

FINAL EXAMINATION

GROUP III

(SYLLABUS 2016)

SUGGESTED ANSWERS TO QUESTIONS

DECEMBER 2018

Paper- 13: CORPORATE LAWS & COMPLIANCE

Time Allowed: 3 Hours

Full Marks :100

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

Answer Question No. 1 which is compulsory carrying 20 marks and answer any 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.

2 × 10 = 20

(a) Multiple Choice Questions:

- (i) At a general meeting of a company a matter was to be passed by a special resolution. Out of forty members of the company, twenty voted in favour of the resolution, five voted against it and five votes were cancelled. The remaining ten members abstained from voting. The chairman declared resolution as

- (A) Passed
- (B) Invalid
- (C) Cancelled
- (D) Accepted

- (ii) Payment of Commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian Company is

- (A) Permissible
- (B) Prohibited
- (C) Forwarded
- (D) Restricted

- (iii) All Board members and senior management personnel should affirm compliance with the Code on annual basis. The annual report of the Company shall contain a declaration to this effect signed by the

- (A) Auditor.
- (B) Director.
- (C) Managing Director.
- (D) CEO.

- (iv) The quality of something which enables one to understand the truth easily. In this context of Corporate Governance, it implies an accurate, adequate and timely

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disclosure of relevant information about the operating result etc., of the Corporate enterprise to the stakeholders. This principle is known as

- (A) Transparency
 - (B) Accountability
 - (C) Independence
 - (D) Clarity
- (v) SEBI has to be responsive to the needs of the three groups which constitute the Market. Which of the following does not constitute the Market?
- (A) The issuers of securities
 - (B) The investors
 - (C) The brokers
 - (D) The market intermediaries
- (vi) Which of the following listing provides arbitrage opportunities to the investors, whereby they can make profit based on the difference in the prices prevailing in the said exchanges?
- (A) Multiple listing
 - (B) Initial listing
 - (C) Listing for right issue
 - (D) Listing for public issue
- (vii) Which of the following is not the objective of Competition Act, 2002?
- (A) To prevent practices having adverse effect on competition.
 - (B) To prevent competition in market
 - (C) To protect the interest of the consumers
 - (D) To ensure freedom of trade carried on by the other participant in marketing India and for matter connected there with or incidental thereto.
- (viii) 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 is known as
- (A) Acquisition
 - (B) Agreement
 - (C) Cartel
 - (D) Pool
- (ix) An authorised dealer, money changer, offshore banking or any other persons for the time being authorized to deal in foreign exchange or foreign securities is known as
- (A) Authorised banker
 - (B) Authorised dealer
 - (C) Authorised person
 - (D) Authorised money changer
- (x) The process of money laundering generally involves three stages. Which is the second stage?
- (A) Placement
 - (B) Layering
 - (C) Integration
 - (D) Contribution

Answer: 1(a)

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- (i) (a) Section 114(2). For a valid special resolution, votes cast in favour should be at least three times the votes cast against the resolution, if any. Abstentions are not to be taken into account.
Thus, 20 votes being in favour and only 5 votes against the resolution, the resolution is validity passed.
- (ii) (b) According to the rules, drawal of foreign exchange for certain transactions are prohibited. In respect of certain transactions drawal of foreign exchange is permissible with the prior approval of Central Government. Payment of Commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian Company is prohibited.
- (iii) (d) All Board members and senior management personnel shall affirm Compliance with the Code on annual basis. The annual Report of the Company shall contain a declaration to this effect signed by the CEO.
- (iv) (a) The quality of something which enables one to understand the truth easily. In this context of Corporate Governance, it implies an accurate adequate and timely disclosure of relevant information about the operating result etc. of the Corporate enterprise to the stakeholders.
- (v) (c) In 1995, the SEBI was given additional statutory power by the Government of India through an amendment to the SEBI Act, 1992 SEBI has to be responsive to the needs of the three groups which constitute issuers of securities, investors and the market intermediaries.
- (vi) (a) 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.
- (vii) (b) Keeping in view the economic development of the country, the Competition Act, 2002 was laid down to provide for an establishment of a commission not to seek the objective of preventing competition in market.
- (viii) (c) Cartel is 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.
- (ix) (c) Authorised person is an authorized dealer, money changer, off shore banking or any other persons for the time being authorized to deal in foreign exchange or foreign securities.
- (x) (b) Layering is the second stage of money laundering
- (2)(a) (i) The common seal is a seal used by the Corporation as the symbol of its incorporation and also a statutory requirement for a company. Comment**
- (ii) M/s. Kaberi Mutual Benefits Nidhi Ltd. is incorporated as a Nidhi Company under the Companies Act, 2013. The Board of Directors of the Company have decided to appoint Mr. Raja (a minor) as a member of the company. Referring to the applicable provisions of the Companies Act, 2013 read with rules thereunder, advise them.**
- (iii) Is it obligatory for a Producer Company to have internal audit of its accounts for financial year 2016-17?**

