

**FINAL EXAMINATION
GROUP - III
(SYLLABUS 2016)**

**SUGGESTED ANSWERS TO QUESTIONS
DECEMBER - 2017**

Paper-13 : CORPORATE LAWS & COMPLIANCE

Time Allowed : 3 Hours

Full Marks : 100

The figures in the margin on the right side indicate full marks.
Answer Question No. 1 which is compulsory, carrying 20 marks and
answer any 5(five) Questions from Question No. 2 to Question No. 8.

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

(a) Multiple choice questions: 2x10=20

- (i) The power of appointing additional director can be exercised by the
 - (A) Annual General Meeting
 - (B) Board Meeting
 - (C) Statutory Meeting
 - (D) None of the above
- (ii) A company has 9 Directors, on 01-01-2016. The office of 2 Directors have fallen vacant on 02-01-2016. The quorum required for conducting a Board meeting is
 - (A) 4
 - (B) 3
 - (C) 2
 - (D) 5
- (iii) Power to recognize Stock Exchange vests with
 - (A) Central Government
 - (B) State Government
 - (C) SEBI
 - (D) Supreme Court
- (iv) A Government department supplying water for irrigation to the agriculturists after levying charges for water supplied can be considered as
 - (A) Firms
 - (B) Enterprise
 - (C) Joint venture
 - (D) Joint sector
- (v) The Apples producers of Shimla have formed an association to control the production of apples. This association is called as
 - (A) Pool
 - (B) Cartel
 - (C) Merger
 - (D) Combination
- (vi) Every Banking Company incorporated in India shall prepare a balance sheet and profit and loss account as on the last working day of the
 - (A) Calendar Year
 - (B) Accounting Year
 - (C) Month
 - (D) None of the above
- (vii) A memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulation in this

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- behalf is known as
- (A) Red Herring Prospectus
 - (B) Abridged Prospectus
 - (C) Shelf Prospectus
 - (D) Deemed Prospectus
- (viii) The Chairman of the Insurance Regulatory and Development Authority shall hold office for a term of _____ from the date on which he enters upon his office and should be eligible for reappointment.
- (A) 3 years
 - (B) 4 years
 - (C) 5 years
 - (D) 6 years
- (ix) Corporate Governance is a blend of the Internal and External Corporate Governance
- (A) Techniques
 - (B) Mechanisms
 - (C) Systems
 - (D) Methods
- (x) Which of the following is the advantage of the family business over non-family business?
- (A) Staff recruitment
 - (B) Raising funds for growth
 - (C) Ownership vs. Management
 - (D) Deep industry insight

Answer:

1. (i) (B) The power to appoint additional directors vests with the Board of Directors and it will be decided in the AGM of the company.
- (ii) (B) The total strength shall be $9-2=7$ directors. Quorum shall be higher of 2 or $1/3$ rd of 7. $1/3$ rd of 7 comes to 2.33. As per Clause (i) of Explanation to section 174(4), any fraction of a number shall be rounded off as 1. Accordingly, the quorum shall be 3 directors (being higher of 2 or 3).
- (iii) (C) Power to recognize Stock Exchange vests with Central Government. However, Central Government has delegated the powers to SEBI vide its notification No.F.No. 1/57/SE/93 dated 13.9.94. (Section 3 of Securities Contracts (Regulation) Act, 1956).
- (iv) (B) The given problem relates to Section 2(h) of the Competition Act, 2002. As per this section 2(h), enterprise means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods.
- (v) (B) The term "cartel" has an inclusive meaning. Thus an association formed to control the production of apples is within the aforesaid definition of a cartel. Hence the association of apple producers of Shimla will be considered as a cartel under the provisions of the Act.
- (vi) (B) According to Section 29 of the Banking Regulation Act 1949 every Banking Company incorporated in India, in respect of all business transacted by it and through its branches in India, shall prepare a balance sheet and profit & loss account as on the last working day of the Accounting year which is (1st April to 31st March.)
- (vii) (B) Abridged Prospectus is a shorter version of the prospectus that includes all the most key elements of the typical prospectus.

