

SUGGESTED ANSWERS TO QUESTIONS
FINAL EXAMINATION
GROUP - III
(SYLLABUS 2016)
DECEMBER - 2021
Paper -13 Corporate Laws & Compliance

Time Allowed : 3 Hours

Full Marks : 100

Section: A - MCQ

20X1=20

Q.1 Which of the following export documents is known as the Document of Title?

- Ans
1. Mate's receipt
 2. Bill of exchange
 3. Bill of lading
 4. Proforma invoice

Q.2 It is not compulsory for private Ltd companies to

- Ans 1. All of these.
2. Conduct statutory meetings.
 3. Issue prospectus.
 4. Maintain an index of its members.

Q.3 Public deposits cannot exceed

- Ans
1. 50% of share capital and free reserve.
 2. None of these.
 3. 25% of share capital and free reserve.
 4. 10% of share capital and free reserve.

Q.4 As per section 36(4) of Insolvency and Bankruptcy code ,2016,which of the following assets will not form a part of liquidation assets:

- Ans
1. Assets of any Indian or foreign subsidiary of the corporate debtor.
 2. Assets subject to the determination of ownership by the court.
 3. Tangible assets,whether moveable or immoveable.
 4. All proceeds of liquidation as and when they are realised.

Q.5 Providing fair compensation and safe working conditions,is related to social responsibilities towards:

- Ans
1. Shareholders.
 2. Employees.
 3. Customers.
 4. Community.

Q.6 "METRO" is which form of enterprise

- Ans
1. Private limited company
 - ✓ 2. PPP
 3. Government company
 4. Public limited company

Q.7 Which of the following instruments is also known as 'Hybrid security'?

- Ans
- ✓ 1. Preference share.
 2. Debentures
 3. Public deposit
 4. Equity shares

Q.8 Which of the following is not the feature of LLP?

- Ans
- ✓ 1. The registration of LLP is not compulsory.
 2. Compulsory to maintain accounts and get them audited.
 3. All partners have limited liability.
 4. No mutual agency.


Q.9 Which of the following FDI in resident entities is not eligible as investee entities?

- Ans  1. FDI in H.U.F
2. FDI in an Indian company.
 3. FDI in partnership.
 4. FDI in LLP

Q.10 Rule _____ means the enforcement of rules in the society legally.

- Ans  1. Application.
2. Implementation
 3. Making
 4. Following

Q.11 Which of the following is a motive for merger?

- Ans
1. Economics of scale.
 2. Surplus fund
 3. Tax shelter
 -  4. None of these.

Q.12 More instability in currency is called as _____

- Ans**
1. Country risk.
 2. Liquidity risk
 3. Currency risk.
 4. Financial risk.

Q.13 Which of the following can never be dishonoured

- Ans**
1. None of these
 2. Bank draft
 3. Cheque
 4. Both (a) and (b)

Q.14 A Nidhi shall not accept deposits exceeding _____times of its net owned funds

- Ans**
1. Fifteen times
 2. Ten times
 3. Twenty times
 4. Twenty five times

Q.15 The ethical issues relating to customers include.

- Ans**
1. Price of the product.
 2. Quality of the product.
 3. All of these.
 4. Safety in handling product.

Q.16 Principle of indemnity is not applicable to

- Ans** 1. Life insurance
2. Marine insurance
 3. Fire insurance.
 4. None of these

Q.17 The process of money laundering generally involves three stages.Which is the second stage?

- Ans**
1. Placement.
 2. Integration.
 3. Layering.
 4. Contribution.

Q.18 Which of the following is not a motive for setting up a joint venture?

- Ans** ✓ 1. None of these.
2. Diversification of risk.
 3. Tax shelter
 4. Economics of scale.

Q.19 The holders of GDRs do not carry which of the following right?

- Ans** ✓ 1. Voting right.
2. Dividends
 3. All of these.
 4. Capital appreciation

Q.20 In the case of a meeting of the Board of directors or of a committee of the board, the Minutes shall also contain.

- Ans**
1. The names of the directors present at the meeting.
 - ✓ 2. Both.
 3. In the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from or concerning with the resolution.
 4. None of these

Q.1 Which document helps to avoid and solve any ambiguity, or conflict between exporter and importer?

Answer:

Indent

Q.2 The Companies Act, 2013 is administered by which authority?