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- (iv) A company incorporated outside India having shareholders who are all Indian citizens. Examine and state whether the above company can be considered as 'Foreign Company' under the Companies Act, 2013. 2+2+2+2=8
- (b) BET Ltd. incurred loss in business up to current quarter of financial year 2017-18. The company has declared dividend at the rate of 11%, 16% and 18% respectively in the immediate preceding three years. In spite of the loss, the Board of Directors of the company have decided to declare interim dividend @ 15% for the current financial year. Examine the decision of BET Ltd. stating the provisions of declaration of interim dividend under the Companies Act, 2013. 4
- (c) The Board of Directors of Best Consultants Limited, registered in Kolkata, proposes to hold the next board meeting in the month of May, 2017. They seek your advice in respect of the following matters :
- (i) Can the board meeting be held in Chennai, when all the Directors of the Company reside at Kolkata?
- (ii) Is it necessary that the notice of the board meeting should specify the nature of business to be transacted?

Advice with reference to the relevant provisions of the Companies Act, 2013

2+2=4

Answer :2(a)

- (i) The common seal acts as the official signature of the company. Prior to the companies (amendment) Act, 2015, the common seal is a seal used by corporation as the symbol of its incorporation and also a statutory requirement for a company. As a departure from this concept, the companies (amendment) Act, 2015 has deleted the requirement of having common seal compulsorily.
- After this Amendment, in case a company does not have a common seal, the Authorisation shall be made by two directors or by a director and a company secretary, wherever the company has appointed a company secretary.
- (ii) According to rules 8(3) of Nidhi rules, 2014, a minor shall not be admitted as a member of Nidhi. However, deposit may be accepted in the name of a minor, if they are made by the natural or legal guardian who is a member of Nidhi. Hence the Board of Directors of the company cannot appoint Mr. Raja (a minor) as a member of the company.
- (iii) Yes as per section 581ZF of the companies Act, 1956, every producer company is required to have internal audit of its accounts carried out by a chartered accountant at such intervals and in such manner as may be specified in the articles.
- (iv) A company incorporated outside India, will not be deemed to be a foreign company even though all the shareholders are Indian citizens, unless it has a place of business in India.

Answer : 2(b)

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 the quarter immediately preceding the date of declaration of interim

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dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

In the instant case, interim dividend by BET Ltd. 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. $(11+16+18)/3=45/3=15\%$]. Therefore, decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable.

Answer : 2(c)

- (i) There is no provision in the Companies Act, 2013 under which the board meetings must be held at any particular place. The Companies Act lays down the provisions for holding meetings by video conferencing, sending notices, procedures at the meeting etc. Therefore, there is no difficulty in holding the board meeting at Chennai even if all the directors of the company reside at Kolkata and the registered office is situated at Kolkata provided that the requirements regarding the holding of a valid board meeting and the other provisions relating to the signing of register of contracts, taking roll calls, etc. are complied with.
- (ii) Section 173(3) of the Companies act, 2013 provides for the giving of notice of every board meeting of not less than seven days to every director of the company. There is no provision in the Act laying down the contents of the notice. Hence, it may be construed that notice may be interpreted as intimation of the meeting and does not necessarily include the sending of the Agenda of the meeting. However, considering the importance of Board Meetings and the responsibilities placed on the Directors for decisions taken at the meetings, it is inevitable for them to be properly prepared and informed about the items to be discussed at the Board Meetings. As a matter of good secretarial practice, the notice should include full details and particulars of the business to be transacted at the Board Meetings.

The articles of association of the company may make it mandatory to do so in almost all cases.

3.(a)(i) Mr. Balu is a CEO in a public company. State whether the limits on managerial remuneration under section 197 of the Companies Act, 2013 and schedule V apply to Mr. Balu.