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- (viii) (C) The Chairman of the Insurance Regulatory and Development Authority shall hold office for a term of five years from the date on which he enters upon his office and should be eligible for reappointment. Maximum age of Chairman to be 65 year: [First Proviso to section 5(1)]. No person shall hold office as such Chairman after he has attained the age of 65 years.
- (ix) (B) Corporate Governance is a blend of the internal and external corporate governance mechanisms. The external mechanisms include the managerial labour market, the capital market, takeover and legal systems. The internal governance mechanisms include the board of directors and most important is ownership
- (x) (D) Deep Industry Insight. Family businesses gain significant experience and expertise as they typically work in one industry for longer durations. This gives them the added advantage of understanding and appreciating the challenges faced in that industry much better than any non-family businesses.
2. (a) **Minu Limited was incorporated by furnishing false informations. As per the Companies Act, 2013, state the power of the Tribunal in this regard.** 7
- (b) **Referring to the provisions of the Companies Act, 2013, examine the validity of the following:**
The Board of Directors of ABC Limited proposes to declare dividend at the rate of 20% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of this Act. 4
- (c) **The Board of Directors of a company have filed a complaint with the Institute of Chartered Accountants of India against their Statutory Auditors for their failing to attend the Annual General Meeting of the Shareholders in which audited accounts were considered. Comment.** 5

Answer:

2. (a) According to section 7(7) of the Companies Act, 2013:
Incorporation by furnishing of incorrect information: Without prejudice to the provisions of sub-section (6), where a company has got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—
- (a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
- (b) direct that liability of the members shall be unlimited; or
- (c) direct removal of the name of the company from the register of companies; or
- (d) pass an order for the winding up of the company; or
- (e) pass such other orders as it may deem fit:
- Provided that before making any order under this sub-section.—
- (i) the company shall be given a reasonable opportunity of being heard in the matter; and
- (ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.
- (b) Prohibition on declaration of dividend: Section 123(6) of the Companies Act, 2013, specifically provides that a company which fails to comply with the provisions of section 73 (Prohibition of acceptance of deposits from public) and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares.

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In the given instance, the Board of Directors of ABC Limited proposes to declare dividend at the rate of 20% to the equity share holders, in spite of the fact that the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act 2013. So according to the above provision, declaration of dividend by the ABC Limited is not valid.

- (c) **Auditors Attendance at Annual General Meeting:** As per Section 146 of the Companies Act, 2013, it is right of the auditor to receive notices, and other communications relating to any general meeting and to be heard at such meeting, relating to the matter of his concern, however, it is duty of the auditor to attend the same or through his authorised representative unless otherwise exempted.

In the instant case, the Board of Directors of a company have filed a complaint with the Institute of Chartered Accountants of India against their statutory auditors for their failing to attend the Annual General Meeting of the Shareholders in which audited accounts were considered.

In view of above discussed provisions of section 146, the statutory auditor of the company should attend the general meetings either through himself or through his authorised representative.

3. (a) **Robertson Ltd. is a company registered in Thailand. Although, it has no place of business established in India, yet it is doing online business through telemarketing in India. Whether it will be treated as a Foreign Company under the Companies Act, 2013? Explain.** 7

- (b) **Various complaints have been made against the activities of a Co-operative Banking company to the effect that, if unchecked, the shareholders, depositors and others will suffer heavily and the complainants requested for the appointment of directors by Reserve Bank of India. Discuss whether the Reserve Bank has any powers to inspect the records of the Co-operative Bank to ascertain the truth or otherwise in the complaints and to appoint directors in the Co-operative Bank under the Banking Regulation Act, 1949.** 5

- (c) **The Board of Directors of Stepping Stones Publications Ltd. at a meeting held on 15.01.2014 resolved to borrow a sum of ₹15 crores from a nationalized bank. Subsequently the said amount was received by the company. One of the Directors, who opposed the said borrowing as not in the interest of the company has raised an issue that the said borrowing is outside the powers of the Board of Directors. The Company seeks your advice and the following data is given for your information:**

- (i) Share Capital ₹ 5 crores
- (ii) Reserves and Surplus ₹ 5 crores
- (iii) Secured Loans ₹ 15 crores
- (iv) Unsecured Loans ₹ 5 crores

Advise the management of the company. 4

Answer:

3. (a) According to section 2(42) of the Companies Act, 2013, "foreign company" means a company or body corporate incorporated outside India which -
- (a) has a place of business in India whether by itself or through an agent, physically through electronic mode; and
 - (b) conducts any business activity in India in any other manner.