Answer:

The Companies Act 2013 is administered by the Central Government through the Ministry Of Corporate Affairs, (MCA) and offices of Registrar of Companies.

Q.3 In between the winding up and dissolution, can the company be sued in the Court of Law?

Answer:

Yes, because the legal status of the company continues.

Q.4 A company got registered with an illegal object. Can the registration be questioned?

Answer:

No, The registration can not be questioned if the Registrar has already issued the certificate of registration.

Q.5 Is the power to invest the funds of the company the prerogative of the board of directors?

Answer:

Yes

Q.6 What is the full form of RTGS?

Answer:

Real time gross settlement.

Q.7 Can the company keep any of the books of account at any other place in India other than the registered office of the company?

Answer:

Yes, Subject to intimation to the Registrar, within seven days of the Board decisions.

Q.8 What are three main target groups that can be distinguished in governance concepts?

Answer:

Government, citizens and business/interest groups.

Q.9 State whether shareholders of the company may declare interim dividend.

Answer:

No

Q.10 State which of the following terms are not defined in the companies Act,2013:

- i) The word amalgamation
- ii) The words oppression and mismanagement

Answer:

Both

Q.11 Financial statement with respect to small company may not include cash flow statement. Do you agree?

Answer:

Yes

Q.12 State whether public deposit may be accepted in joint name exceeding three?

Answer:

No

Q.13 Name the organisation formed by passing a special act.

Answer:

Statutory Company

Q.14 State whether the LLP Act, 2008 provides any facility for conversion of a LLP into private limited company.

Answer:

The LLP Act, 2008 does not provide any facility for conversion of LLP into a private limited company.

Q.15 Who defines trade based money laundering?

Answer:

Financial Action task force

Q.16 Fill in the blanks:
Public deposits can be invited by companies for a period of _____ months to _____ years.

Answer:

Six-three

Q.17 When two or more firms come together to create a new business entity that is legally separate and distinct from its parents, it is known as_____.

Answer:

Joint Venture

Q.18 A person who is indebted to a company in excess of Rs.5 lakh can be appointed as an auditor of that company.

Answer:

No

Q.19 State the effect if the resolution plan is rejected by NCLT

Answer:

If the resolution plan is rejected by the adjudicating authority. Liquidation process will commence.

Q.20 Can a person resident in India, possess foreign coins without no restriction?

Answer:

Yes

Section : C

(12X4= 48 Marks)

One LAQ

Q.1 **Insincere, limited on 22nd May, 2020. Mortgaged one of the freehold land of the company in the favour of the bank, from which Mr Daman,a director of the company had taken a housing loan for his residential purpose since Insincere Ltd. had been running in losses and was unable to honour the liabilities due towards the other creditors.The Board of directors of the company was aware of the financial crisis faced by the insincere Ltd. and of creation of a mortgage in order to give preference to Mr.Daman over other creditors. On 23rd September, 2020, some creditors of the company filed a petition for the winding up before tribunal. It passed an order for the winding up of the company on 5th November,2020. Discuss on the nature of the transaction of mortgage created with bank in the given circumstances in the light of the companies Act,2013.**

(6 Marks)

Answer:

Section 328 (1) states that when a company has given preference to a person who is one of the creditors of the company or a surety or guarantor for any of the debts or other liabilities of the company,and the company does anything or suffers anything done which has the effect of putting that person into a position which in the event of the company going into liquidation,will be better than the position, he would have been in if that thing had not been done prior to six months of making winding up application,the Tribunal, if satisfied that such transaction is a fraudulent preference may order as it may think fit forrestoring the position to what it would have been if the company had not given that preference.

Sub-Section(2) states that if the Tribunal is satisfied that there is a preference transfer of property, movable or immovable, or any delivery of goods, payment, execution made, taken or done by or against a company within six months before making winding up application, the Tribunalmay order as it may thinkfit and may declare such transactioninvalid and restore the position.

In the question, the company had created a legal mortgage on 22nd May 2020 and the creditors made a petition for winding up of the company on 23rd September 2020, so the above transaction of creation of legal mortgage on the freehold land of the company falls within the ambit of section 328 of the Act.

Therefore, creation of mortgage of the freehold land of the company is the transaction covered under the fraudulent preference since the mortgage is created 6 months preceding the date of making of winding up petition and therefore the Tribunal may order as it may think fit and may declare such transaction on creation of mortgage as invalid and restore the position.

