penalty on Mr. Y. The maximum penalty that SEBI can impose is Rupees twenty-five crores or three times the amount of profits made out of insider trading, whichever is higher.

- (iv)
- a. Incorrect, Listed companies means a company which have any of its securities listed on any of its recognized stock exchange, [sec. 2(52) of the Companies Act 2013].
 - b. Incorrect, Foreign exchange draws to the extent of US Dollar 80000 for cultural tour in Washington requires prior permission / approval of the Govt., of India irrespective of the amount of foreign exchange required as prescribed in the second schedule to the foreign exchange management (current Account Transaction) Rules 2000.

- 2. (E) (i) A scheme of amalgamation of Anu Co. Ltd. with Priya Co. Ltd. was presented to the Tribunal for sanction after the scheme was approved by an overwhelming majority**

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of shareholders, secured and unsecured creditors of both companies at meeting held under Section 391 of the Companies Act, 1956. While the scheme was pending in the High Court, some of the members requisitioned EGM for the purpose of requesting company 'Anu Limited' to negotiate with company 'Priya Ltd.' as according to the requisitionists the exchange ratio was not fair and reasonable. Can the directors refuse to call EGM? Comment. 3

(ii) Alliance Ltd. a newly formed company, obtained a certificate to commence business on 1st January, 2014. But it did not hold its statutory meeting up to 30th June, 2014, nor did it deliver a statutory report to the Registrar. The Registrar presented a petition to the Tribunal for company's winding up on the ground that the company has made default in holding the statutory meeting. Can the company be wound up on this ground? Would your answer differ if Alliance Ltd. were a private limited company? Decide with reference to relevant provisions of the Companies Act, 1956. 3

(iii) How an auditor shall report in his audit report to comply with CARO 2015 in respect of

- (a) Repayment of dues
- (b) Guarantee by the company
- (c) Use of funds
- (d) Fraud

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(iv) What are the qualifications required to be appointed members of state commission as per the Indian Electricity Act, 2003? 3

Answer:

2. (E)

(i) In such a case, the tribunal cannot prevent a company from holding a requisitioned meeting for considering a proposed modification of a scheme which is already pending before the tribunal for its sanction

The Court has wide powers u/s 392 to give directions or make such modification in the compromise or arrangement as it may consider necessary for proper working of the compromise or arrangement arrived at.

Any modification in the scheme could be considered by the Court at the instance of a shareholder.

Further, a mere discussion by the shareholders at a properly requisitioned meeting about the proposal modification to the scheme pending before the Court for sanction would not by

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itself affect either the Scheme or the Court's power to consider the modification and sanction of scheme with or without modification.

Hence, directors can't refuse to call an EGM requisitioned by the member.

- (ii) Yes, the company can be wound up on this ground. If Alliance Ltd., is a private company, then it cannot be wound up on this ground. The problem in question falls under Section 433 (b). As per this section, a company may be wound up by the Tribunal if default is made in holding statutory meeting or delivering statutory report to the Registrar. In the present case, the company has made a default in holding the statutory meeting and also in delivering statutory report to the Registrar. The tribunal may, therefore, order the winding up of the company under Section 433 (b).

A private company is neither required to hold a statutory meeting nor to deliver a statutory report to the Registrar, a petition for its winding up is, therefore, not maintainable under section 433 (b)

- (iii) As per CARO 2015 specified in paragraph 3, an auditor is required to state in respect of

- (a) Repayment of dues: Whether the company has defaulted in repayment of dues to a financial institution or bank or debenture holders, If yes, the period and amount of default to be reported.
- (b) Guarantee by company: Whether the company has given any guarantee for loans taken by others from bank or financial institutions, the terms and conditions whereof are prejudicial to the interest of the company.
- (c) Use of Funds: Whether term loans were applied for the purpose for which the loans were obtained.
- (d) Fraud: Whether any fraud on or by the company has been noticed or reported during the year; if yes, the nature and the amount involved is to be indicated

Reasons to be stated for unfavorable or qualified answer

- (1) Where in the auditor's report, the answer to any of the questions referred to in paragraph 3 is unfavorable or qualified; the auditor's report shall also state the reasons for such unfavorable or qualified answer, as the case may be.
- (2) Where the auditor is unable to express any opinion in answer to a particular question, his report shall indicate such fact together with the reasons why it is not possible for him to give an answer to such question.