(ii) Mr. X is a Whole Time Director (WTD) in a Super Ltd. He is also Whole Time Director (WTD) in its subsidiary company. Discuss the validity of Mr. X as WTD in its subsidiary company. **2+2=4**

(b) Mr. Faithful is an auditor of Daga Ltd. While auditing the accounts of the Daga Ltd. for 2016- 2017, he finds manipulation of fund around Rs. 2 crore committed by the officers of the company against the Daga Ltd. Examine in the light of the Companies Act, 2013 the way frauds are required to be reported by Mr. Faithful and the duty of the Daga Ltd. in relation to reporting of such frauds. **7**

(c) Comment with reference to the provisions of the Companies Act, 2013 in respect of the following:-

- (i) Mr. P who is not qualified to be appointed as an independent director is appointed by the Board of Directors of XYZ Company Limited, for an independent director, as an alternate director.**
- (ii) On the request of bank providing financial assistance, the Board of Directors of PQR Limited decides to appoint on its Board Mr. Peter, as nominee director.**

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Articles of Association of the Company do not confer upon the Board of Director any such power. Further, there is no agreement between the company and the bank for any such nomination. **2+3=5**

Answer : 3(a)

- (i) Section 197 applies with regard to remuneration of directors including MD/WTD and Manager. Schedule V provides conditions with regard to appointment and remuneration of MD/WTD and Manager. Therefore, the provisions related to the managerial remuneration are not applicable on all KMP's i.e. to CEO, CFO or CS but they are applicable only to MD/WTD and Manager. So, Section 197 & Schedule V, shall not apply to Mr. Financer.
- (ii) As per section 203(2) of the Companies Act, 2013, every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration. A whole-time key managerial personnel shall not hold office in more than one company at the same time except in its subsidiary company [Section 203(3)]. So accordingly, Mr. X can validly hold the position of Whole time Director in the subsidiary of Super Ltd.

Answer :3(b)

Reporting of frauds by auditor and other matters : As per section 139 read with rule 13 of the Companies (Audit and Auditors) Rules, 2014, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officer or employees, the auditor shall report the matter to the Central Government.

The auditor shall report the matter to the Central Government as under:-

- (i) **The auditor shall report the matter to the Board or the Audit Committee**, as the case may be, immediately but not later than two days of his knowledge of the fraud, seeking their reply or observations within forty-five days;
- (ii) On receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within fifteen days from the date of receipt of such reply or observations;
- (iii) In case the auditor fails to get any reply or observations from the board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations ;
- (iv) The report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an email in confirmation of the same;
- (v) The report shall be on the letter-head of the auditor containing postal address, email address and contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number; and
- (vi) The report shall be in the form of a statement as specified in Form ADT-4.

Details of each of the fraud reported to the Audit Committee or the Board during the year shall be disclosed in the Board's Report by the company :-

- (a) Nature of Fraud with description;
- (b) Approximate Amount involved ;
- (c) Parties involved, if remedial action not taken; and
- (d) Remedial actions taken.

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Answer : (c)

- (i) According to first proviso to section 161(2) of the Companies Act, 2013, 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.

In the present case, Mr. P who is not qualified to be appointed as an independent director is appointed by the Board of Directors of XYZ Company Limited; for an independent director, as an alternate director. Thus, the said appointment is not valid.

- (ii) According to section 161(3) of the Companies Act, 2013, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company, subject to the articles of a company.

In the present case, on the request of bank providing financial assistance the Board of Directors of PQR Limited decides to appoint on its Board Mr. Peter, as nominee director. Articles of Association of the company do not confer upon the Board of Directors any such power and further there is no agreement between the company and the bank. Thus, the appointment of Mr. Peter as nominee director is not valid as Articles do not confer upon the Board of Directors any such power.

- 4.(a) ABC Ltd. and DEF Ltd. are wholly owned by Government of West Bengal. As a policy matter, the Government issued administrative orders for merging DEF Ltd. with ABC Ltd. in the public interest. State the authority with whom the application for merger is required to be filed under the provisions of the Companies Act, 2013.**

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- (b) Excel Limited is a listed company with a turnover of Rs. 60crores in Financial Year 2016-2017. The Company appoints Ms. R as the Women Director on 1st March, 2017. Ms. R is already a Director in twelve companies including ten Public Companies. State briefly whether the appointment of Ms. R in Excel Limited is valid as per provision of the Companies Act, 2013.**

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- (c) An Audit Committee of a Public Limited Company constituted under section 177 of the Companies Act, 2013 submitted its report of its recommendation to the Board. The Board, however, did not accept the recommendations. In the light of the situation, analyze whether ;**

- (i) The Board is empowered not to accept the recommendations of the Audit Committee.**

- (ii) If so, what alternative course of action, would be Board resort to ? **3+1=4****

- (d) State briefly the power of Tribunal in case Auditor acted in a Fraudulent Manner. **4****

Answer : 4 (a)

Authority to whom the application for merger is to be made According to Section 237 of the Companies Act, 2013, where 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.