Q.2 Perpetual Limited is an asset reconstruction company (ARC) under the SARFAESI Act, 2002. During the financial year 2020-2021. Mr Param, one of the directors of the company in urgent need of money transferred 10% of his shareholding to Mr Shariff (Another director of the company), which increased Mr Shariff's shareholding to 20%. Perpetual Ltd also appointed Mr Vikram as CEO for managing the overall operations and resources of the company. However, for the said purposes, Perpetual limited did not take approval of the Reserve Bank of India. RBI cancelled the certificate of Registration granted to Perpetual Limited. Perpetual Ltd. contended that the decision of the RBI is inappropriate as transfer of shareholding and appointment of CEO is not a substantial change in management. Discuss the validity of decisions of the RBI in the light of the applicable law

(4 Marks)

Answer:

As per Section 3(6) of the SARFAESI ACT 2002. Every asset reconstruction company, shall obtain prior approval of the Reserve Bank for any substantial change in its management including appointment of any director on the board of directors of the asset reconstruction company or managing director or chief executive officer thereof or change of location of its registered office or change in its name.

Provided that the decision of the Reserve Bank whether the change in management of a securitisation company or a reconstruction company is a substantial change in its management or not shall be final.

Explanation—For the purposes of this section, the expression "substantial change in management" means the change in the management by way of transfer of shares or change affecting the sponsorship in the company by way of transfer or shares or amalgamation or transfer of the business of the company.

In the above question, there has been change in shareholding of directors which falls under the "substantial change in management" including appointment of CEO and the decision of the Reserve Bank as to whether the change in management of the asset reconstruction company is a substantial change in management or not, shall be final.

Therefore, the decision of the Reserve Bank shall be final and will be held valid

- Q.3 Identify the form of public sector enterprise in the following cases.**
1) It is under the control of the Concerned Minister of the department.
2) Private individuals can also become shareholders.

(2 Marks)

Answer:

- 1) Departmental Undertaking
- 2) Government company

Two LAQ

- Q.1 Bharti Limited, a company listed on Bharat Stock Exchange Limited (A recognised Stock Exchange to India) had been incurring losses continuously during the preceding 3 years, but its net worth has not become negative till date. The Stock Exchange decided to delist the securities of the company after giving an opportunity of being heard to the company. Mr. Binay, (the investor) who holds equity shares up to 10% of the total equity share capital of the company, has suffered heavy losses due to delisting of securities by the Stock Exchange. You have been hired by Mr. Binay to consult him regarding the security laws. Examine the given situation and mention the various grounds of delisting under SCRA and the remedies available to Mr. Binay in the light of the securities contract (Regulation) Act, 1956 [SCRA].**

(5 Marks)

Answer:

As per Section 21A of the Securities Contracts (Regulation) Act, 1956 read with Rule 21 of the Securities Contract (Regulation) 1957, a recognised stock exchange may delist the securities, after recording the reasons therefor from any recognised 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. A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognised stock exchange delisting the securities within fifteen days from the date of the decision of the recognised stock exchange delisting the securities,

Following are the grounds namely

- (a) the company has incurred losses during the preceding three consecutive years and it has negative net worth.
- (b) trading in the securities of the company has remained suspended for a period of more than six months.
- (c) the securities of the company have remained infrequently traded during the preceding three years,
- (d) the company or any of its promoters or any of its director has been convicted for failure to comply with any of the provisions of the Act or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 or rules, regulations, agreements made thereunder. as the case may be and awarded a penalty of not less than rupees one crore or imprisonment of not less than three years.
- (e) the addresses of the company or any of its promoter or any of its directors, are not known or false addresses have been furnished or the company has changed its registered office in contravention of the provisions of the Companies Act, or
- (f) shareholding of the company held by the public has come below the minimum level applicable to the company as per the listing agreement under the Act and the company has failed to raise public holding to the required level within the time specified by the recognised stock exchange. In the above question, the net worth of the company has not become negative. Therefore, either the company or Mr. Binay may file an appeal before the Securities Appellate Tribunal against the decision of the recognised stock exchange within 15 days from the date of the decision.

Q.2 Earth Developers Private Limited, a Bengaluru based company is regular in filing its annual return as well as financial statements and has four directors but so far no managing director has been appointed. Due to the manifold increase in the construction work undertaken by the company in the last two years, it is urgently felt that a managing director needs to be appointed. Accordingly, Mr Pranav was appointed as MD by the Board of Directors at its meeting, specifying the terms and conditions including monthly remuneration, payable to him. Enumerate on the requirement and validity of an appointment of Mr. Pranav in the given scenario, in the context of relevant law.