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(iv) Qualifications of appointment of Chairperson and Members of State Commission [Section 84 of the Indian Electricity Act, 2003]

(1) The Chairperson and the Members of the State Commission shall be persons of ability, integrity and standing who have adequate knowledge of, and have shown capacity in dealing with problems relating to engineering, finance, commerce, economics, law or management.

(2) Notwithstanding anything contained in sub-section (1), the State Government may appoint any person as the Chairperson from amongst persons who is or has been, a Judge of a High Court. Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of that High Court.

Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of that High Court.

(3) The Chairperson or any other Member of the State Commission shall not hold any other office.

(4) The Chairperson shall be the Chief Executive of the State Commission.

SECTION C

3. Answer any two questions (10 marks each): **10 × 2 = 20**

(A) (i) "Corporate Social Responsibility is to be considered as an investment and not as a charity"— Elaborate the statement. **6**

(ii) "Corporate Governance is about promoting fairness". Is it truly beneficial?- Discuss.

4

Answer:

3. (A)

(i) The originally defined concept of Corporate Social Responsibility (CSR) needs to be interpreted and dimensionalised in the broader conceptual framework of how the corporate embed their corporate values as a new strategic asset, to built a basis for trust and cooperation within the wide stakeholder community.

Though there have been evidences that record a paradigm shift from charity to a long-term strategy, yet the concept still is believed to be strongly linked to philanthropy. There is a need to bring about an attitudinal change in people about the concept.

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By having more coherent and ethically driven discourses on CSR, it has to be understood that CSR is about how corporates place their business ethics and behaviours to balance business growth and commercial success with a positive change in the stakeholder community.

Several corporate today have specific department to operationalise CSR. There are either foundations or trust or a separate department within an organization that looks into implementation of practices.

Being treated as a separate entity, there is always a flexibility and independence to carry out the tasks.

But often these entities work in isolation without creating a synergy with the other departments of the corporate. There is a need to understand that CSR is not only a pure management directive but it is something that is central to the company and has to be embedded in the core values and principles of the corporate.

Whatever corporate do within the purview of CSR has to be related to core business. It has to utilize things at which corporate are good. It has to be something that takes advantage of the core skills and competencies of the companies. It has to be a mandate of the entire organization and its scope does not simply begin and end with one department in the organization.

Charity means the act of donating money, goods, time or effort to support a charitable cause in regard to a defined objective. Charity can be equated with benevolence and charity for the poor and needy. It can be any selfless giving towards any kind of social need that is not served, underserved or perceived as unserved or undeserved. Charity can be by any individual or by a corporate.

Corporate Social Responsibility is about how a company aligns their values to social causes by including and collaborating with their investors, suppliers, employees, regulators and the socially as a whole. The investment in CSR may be on people centric issues and/or planet issues. A CSR initiative of a corporate is not a selfless act of giving; companies derive long-term benefits from the CSR initiatives and it is this enlightened self interest which is driving the CSR initiatives in companies.

- (ii) Corporate Governance deals with promoting corporate fairness, transparency and accountability. It is concerned with structures and processes for decision-making, accountability, control and behavior at the top level of the organizations. It influences how the objectives of an organization are set and achieved, how risk is monitored and assessed and how performance is optimized. It is truly beneficial and it has the following benefits.

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1. **Improve Financial Performance:** Socially responsible business practices are linked to positive financial performance.
2. **Operating Cost Reduction :** CSR initiative can help to reduce operating costs.
3. **Brand Image and Reputation:** CSR helps a company to increase its brand image and reputation among the public, which in turn increase its ability to attract investors and trading partners. Proactive CSR Practices would lead to a favourable public image resulting in various positive outcomes like consumer and retailer loyalty, easier acceptance of new products and services, market access and preferential allocation of investment funds.
4. **Increased sales and customer loyalty:** Business must first satisfy customer's key buying criteria i.e. price, quality, safety and convenience.
5. **Productivity and Quality:** Improved working conditions, reduced environmental impacts or increased employee involvement in decision-making , leads to (a) increased productivity and (b) reduced errors.
6. **Ability to attract and retain employees:** Companies perceived to have strong CSR commitments find it easier to recruit and retain employees, resulting in reduction in turnover and associated recruitment and training costs.