Thus, in the given situation of merger between two wholly owned Government companies in public interest, there is no specific authority with whom the application for merger is required as the Central Government shall by notification in the Official Gazette, will provide for the amalgamation of the two said companies into a single company.

Answer: 4(b)

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Number of directorships : As per section 165(1) of the Companies Act, 2013, no person shall hold office as director, including any alternate directorship, in more than 20 companies at the same time.

Out of the limit of 20, the maximum number of public companies in which a person can be appointed as a director shall not exceed 10. [Proviso to section 165(1)]

Private companies that is either holding or subsidiary company of a public company shall be included in reckoning the limit of public companies in which a person can be appointed as a director.

In the instant case, Ms. R was appointed as a women director on 1st March, 2017 in Excel Limited. She was already holding directorship in twelve companies including ten public companies.

As Ms. R was already a director in ten public companies, her appointment in Excel Limited is not valid as it will lead to her directorship in 11 public companies.

In this case, either she can choose between the companies in which she wishes to continue to hold the office of director or resign her office as director in the other remaining companies to maintain the limit of holding of directorship.

Answer : 4(c)

(i) As per Section 177(2) and (3) of the Companies Act, 2013 an audit committee must be formed within a year of the commencement of the Act or within a year of the incorporation of a company as the case may be, and will consist of at least 3 directors out of which the independent directors shall constitute the majority.

Under section 177(8) the Board's Report which is laid before a general meeting of the company under section 134(3) where the financial statements of the company are placed before the members, must disclose the composition of the audit committee and also where the Board has not accepted any recommendations of the audit Committee the same shall be disclosed alongwith the reasons therefor. Therefore, the Board is empowered not to accept the recommendations of the Audit Committee but only under genuine circumstances and with legitimate reasons.

(ii) If the Board does not accept the recommendations of the Audit Committee, it shall disclose the same in its report under section 134(3) placed before a general meeting of the company.

Answer : 4(d)

Power of Tribunal in case Auditor acted in a Fraudulent Manner. As per sub-section (5) of the section 140 of the Companies Act, 2013, the Tribunal either suo motu or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors.

However, if the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place.

It may be noted that an auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447 of the said Act.

It is hereby clarified that the case of a firm, the liability shall be of the firm and that of every partner or partners who acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to the company or its director or officers.

5. (a) A group of members of XYZ Limited has filed a petition before the Tribunal alleging

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various acts of oppression and mismanagement by the majority shareholders of the company. The Petitioner group holds 12% of the issued share capital of the company. During the pendency of the petition, some of the petitioner group holding about 5% of the issued share capital of the company wish to disassociate themselves from the petition and they along with the other majority shareholders have submitted before the Tribunal that the petition may be dismissed on the ground of non-maintainability.

Examine their contention having regard to the provisions of the Companies Act, 2013. 4

- (b) An officer of a company was allotted one room for two years in a guest house owned by the Company at some other city where he used to stay while on tour. It came to notice of the company that he had not vacated the said room after the expiry of two years and is holding the unauthorized possession of that room and has been permitting to stay outsiders in the said room, at a rent of Rs. 500 per day. The record shows that he had permitted the outsider for 45 days and collected Rs. 22,500 and retained the said amount with him. As per the letter of allotment, there was no such clause which can be invoked against him for making any recovery on account of such wrongful occupation.

Analyse in the given situation, whether manager of the company can seek recovery from the officer of the company under any of the provisions of his employment or the Companies Act. 5

- (c)(i) State briefly the factors to be considered by the Court while deciding the amount of fine or imprisonment under section 446A of the Companies Act, 2013.
- (ii) Asha Ltd., has made default in filing financial statements and annual returns for a continuous period of 4 financial years ending on 31st March, 2017. The Registrar of Companies having jurisdiction approached the Central Government to accord sanction to present a petition to Tribunal (NCLT) for the winding up of the company on the above ground under section 272 of the Companies Act, 2013.