(4 Marks)

Answer:

Section 196(4) requires that the terms and conditions of appointments of a Managing Director and the remuneration payable to him shall be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in Part I of the Schedule V.

Therefore, there is no requirement regarding the approval of appointment of Mr. Pranav as MD in the Earth Developers Private Limited, at the immediate next general meeting of the shareholders. Therefore his appointment as MD in the Earth Developers Private Limited is valid.

Q.3 A claim for loss by fire must satisfy the certain conditions. what are those conditions?

(3 Marks)

Answer:

A claim for loss by fire must satisfy the following two conditions,

(i) there must be actual loss, and

(ii) fire must be accidental and non-intentional. The property must be damaged or burnt by fire. If the property is damaged by heat or smoke without ignition, it will not be covered under the word 'fire', and the loss will not be recoverable from the insurer.

Q.1 What is an overseas direct investment? Differentiate between automatic route and approval route to direct investment.

(5 Marks)

Answer:

Direct investment outside India /overseas direct investment means investments, either under the Automatic Route or the Approval Route by way of

- I. contribution to the capital or subscription to the Memorandum of a foreign entity or
- II. purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange, signifying a long-term interest in the foreign entity. (JV or WOS).

Difference between Automatic Route and Approval Route for direct investment Automatic route for direct investment or financial commitment outside India:

An Indian Party has been permitted to make investment/undertake financial commitment in overseas Joint Ventures (JV)/ Wholly Owned Subsidiaries (WOS), as per the ceiling prescribed by the Reserve Bank.

With effect from July 03, 2014, it has been decided that any financial commitment (FC) exceeding USD 1 (one) billion (for its equivalent) in a financial year would require prior approval of the Reserve Bank even when the total FC of the Indian Party is within the eligible limit under the automatic route [i.e., within 400% of the net worth (Paid up capital + Free Reserves) as per the last audited balance sheet].

Approval route for direct investment or financial commitment outside India:

- (i) Prior approval of the Reserve Bank would be required in all other cases of direct investment (or financial commitment) abroad.
- (ii) Reserve Bank would, inter alia, take into account the following factors while considering such applications:
 - (a) Prima facie viability of the JV/WOS outside India,
 - (b) Contribution to external trade and other benefits which will accrue to India through such investment (or financial commitment),
 - (c) Financial position and business track record of the Indian Party and the foreign entity, and
 - (d) Expertise and experience of the Indian Party in the same or related line of activity as of the JV/WOS outside India.

Therefore, under the approval route (proposals not covered by the conditions under the automatic route) prior approval of the Reserve Bank would be required. For which a specific application in Form ODI with the documents prescribed therein is required to be made through the Authorised Dealer Category- 1 Banks

Q.2 State on the nature of liability caused on an offence committed under the prevention of Money Laundering Act, 2002.

(5 Marks)

Answer:

Money Laundering basically is knowingly dealing with proceeds of crime directly or indirectly. The Act provides both for civil and criminal liability. Criminal liability under the Prevention of Money Laundering Act Crime which results in tainted money is a separate offence under various laws as specified in Schedule to Prevention of Money Laundering Act. These offences are punishable under those Acts. The punishment is to the person/s who is/are involved in actually committing that offence.

The offence as specified in Section 4 of the Prevention of Money Laundering Act is a separate offence. The punishment under section 4 of Prevention of Money Laundering Act is not only to those who are actually involved in dealing with tainted money but also on those who are knowingly involved, directly or indirectly, in dealing with proceeds of crime.

This is a criminal offence, which will be tried by special courts designated for this purpose under Section 2 (Z) of the Prevention of Money Laundering Act. The trial will be both for charges under the specific Act which is a crime and also offence of money laundering under Prevention of Money Laundering Act. However it is not 'joint trial'

Civil Liability i.e. confiscation of tainted property

In addition to criminal liability, the property involved in money laundering can be attached and frozen by Central Government and later confiscated.

Q.3 State when an act or omission is an offence.

(2 Marks)

Answer:

An Act or omission is an offence only if it is made punishable by any law for the time being in force and not otherwise.