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

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

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

- (b) Power of Reserve Bank of India to inspect banks (Section 35 of the Banking Regulation Act, 1949): RBI is empowered to conduct inspection of any bank and to give them direction as it deems fit. All banks are bound to comply with such directions. Every directors or other officer of the bank shall produce all such books, documents as required by the inspector. The inspector may examine on oath any director or other officers.

RBI shall supply the bank a copy of such report of the inspection. RBI submits report to Central Government and the latter, on scrutiny, if is of the opinion that the affairs of the bank are being conducted detrimental to the interest of its depositors, it may, after giving an opportunity of being heard, to the bank, may order in writing prohibiting the bank from receiving fresh deposits, direct the RBI to apply section 38 for winding up of the bank.

Power of RBI to appoint Directors (Section 36AB of the Banking Regulation Act, 1949): RSI is empowered to appoint additional Directors for the banking company with effect from the date to be specified in the order, in the interest of the bank or that of depositors. Such additional directors shall hold office for a period not exceeding three years or such further period not exceeding three years at a time.

- (c) According to the provisions of Section 180(1)(c) of the Companies Act, 2013, there are restrictions on the borrowing powers to be exercised by the Board of directors. According to the said section, the borrowings should not exceed the aggregate of the paid up capital and free reserves. While calculating the limit, the temporary loans obtained by the company from its bankers in the ordinary course of business will be excluded. However, from the figures available in the present case the proposed borrowing of ₹15 crores will exceed the limit mentioned. Thus, the borrowing will be beyond the powers of the Board of directors.

Thus, the management of Stepping Stone Publications Ltd., should take steps to convene the general meeting and pass a special resolution by the members in the meeting as stated in Section 180(1)(c) of the Companies Act, 2013. Then the borrowing will be valid and binding on the company and its members.

- 4. (a) (i) ABC Private Limited is a company in which there are eight shareholders. Can a member holding less than one-tenth of the share capital of the company apply to the Tribunal for relief against oppression and mismanagement? Give your answer according to the provisions of the Companies Act, 2013.**

- (ii) Does the scheme of compromise or arrangement require approval of preference shareholder?** **4+3=7**

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- (b) (i) Shareholders of Hide and Seek Ltd. are not satisfied about performance of the company. It is suspected that some activities being run in the name of the company are not in the interest of the company or its members. 101 out of total 500 shareholders of the company have made an application to the Central Government to appoint an inspector to carry out investigation and find out the true picture.

With reference to the provisions of the Companies Act, 2013, mention whether the shareholders' application will be accepted. Elaborate.

- (ii) B B Ltd. is a listed company and it has been served with notice for appointment of small shareholders' director. Referring to the provisions of the Companies Act, 2013, advise on the following:

What is the tenure of small shareholders' director and whether he can be re-appointed as such, after expiry of his tenure? Also state whether he can be appointed as an officer of the company on expiry of his tenure as small shareholders' director. 6+3=9

Answer:

4. (a) (i) Under section 244 of the Companies Act, 2013, in the case of a company having share capital, the following member(s) have the right to apply to the Tribunal under section 241:
- (a) Not less than 100 members of the company or not less than one-tenth of the total number of members, whichever is less; or
 - (b) Any member or members holding not less than one-tenth of the issued share capital or the company provided the applicant(s) have paid all the calls and other sums due on the shares.

In the given case, since there are eight shareholders. As per the condition (a) above, 10% of 8 i.e. 1 satisfies the condition. Therefore, a single member can present a petition to the Tribunal, regardless of the fact that he holds less than one-tenth of the company's share capital.

- (ii) Preference shareholders: The term member' includes preference shareholders also. Further, preference shareholders are a class of members and their rights may be affected differently in the proposed scheme of arrangement. Hence their approval is also required.

If the Court/Tribunal directs separate meeting of preference shareholders and equity shareholders, then the scheme should be approved by requisite majority in both such meetings held as per directions of the Court/Tribunal.