Examine the validity of the RoC move, explaining the relevant provisions of the Companies Act, 2013

4+3=7

Answer: 5(a)

The argument of the majority shareholders that the petition may be dismissed on the ground of non-maintainability is not correct. The proceedings shall continue irrespective of withdrawal of consent by some petitioners. It has been held by the Supreme Court in Rajmundhry Electric Corporation vs. V.NageswarRao, AIR (1956) SC 213 that if some of the consenting members have subsequent to the presentation of the petition withdraw their consent, it would not affect the right of the applicant to proceed with the petition. Thus, the validity of the petition must be judged on the facts as they were at the time of presentation. Neither the right of the applicants to proceed with the petition nor the jurisdiction of Tribunal to dispose it of on its merits can be affected by events happening subsequent to the presentation of the petition.

Answer: 5(b)

Penalty for wrongful withholding of property : Section 452 of the Companies Act, 2013 provides for Penalty for wrongful withholding of property. According to the section :

- (1) If any officer or employee of a company –
(a) Wrongfully obtains possession of any property, including cash of the

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company; or

- (b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorized by this Act, he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than 1 lakh rupees but which may extend to 5 lakh rupees.

- (2) The Court trying an offence may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to 2 years.

Hence, as per the provisions of the Companies Act, 2013 and not giving any emphasis on the terms of employment, the manager of the company can recover possession of the room and the cash wrongfully obtained and the benefits that have been derived from such property or cash.

Answer: 5(c)

- (i) 446A. The court or the Special court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely –

- a) size of the Company;
- b) nature of business carried on by the company;
- c) injury to public interest;
- d) nature of the default, and
- e) repetition of the default

- (ii) Validity of RoC's action

According to Section 271(d) of the Companies Act, 2013, a Company may, on a petition under Section 272, be wound up by the Tribunal, if the Company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years.

In the instant case, the move by RoC to present a petition to Tribunal for the winding up of Asha Ltd. is not valid as the Company has made default in filing financial statements and annual returns for a continuous period of 4 financial years ending on 31st March, 2017.

6.(a) State briefly the power of SEBI to levy monetary fines and penalties under SEBI Act, 1992.

4

- (b) **The Board of Directors of M/s. S.K. Limited, a banking company incorporated in India, for the accounting year ended 31st March, 2018 has transferred 10% of its net profit during the year to the Reserve Fund Account. A few shareholders of the company have objected the above act of the Board on the ground that it is violative of the provisions of the Banking Regulation Act, 1949. The Board of Directors of the Company in their defense have stated that the company has received an order dated 30th April, 2018 from the Central Government exempting the company from the provisions of sub section (1) of section 17 of the Act. It is further informed that on the date of the Central Government order i.e. 30.04.2018 the paid up capital of the company was Rs. 200 crores and the amount standing in the Reserve Fund Account and Share Premium Account was Rs. 100 crores and Rs. 75 crores respectively.**

Decide whether the order of the Central Government exempting the company is justified as per the provisions of the Banking Regulation Act, 1949.

(c) (i) All offences under the Companies Act, 2013 are non-cognizable. Comment.

(ii) What are the powers of the Central Government under the Companies Act, 2013 regarding to Appeal against acquittal ?

(iii) The Securities and Exchange Board of India issued an order against a stock broker to redress the grievances of the investors within the stipulated time. The stock broker failed to do so, which is an offence under the provisions of the Securities Contracts (Regulation) Act, 1956.

Decide whether this offence can be compounded after institution of proceedings against the stock broker.

(iv) Whether a person purchasing goods not for personal use, but for resale can be considered as a 'consumer' under the Competition Act, 2002.

2+2+2+2=8

Answer : 6(a)

Power of SEBI to levy monetary fines and penalties under SEBI Act, 1992 : SEBI Act, 1992 empowers SEBI to levy monetary fines and penalties on any person incurring a default under the Act in the following cases :

- (i) Failure to furnish any document, information, books, other documents, return or report called for by the Board ;
- (ii) Failure to maintain books of account and records ;
- (iii) Failure by an intermediary to enter into an agreement with his client, redress the grievances of investors;
- (iv) Failure by a person sponsoring or carrying on any collective investment scheme, including mutual funds, without obtaining certificate of registration ;
- (v) Failure by a stock broker to issue contract notes in the form and manner specified by the stock exchange, failure to deliver any security or failure to make payment of the amount due to the investor, charging of excess brokerage ;
- (vi) Any person dealing, communicating, counseling on the basis of some price sensitive information ;
- (vii) Failure by a person to disclose the aggregate of his shareholding in a body corporate before he acquires any shares of that body corporate and failure to make a public announcement to acquire shares at a minimum price in case of takeovers.