Q.1 Delegare Limited incorporated in Singapore desires to establish a place of business at Mumbai. You being a practicing Chartered Accountant have been appointed by the company as liaison officer for compliance of legal formalities on behalf of the company. Examining the provisions of the Companies Act, 2013, state the documents which are required to be furnished on behalf of the company, on the establishment of a place of business at Mumbai.

(6 Marks)

Answer:

Under Section 380 (1) of the Companies Act, 2013 every foreign company shall, within 30 days of the establishment of place of business in India, deliver to the Registrar for registration the following documents:

- (i) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company. If the instruments are not in the English Language, a certified translation thereof in the English Language.
- (ii) the full address of the registered or principal office of the company,
- (iii) A list of the directors and the secretary of the company containing such particulars as prescribed under the Companies (Registration of Foreign Companies) Rules, 2014,
- (iv) The name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company
- (v) The full address of the office of the company in India which is deemed to be its principal place of business in India
- (vi) Particulars of opening and closing of a place of business in India on earlier occasion or occasions,
- (vii) Declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad and
- (viii) Any other information as may be prescribed.

According to the Companies (Registration of Foreign Companies) Rules, 2014, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

Q.2 Everlasting Ltd. went into liquidation. XYZ Bank Ltd. the secured creditor, decided to realise its security interest by informing liquidator of such security interest and identify assets subject to which such security interest has to be realised. Liquidator denied the XYZ bank Ltd. to enforce its security interest as said secured creditor is not a part of committee of creditors. Throw a light on the stated situation and examining on the validity of the stand taken by the liquidator.

(3 Marks)

Answer:

As per Provisions laid down in Section 52 of the Insolvency and Bankruptcy Code, 2016, an option is given to secured creditor to realise its security interest by informing liquidator in respect of such security interest and identify assets subject to which such security interest has to be realised. Therefore, it is not mandatory under Code proceedings for financial creditor to be a part of CoC (Committee of Creditors) to enforce its security interest. Hence, application filed by Financial creditor was to be accepted.

Therefore the stand taken by the liquidator on his denial to the XYZ Bank Ltd., to enforce its security interest on the account that secured creditor is not a part of the Committee of creditors, is not valid.

Q.3 Who can initiate the insolvency resolution process?

(3 Marks)

Answer:

Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided- Section 6 of Insolvency and Bankruptcy Code, 2016.

Five LAQ

Q.1 Explain the principles of corporate governance.

(5 Marks)

Answer:

Principles of Corporate Governance

Transparency

Transparency means the quality of something which enables one to understand the truth easily. In the context of corporate governance, it implies an accurate, adequate and timely disclosure of relevant information about the operating results etc. of the corporate enterprise to the stakeholders.

Accountability

Accountability is a liability to explain the results of one's decisions taken in the interest of others. In the context of corporate governance, accountability implies the responsibility of the Chairman, the Board of Directors and the chief executive for the use of company's resources (over which they have authority) in the best interest of company and its stakeholders.

Independence

Good corporate governance requires independence on the part of the top management of the corporation i.e., the Board of Directors must be strong non partisan body; so that it can take all corporate decisions based on business prudence. Without the top management of the company being independent; good corporate governance is only a mere dream.

Q.2 State briefly the Evaluation of MOU

(4 Marks)

Answer:

Evaluation of MOU

Performance of MOU signing PSEs is evaluated with reference to their MOU targets twice in a year. First the performance is evaluated on the basis of provisional results and secondly on the basis of audited data. The performance evaluation exercise is also carried out in an extensive manner. As mentioned earlier this performance evaluation exercise is not carried out purely through a mechanical procedure. In fact, at the end of the year the review meetings are held which provides an opportunity to consider the proposals to adjust the criteria values for factors which were not predicated and could not have been predicted by either party. Thus, the MOU evaluation is finalized on the basis of the actual performance and the PSEs are graded as 'EXCELLENT', 'VERY GOOD', 'GOOD', 'FAIR' & 'POOR'. Some portion of the Performance Related Pay (PRP) is linked to MOU Rating.

Q.3 State briefly various factors which have persuaded businessmen to consider their social responsibilities.