(B) (i) State the reasons for failure of construction industry to embrace whole life cycle costing (WLCC). 5

(ii) State the factors responsible for increasing attention towards Corporate Social Responsibility by the corporates. 5

Answer:

3. (B)

(i) Reason for failure of construction industry to embrace Whole Life Cycle Costing (WLCC):

Currently, the application of whole life cycle costing (WLCC) in the construction industry is still hindered significantly by the lack of standard method and the excuse of lack of sound data upon which to arrive at accurate decisions. As a result, the output from WLCC models is looked on as unreliable. A Government report issued by the Building Research Establishment on whole Life Cycle Costing Identified several factors that presently act as barriers to applying WLCC.

- The lack of universal methods and standard formats for calculating whole life cycle costs.
- The difficulty in integration of operating and maintenance strategies at the design phase.
- The scale of the data collection exercise, data inconsistency

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- The requirement for an independently maintained database on performance and cost of building components.

These barriers might be directly related to the absence of adequate knowledge of WLCC processes and mechanisms. There may also be a lack of willingness from stakeholders to set up appropriate mechanisms to solve these problems. If, for example, all building occupiers were required to submit annual running cost profiles, the risk associated with WLCC techniques could be significantly reduced (Bird 1987). In fact, White (1991) argues the case for 'performance profiles' and in particular, highlights again the requirements for a universal construction data information system. One could argue that a plethora of WLCC models does exist but the common denominator in practical application and development is lack of appropriate information or know-how to use and develop models with existing information.

It seems to be worth noting how both the academic and practical 'schools of thought' in the industry need to get their own houses in order if significant steps are to be taken in the wider applications of WLCC. Newton (1991) in his work in cost modeling procedures highlights the need for a methodological and organized framework for such research activities. The sheer complexity of many models lends little to practical application and in many cases, if not the majority, the lack of available good quality data prohibits further development. In terms of the practitioners, they need to be willing to encourage clients and building occupiers into adopting a more holistic approach to running cost controls so that procedures can be put in place to aid all those requiring WLCC cost profiles.

- (ii) The following are the few factors and influences which have led to increasing attention being devoted to Corporate Social Responsibility (CSR) by the Corporate:
- i. Globalization – coupled with focus on cross-border trade, multinational enterprises and global supply chains – is increasingly raising CSR concerns related to human resources management practices, environmental protection, and health and safety, among other things.
 - ii. Governments and intergovernmental bodies, such as the United Nations, The OECD (Organisation for Economic Cooperation and Development) and the ILO (International Labour Organisation) have developed compacts, declarations, guidelines, principles and other instruments that outline social norms for acceptable conduct.
 - iii. Advances in communications technology, such as the Internet, Cellular phones and personal digital assistants, are making it easier to track corporate activities and disseminate information about them. Non-governmental organizations now regularly draw attention through their websites to business practices they view as problematic.

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- iv. Consumers and investors are showing increasing interest in supporting responsible business practices and a demanding more information on how companies are addressing risks and opportunities related to social and environmental issues.
- v. Numerous serious and high-profile breaches of corporate ethics have contributed to elevated public mistrust of corporations and highlighted the need for improved corporate governance, transparency, accountability, and ethical standards.
- vi. Citizens in many countries are making it clear that corporations should meet standards of social and environmental care, no matter where they operate.
- vii. There is increasing awareness of the limits of government legislative and regulatory initiatives to effectively capture all the issues that CSR addresses.

Businesses are recognizing that adopting an effective approach to CSR can reduce risk of business disruptions, open up new opportunities, and enhance brand and company reputation.