SEBI also has the power to suspend or cancel the certificate of registration of a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market, This includes depository, depository participant, custodian of securities, foreign institutional investor and credit rating agency also.

Answer :6(b)

Reserve Fund: According to Section 17 of the Banking Regulation Act, 1949, every Banking Company incorporated in India must create a Reserve Fund and transfer a sum equal to not less than 20% of its net profits. However, the Central Government is empowered to exempt from this requirement on the recommendation of the RBI. Such exemption will be allowed only :-

- When the amounts in the reserve fund and the share premium account are not less than the paid-up capital of the banking company.
- When the Central Govt. feel that its paid-up capital and reserves are adequate to

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safe guard the interest of the depositors.

If a banking company appropriates any sum from the Reserve fund or the share premium account, it must be reported to RBI within 21 days explaining the circumstances leading to such appropriation.

In the instant case, the total amount in the reserve fund and the share premium account is Rs. 175 crores which is less than the paid-up capital of the banking company i.e. Rs. 200 crore.

In view of the above the transfer of 10% of its net profits to reserve fund is violative of the provisions of the Banking Regulation Act, 1949. Moreover, the Order of the Central Government exempting the company is not justified as per the provisions of the Banking Regulation Act, 1949.

Answer : 6(c)

- (i) As per section 439(1) of The Companies Act, 2013, every offence under the Companies Act, 2013 except the offences referred to in section 212(6) shall be deemed to be non-cognizable under the code of criminal procedure.

As per section 212(6), offence covered under section 447 of the Act shall be cognizable. Hence the given statement in the question is not valid.

- (ii) According to section 444 of The Companies Act, 2013, The Central Government may in any case arising under this Act direct :-
- Any Company Prosecutor or
 - Authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any court other than High Court.
Appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.
- (iii) The offence can be compounded after institution of proceedings against the stock broker as it is clearly stated under section 23N.
- (iv) It is not necessary that a person must purchase the goods for personal use in order to be considered as a "consumer" under Competition Act 2002. Even a person purchasing goods for re-sale or for any commercial purpose will also be considered as a "consumer" within the meaning of the section 2(f) of Competition Act, 2002.

7.(a) Explain the main provisions of clause 49 of the listing agreement with the Stock Exchanges regarding Corporate Governance. 4

(b) Discuss the National Voluntary Guidelines on "Business should respect the interests of and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized." 4

(c) (i) M/s. Toy Metal Limited had availed credit facilities from Bapi Bank Ltd. The company made repayment of loan to some extent and not entirely and accordingly, the bank took recourse under the provisions of section 13(2) of the SARFAESI Act, 2002. Consequently, possession of the mortgaged property was taken up and was duly advertised by the Bank. The company also filed an application under section 17(1) of SARFAESI Act, 2002 before the debts recovery tribunal which was dismissed by the impugned order. Being aggrieved the company approached the Court. Examine in the light of the SARFAESI Act, 2002 whether the company will succeed in the petition filed before the Court.

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- (ii) “Money Laundering does not mean just siphoning of fund.” Comment.
- (iii) The Insolvency and Bankruptcy Code, 2016 is not applicable to corporates in finance sector. Explain. 4+2+2=8

Answer: 7(a)

- (a) Clause 49, as currently in effect, includes the following key requirements :
 - a) **Board** : Independence Boards of directors of listed companies must have a minimum number of independent directors. Where the chairman is an executive or a promoter or related to a promoter or a senior official, then at least one half the board should comprise independent directors ; in other cases, independent directors should constitute at least one third of the board size.
 - b) **Audit Committees** : Listed Companies must have audit committees of the board with a minimum of three directors, two thirds of whom must be independent; in addition, the roles and responsibilities of the audit committee are specified in detail.
 - c) **Disclosure**: Listed companies must periodically make various disclosures regarding financial and other matters to ensure transparency.
 - d) **CEO/CFO Certification of Internal Controls** : The CEO and CFO of listed companies must :
 - (i) Certify that the financial statements are fair, and
 - (ii) Accept responsibility for internal controls
 - e) **Annual Reports** : Annual reports of listed companies must carry status reports about compliance with corporate governance norms.