- (b) (i) According to the Companies Act, 2013, the Central Government under section 210 (1) may order an investigation into the affairs of the company, if it is of the opinion that it is necessary to do so:
- (a) on the receipt of a report of the Registrar or Inspector under section 208;
 - (b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated;
 - (c) in public interest.

According to section 210 (3) of the Companies Act, 2013, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.

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The shareholders' application will not be accepted as under 210 of the Companies Act, 2013, Central Government may order an investigation into affairs of the company on the intimation of a special resolution passed by a company that the affairs of the company ought to be investigated and then may appoint the inspectors. Here, 101 out of total 500 shareholders of the company have made an application to the Central Government to appoint an inspector to carry out investigation but it is not sufficient as the company has not passed the special resolution.

- (ii) The tenure of small shareholder's director shall not exceed a period of 6 consecutive years and on the expiry of the tenure, such director shall not be eligible for re-appointment.

A small shareholders' director shall not, for a period of 3 years from the date on which he ceases to hold office on a small shareholders' director in a company, be appointed in or be associated with such company in any other capacity, either directly or indirectly.

5. (a) (i) **In the annual general meeting of XYZ Ltd., while discussing on the matter of retirement and reappointment of director Mr. X, allegations of fraud and financial irregularities were levelled against him by some members. This resulted into chaos in the meeting. The situation was normal only after the Chairman declared about initiating an inquiry against the director, Mr. X, however, could not be re-appointed in the meeting. The matter was published in the newspapers next day. On the basis of such news, whether the court can take cognizance of the matter and take action against the director on its own? Justify your answer with reference to the provisions of the Companies Act, 2013.**
- (ii) **What is the role of the Audit Committee vis-a-vis the statutory auditor when the company wishes to engage them to perform certain engagements not restricted under Section 144?** **4+4=8**
- (b) (i) **X was appointed as Managing Director for life by the Articles of Association of a private company incorporated on 1st June, 2014. Examine in this connection.**
(A) Can 'X' be appointed for life as Managing Director?
(B) Is it possible for the company in general meeting to remove 'X' from his office of directorship during his life time?
- (ii) **Explain briefly over-riding preferential payments in accordance with the provision of the Companies Act, 2013.** **4+4=8**

Answer:

5. (a) (i) Section 439 of the Companies Act, 2013 provides that offences under the Act shall be non-cognizable. As per this section:
1. 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.
 2. 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.

Thus, in the given situation, the court shall not initiate any suo moto action against the director Mr. X without receiving any complaint in writing of the Registrar of Companies, a shareholder of the company or of a person authorized by the Central Government in this behalf.

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- (ii) According to section 177(5), the Audit Committee is empowered to;
- (1) call for the comments of the auditors about:
 - (A) internal control systems,
 - (B) the scope of audit, including the observations of the auditors,
 - (C) review of financial statement before their submission to the Board,
 - (2) discuss any related issues with the internal and statutory auditors and the management of the company.
- Audit committee should review the annual financial statements and submit the same to the Board with its recommendations, if any.

- (b) (i) (a) Under section 196(2) of the Companies Act, 2013 lays down that no company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time. No concession or exception is allowed by the Act to private companies.

Hence, 'X' cannot be appointed as Managing Director for life in a private company.

- (b) Section 169(1) of the Companies Act, 2013 empowers the company to remove a director, by ordinary resolution before the expiry of his period of office after giving him an opportunity of being heard. This section applies to both public and private companies. It applies to all directors except a director appointed by the Tribunal under section 242 of the Act. The above provision applies to the Managing Director also as he is a director of the company and the member of its Board of Directors. Hence, it is possible for the company in general meeting to remove 'X' before the expiry of his term of office by an ordinary resolution.

- (ii) Overriding preferential payments (Section 326)
Section 326(1) notwithstanding anything contained in this Act or any other law for the time being in force in the winding up of a company:
- (a) workmen's dues, and
 - (b) debts due to secured creditors to the extent such debts rank under clause (iii) of the proviso to Section (1) of Section 325 pari passu with such dues, shall be paid in priority to all other debts.