(C) (i) What is the relationship between Corporate Social Responsibility and Sustainable Development? 5

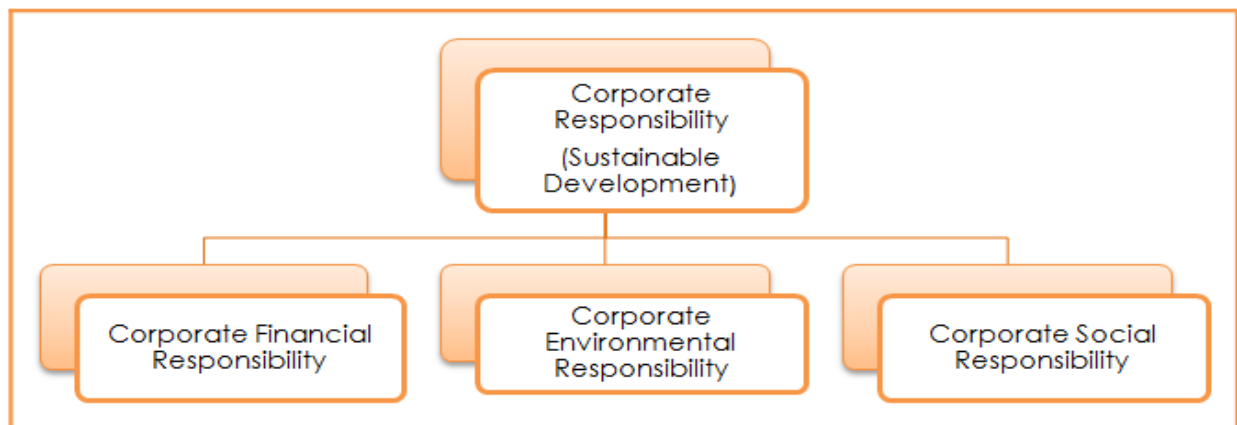
(ii) What are the difficulties encountered in Governance in the State owned Business? 5

Answer:

3. (C)

(i) Relation between Corporate Social Responsibility (CSR) & Sustainable Development (SD)

CSR is an integral part of sustainable development. Exactly, where it fits in is vigorously debated, mainly because the concept of sustainable development also has many different interpretations. This diagram, illuminates CSR's relationship with sustainable development.



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The basic idea to incorporate the sustainability aspect into business management should be grounded in the ethical belief of give and take to maintain a successful company in the long-term. As the company is embedded in a complex system of interdependences-in-and outside the firm, this maintaining character should be fulfilled due to the company's commitment in protecting the environment or reducing its ecological footprint and due to the general acceptance of its corporate behaviour by society in and outside of the firm.

It is recommended that CSR is to be used as social strand of the SD-concept which is mainly built on a sound stakeholder approach. CSR focus especially on the corporate engagement realizing its responsibilities as a member of society and meeting the expectations of all stakeholders.

The concept of SD on a corporate level is stated as **Corporate Sustainability** which is based on the three pillars economic, ecological and social issues, therefore, the social dimension is named CSR. The corporate orientation on sustainability is specially affected by external influences due to the specific sustainability orientation on a macro-level:

Legal/institutional: laws, human rights, etc.

Technological: new technologies

Market: suppliers, competitors, customers, trends

Societal: NGO's, society

Cultural: attitudes, behaviour

Environmental : nature, availability of resources

(ii) While routine governance regulations becomes 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 publicity-listed private enterprises. The typical difficulties faced are:-

- ❖ The board of directors will comprise essentially of bureaucrats drawn from various ministries which are interested in the PSU in addition, there may be nominee directors from banks or financial institutions who have loan or equity exposures to the unit. The effect will be to have a board much beyond the required size, rendering decision-making a difficult process.
- ❖ The Chief executive or managing director (or chairman and managing director) and other functional directors are likely to be bureaucrats and not necessarily professionals with the required expertise. This can affect the efficient running of the enterprise.
- ❖ Difficult to attract expert professionals as independent directors. The laws and regulations

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may necessitate a percentage of independent component 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 of their counterparts from the private sector.