Answer: 7(b)

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.

Core Elements

- (a) Businesses should systematically identify their stakeholders, understand their concerns, define purpose and scope of engagement and commit to engaging with them.
- (b) Businesses should acknowledge, assume responsibility and be transparent about the impact of their policies, decisions, product & services and associated operations on the stakeholders.
- (c) Businesses should give special attention to stakeholders in areas that are underdeveloped.
- (d) Businesses should resolve differences with stakeholders in a just, fair and equitable manner.

Answer: 7(c)

- (i) According to section 18(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, any person aggrieved, by any

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order made by the Debts Recovery Tribunal under sec. 17, may prefer an appeal along with prescribed fees to the Appellate Tribunal within 30 days from the date of receipt of the order of Debts Recovery Tribunal.

Further, no appeal shall be entertained unless the Borrower has deposited with the Appellate Tribunal 50% of the amount of debt due from him, as claimed by the Secured Creditors, or determined by the Debts Recovery Tribunal, whichever is less. However, the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount of not less than 25% of debt.

Thus, in the given situation, Toy Metal Limited can appeal to the Appellate Tribunal (Now to NCLT) by following the above provisions.

- (ii) Money laundering is a moving of illegally acquired cash through financial systems so that it appears to be legally acquired. Thus, Money laundering is not just the siphoning of fund but it is the conversion of money which is illegally obtained.
- (iii) Code not applicable to financial service providers – 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.

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

4×4=16

- (i) Persons who are not entitled to initiate insolvency resolution process**
- (ii) Differential Pricing**
- (iii) Record of Policies and Claims (Section 14)**
- (iv) Current account transaction (Section 2j)**
- (v) Inquiry by the Registrar [(Section 206(4))]**

Answer: 8

(i) Persons who are not entitled to initiate Insolvency resolution process

The Code states that a corporate debtor (which includes a corporate applicant in respect of such corporate debtor) shall not be entitled to make an application to initiate corporate insolvency resolution process [Section 11 of Insolvency and Bankruptcy Code, 2016] in the following cases :

- (a) when undergoing a corporate insolvency resolution process ; or
- (b) having completed corporate insolvency resolution process twelve months preceding the date of making of the application ; or
- (c) or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter ; or
- (d) in respect of him a liquidation order has been made.

Thus, application to initiate insolvency resolution process cannot be filed within 12 months or if there were violation of conditions or where order of liquidation has been made.

(ii) Differential Pricing

An issuer may offer equity shares and convertible securities at different prices, subject to the following condition :

- (a) the retail individual investors/shareholders or employees entitled for reservation making an application for equity shares and convertible securities of value not more than 2 lakh, may be offered equity shares and convertible securities at a price lower than the price at which net offer is made to other categories of

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applicants provided that such difference is not more than 10% of the price at which equity shares and convertible securities are offered to other categories of applicants.

- (b) in case of a book built issue, the price of the equity shares and convertible securities offered to an anchor investor cannot be lower than the price offered to other applicants.
- (c) In case of a composite issue, the price of the equity shares and convertible securities offered in the public issue may be different from the price offered in rights issue and justification for such price difference should be given in the offer document.
- (d) In case the issuer opts for the alternate method of book building, the issuer may offer specifies 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.

(iii) **Record of Policies and claims (Section 14)**

Every insurer, in respect of all business transacted by him, shall maintain :

- (a) a record of policies, in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policyholder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the insurer has notice.
- (b) a record of claims , every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the grounds thereof.
- (c) a record of policies and claims may be maintained in any such form, including electronic made, as may be specified by the regulations made under this Act.
- (d) Every insurer shall, in respect of all business transacted by him, endeavour to issue policies above a specified threshold in terms of sum assured and premium in electronic form, in the manner and form to be specified by the regulations made under this Act.

(iv) **Current account transaction- Section 2(j)**

'Current account transaction' means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes :

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

(v) **Inquiry by the Registrar [Section 206(4)]**

- (1) 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.
- (2) Before calling the company to furnish in writing any information or explanations

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and carrying out inquiry, the Registrar has to inform the company of the allegations made against it by a written order.

- (3) The Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar or an Inspector appointed by it for the purpose to carry out the inquiry under this sub-section.
- (4) It is further provided that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447.