In case of the winding up of a company, the sums towards wages or salary referred to in sub-clause (i) of clause (b) of Sub-Section (3) of Section 325, which are payable for a period of two years preceding the winding up order or such other period as may be prescribed, shall, be paid in priority to all other debts (including debts due to secured creditors), within a period of thirty days of sale of assets and shall be subject to such charge over the security of secured creditors as may be prescribed.

Sub-Section (2) states that the debts payable under the proviso to Sub-Section (1) shall be paid in full before any payment is made to secured creditors and thereafter debts payable under that Sub-Section shall be paid in full, unless the assets are-insufficient to meet them, in which case they shall abate in equal proportions Preferential payments.

- 6. (a) Business should support inclusive growth and equitable development. Explain briefly as per National Voluntary Guidelines 2011 in this regard. 7**

- (b) Interior Pvt. Ltd. is a manufacturing company having turnover of ₹ 210 crore but having maximum outstanding loan from public financial institution of ₹ 90 crore only during the preceding financial year. You are required to state whether the company is liable for internal audit as per the provisions of the Companies Act, 2013. 5**

- (c) XYZ. Ltd. is a listed company having turnover of ₹ 1200 crores during the financial year 2015-16. The CSR committee of the Board formulated and recommended a CSR project which was approved by the Board. Company finalised the project under its CSR initiatives which require funds @ 5% of average net profit of the company for last three financial years. Will such excess expense be counted in subsequent financial years as a part of CSR expenditure? Advise. 4

Answer:

6. (a) 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.

Core Elements

- (a) Businesses should understand their impact on social and economic development, and respond through appropriate action to minimise the negative impacts.
 - (b) Businesses should innovate and invest in products, technologies and processes that promote the wellbeing of society.
 - (c) Businesses should make efforts to complement and support the development priorities at local and national levels, and assure appropriate resettlement and rehabilitation of communities who have been displaced owing to their business operations.
 - (d) Businesses operating in regions that are underdeveloped should be especially sensitive to local concerns.
- (b) Applicability of Provisions of Internal Audit : As per section 138 of the Companies Act, 2013, read with rule 13 of Companies (Audit and Auditors) Rules, 2014 every private company shall be required to appoint an internal auditor or a firm of internal auditors, having-
- (i) turnover of two hundred crore rupees or more during the preceding financial year; or
 - (ii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year;

Thus, either of the condition is required to be satisfied for the applicability of the provision. The internal auditor to be appointed shall either be a chartered accountant whether engaged in practice or not 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 companies auditor may or may not be an employee of the company.

Interior Pvt. Ltd. is having turnover of ₹ 210 crore and maximum outstanding loan from public financial institution of ₹ 90 crore during the previous financial year, here in the case, the turnover is over and above two hundred crore rupees i.e. either of the condition in respect of turnover or outstanding loans is satisfied. Therefore the company is liable for internal audit as per section 138 of the Companies Act, 2013.

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(c) In terms of Section 135(5) of the Companies Act, 2013, the Board of every company to which section 135 is applicable, shall ensure that the company spends, in every Financial year at least 2 per cent of average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR policy. There is no provision for carry forward of excess expenditure to the next year(s). The words used in the section are 'at least'. Therefore, any expenditure over 2% would be considered as voluntary higher spending.

7. (a) Referring to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 state the circumstances under which the Reserve Bank of India may cancel the certificate of registration granted to a Securitisation Company. **8**

(b) With reference to the provisions of Insurance Act, 1938 as amended by Insurance Regulatory and Development Authority Act, 1999, state the norms in respect of paid up equity capital for carrying out the business of an insurer. Also state the items that are excluded in determining the amount of paid up equity capital of an insurer under the said Acts. **4**

(c) (i) Central Government and Government of Maharashtra together hold 40% of the paid-up share capital of MN Limited. A government company also holds 20% of the paid-up share capital in MN Limited.

(ii) PQ Limited is a subsidiary but not a wholly owned subsidiary of a government company.

Examine with reference to the provisions of the Companies Act, 2013 whether MN Limited and PQ Limited can be considered as Government Company. **4**

Answer:

7. (a) Cancellation of Certificate of Registration (Section 4 of the securitization and reconstruction of financial assets and enforcement of Security Interest Act, 2002).