(3 Marks)

Answer:

The various factors which have persuaded businessmen to consider their social responsibilities are :

- (i) Threat of public regulation
- (ii) Pressure of labour movement
- (iii) Impact of consumer consciousness
- (iv) Development of social standards of business
- (v) Development of business education
- (vi) Relationship between social interest and business interest
- (vii) Development of professional, managerial class

Six LAQ

(4X3=12 Marks)

Q.1 Write short note on Allotment of corporate identity number(CIN)

(3 Marks)

Answer:

Allotment of Corporate Identity Number (CIN) on and from the date mentioned in the certificate of incorporation, the registrar shall allot to the company a Corporate Identity Number which shall be distinct Identity for the company and which shall also be included in the certificate.

Q.2 Write short note on Boards report in case of OPC.[Section 134(4)]

(3 Marks)

Answer:

Board's report in case of OPC [Section 134(4)]

In case of a one person company, the report of the Board of Directors to be attached to the financial statement under this section shall mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.

Q.3 Write short note on SEBI Code of corporate governance relating to board of directors.

(3 Marks)

Answer:

SEBI code of corporate governance relating to the Board of Directors

The Board of Directors of the company shall have an optimum combination of executive and non executive directors. The number of independent directors would depend on whether the chairman is executive or non executive. In case of non executive chairman atleast 1/3rd of the Board should comprise Independent directors, and in case of executive chairman atleast half of the board should comprise independent directors.

Q.4 Write short note on Policy on preservation of documents as per part-D SEBI (Listing obligations and disclosure requirement) rules 2015

(3 Marks)

Answer:

Policy on preservation of documents

As per part D-SEBI (Listing obligation and disclosure requirements) RULE 2015

-To be approved by BOD

-Classified under two categories

-Documents to be preserved permanently and to be preserved for minimum 8 years.

Q.5 Write short note on Replacement of resolution professional by Committee of creditors.

(3 Marks)

Answer:

Replacement of resolution professional by committee of creditors

Committee of creditors can change the resolution professional. They have to forward new name to Adjudicating Authority who will appoint another resolution professional after getting approval from Board- Section 27 of Insolvency and Bankruptcy Code 2016

Q.1 Mr. Vikram, a Director of M/S Tubelight Limited has made default in filing of annual accounts and annual returns with the Registrar of Companies for a continuous period of 3 financial years ending on 31st March 2016. Examine the validity of the following under the Companies Act, 2013. (3+3+2+4=12 Marks)

i) Whether Mr. Vikram can continue to be a Director of M/S Tubelight Limited (defaulting company) and also M/S Green light Limited where he is also a Director.

ii) State Whether he can be reappointed as Director in these two companies.

iii) What would be your answer be in case Mr. Vikram is a nominee Director of a Public Financial Institution ?

iv) what would be your answer in case the defaulting company (i.e. M/S Tubelight Limited) is a private limited company ?

Answer:

Disqualifications for Appointment of Director

According to Section 164 (2) of the Companies Act 2013 a person who is or has been a director of a company which

(A) has not filed the financial statements or annual returns for any continuous three financial years or

(B) has failed to repay the deposits accepted by it or pay interest thereon due date or redeem its debentures on due date or pay interest due thereon or pay any dividend declared and such failure continues for one year or more. Shall not be eligible to be reappointed as a director of that company or appointed in other company for a period of five years from the date on which

the said company fails to do so. Further, pursuant to Section 167(1) (a) of the companies act 2013, the office of a director shall become vacant in case he incurs any of the disqualification specified in Section 164. The company joint reading of both the Sections i.e. 164(2) and 167 (1)(a), we may decide the case as under

- i) In the first case Mr. Vikram cannot continue to be director of the defaulting company namely M/s Tubelight Ltd. whereas in Green light Ltd., he can continue as a director because that company is not defaulting company.
- ii) Further, Mr Vikram is a Director of Tubelight Ltd. and Green Light Ltd. Tube Light Ltd did not file financial statements for a continuous period of three financial years ending 31 march 2016. This failure constitute a disqualification under Section 164(2) and consequently Mr Vikram will not be eligible for reappointment in Tubelight Ltd. and Green light Ltd for a period of five years from the date on which the said company incurs the default.
- iii) In case Mr. Vikram is a nominee director of a Public Financial Institution then in such case section 164 is not applicable.
- iv) **In case Tubelight Ltd is a Private Ltd Company.** According to Section 164(3) a private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub section (1) and (2) of Section 164
Thus in this case the answer would be same as above i.e. Mr Vikram has to vacate his office of directorship from TubelightLtd and Green light Ltd and cannot be reappointed in both the companies for a period of 5 years from the date on which the said company incurs the default.