As per the section 4 of the Securitisation & Reconstruction of Financial Assets and Enforcement of security Interest Act, 2002, the Reserve Bank may cancel a certificate of registration granted to a securitization company or a reconstruction company, if such company-

- (i) ceases to carry on the business of securitisation or asset reconstruction; or
- (ii) ceases to receive or hold any investment from a qualified institutional buyer; or
- (iii) has failed to comply with any conditions subject to which the certificate of registration has been granted to it; or
- (iv) at any time fails to fulfill any of the conditions referred to in clauses (a) to (g) of sub-section (3) of section 3; or
- (v) fails to-
 - (a) comply with any direction issued by the Reserve Bank under the provisions of this Act; or
 - (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; or
 - (c) submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank; or
 - (d) obtain prior approval of the Reserve Bank required under sub-section (6) of section 3.

(b) Requirement of Paid Up equity capital for insurance business: No insurer carrying on the business of life insurance, general insurance, health insurance or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority of India Act, 1999, shall be registered unless he has, —

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- (i) a paid-up equity capital of rupees one hundred crores, in case of a person carrying on the business of life insurance or general insurance; or
- (ii) a paid-up equity capital of rupees one hundred crore, in case of a person carrying on exclusively the business of health insurance; or
- (iii) a paid-up equity capital of rupees two hundred crore, in case of a person carrying on exclusively the business as a re-insurer.

Items to be excluded in determining the amount of paid up equity share capital: In determining the paid-up equity capital specified above, any preliminary expenses incurred in the formation and registration of any insurer as may be specified by the regulations made under this Act, shall be excluded.

(c) According to section 2(45) of the Companies Act, 2013, "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.

- (i) The Central Government and Government of Maharashtra together hold 40% of the paid-up share capital of MN Limited. A government company also holds 20% of the paid-up share capital in MN Limited.

In this case, MN Limited is not a Government company because the holding of the Central Government and Government of Maharashtra is 40% which is less than the 51% prescribed under the definition of Government Company. The holding of the government company in MN Limited of 20% cannot be taken into account while counting the prescribed limit of 51%.

- (ii) PQ Limited is a subsidiary but not a wholly owned subsidiary of a government company

In this case, PQ Limited is a government company as the definition of Government Company clearly specifies that a Government Company includes a company which is a subsidiary company of a Government company. Whether the subsidiary should be a wholly owned subsidiary or not is not clearly mentioned under the definition of the Government company under section 2(45).

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

4×4=16

- (a) Objectives of the Competition Act, 2002**
- (b) Difference between Mediation and Conciliation**
- (c) Benefits of Listing**
- (d) Objectives of MOU System**
- (e) Strategy to tackle black money**

Answer:

8. (a) Objectives of the Competition Act, 2002

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.

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- (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.

(b) Difference between Mediation and Conciliation

The meaning of these words as understood in India appears to be similar. 'Mediation' is a way of settling disputes by a third party who helps both sides to come to an agreement, which each considers acceptable. Mediation can be 'evaluative' or 'facilitative'. 'Conciliation', is a procedure like mediation but the third party, the conciliator, takes a more interventionist role in bringing the two parties together and in suggesting possible solutions to help achieve a settlement. The difference lies in the fact that the 'conciliator' can make proposals for settlement, 'formulate' or 'reformulate' the terms of a possible settlement while a 'mediator' would not do so but would merely facilitate a settlement between the parties.

From the very wording it appears that the 'Mediation and Conciliation Panel' as contemplated under Section 442 (as the name suggests) will adopt dual approach of 'Mediation' as well as 'Conciliation' in settling the disputes.

(c) 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 investors enabling them to make crucial decisions with regard to holding or disposing of such securities.
- (e) Shares for listed companies command better credibility as they could be offered as security for loans from Banks and Fls.

(d) Objectives of MoU System

The specific objectives of the MoU system are to:

- (a) Improve the performance of CPSEs through 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.

(e) Strategy to tackle black money:

The committee has identified following strategy to tackle black money:

- (a) Preventing generation of black money.
- (b) Discouraging use to black money.
- (c) Effective detection of black money.
- (d) Effective investigation and adjudication.
- (e) Other steps.