

FINAL EXAMINATION

June 2023

P-13(CLC)

Syllabus 2016

CORPORATE LAWS AND COMPLIANCE

Time Allowed: 03 hours

Full Marks: 100

*The figures in the margin on the right side indicate full marks.
Wherever necessary candidates may make appropriate assumptions
and clearly state them in the respective answer.*

*Answer Q. No. 1 which is compulsory and answer any five
questions from Q. No. 2 to Q. No. 8*

1. Answer all questions mentioned below. Mark the answer. (Only indicate A or B or C or D and give justifications): (1 Mark for correct choice and 1 Mark for justification) $2 \times 10 = 20$
 - (i) If any company primarily deals with financing of procurement, processing, marketing or other activities which include extending of credit facilities or any other financial services to its members such company is known as
 - (A) Not for profit company
 - (B) Associate company
 - (C) Both (A) and (B)
 - (D) Producer company
 - (ii) On resignation of a Director, the DIN
 - (A) will be cancelled.
 - (B) will be cancelled after 6 months.
 - (C) will not be cancelled.
 - (D) will be transferred.
 - (iii) In calculating total number of Directors for ascertaining number of rotational Directors, the following Directors need not be taken into consideration
 - (A) Additional Director
 - (B) Independent Director
 - (C) Whole-time Director
 - (D) None of them
 - (iv) In case of appointment of M.D., manager or whole-time director by a Public Company, the appointment shall also be approved by the
 - (A) Registrar
 - (B) Central Government
 - (C) Board of Directors in the next Board meeting
 - (D) Shareholders in the next general meeting
 - (v) Under what circumstances, one person can constitute a quorum?
 - (A) If the Tribunal Calls or directs the calling of an Annual General Meeting.
 - (B) In case of class meeting, if all the shares of a particular class are held by 1 (one) person, he shall constitute the quorum.
 - (C) If the shareholders want that the presence of one person can constitute a quorum.
 - (D) Both (A) and (B)

- (vi) Demat Account is opened in order to
(A) buy or sell stocks.
(B) buy or sell commodity.
(C) only to buy stocks.
(D) only to sell commodity.
- (vii) When a trade bill is accepted by a Commercial Bank it is known as a _____.
(A) Commercial Paper
(B) Treasury Bill
(C) Commercial Bill
(D) Certificate of Deposit
- (viii) SEBI can call for information by undertaking inspection, conducting enquiries and audit of Stock Exchanges and intermediaries. Identify the related functions of Securities and Exchange Board of India.
(A) Regulatory function
(B) Development function
(C) Protective function
(D) All of the above
- (ix) Which of the following is not a component of a social environment of a business?
(A) Growth Rate
(B) Per capita income
(C) Composition of population
(D) Life expectancy of people
- (x) Violation of FEMA is a
(A) Criminal offence
(B) Civil offence
(C) Non-bailable offence
(D) Punishable with death offence

2. (a) Fill in the blanks:

1×4=4

- (i) The act of looking or something carefully or an official visit to a building or organisation to check that everything is correct and legal is known as _____.
- (ii) Any financial debt raised by the resolution professional during the insolvency resolution process period as per Sec. 5(15) of Insolvency and Bankruptcy Code, 2016 is known as _____.
- (iii) _____ will develop professional standard code of ethics and be first level regulator for insolvency professional members.
- (iv) In relation to another company, a company in which that other company having such influence and includes a joint venture company is known as _____.

- (b) Amar Cement Limited is a company incorporated four years ago. It has earned amounting to ₹ 5 lakh, ₹ 8 lakh and ₹ 11 lakh respectively during the last three financial years. The Board of Directors of the company propose to donate a sum of ₹ 50,000 to a political party. Examine with reference to the provisions of the Companies Act, 2013 whether the proposed donation is within the powers of the Board of Directors of the company. 4
- (c) Mr. X Vice President of ABC Ltd. was appointed as an additional director in 1st January, 2022. On the office of managing director falling vacant he was appointed as managing director on existing remuneration. Whether Mr. X will cease to be managing director in the next Annual General Meeting? 4
- (d) Examine with reference to the provisions of the Companies Act, 2013 whether the following Companies can be treated as foreign companies:
- (i) A company incorporated outside India having share registration office at Mumbai. 4
 - (ii) Indian citizens incorporated a company in Singapore for the purpose of carrying on business there. 4
3. (a) The Securities and Exchange Board of India issued an order against ABC Ltd. for redressal of grievance of one of its members. On failure on the part of the company, the Board imposed penalty upon the company under Section 15C of the Securities and Exchange Board of India Act 1992. The company seeks your advice whether it has any remedy against the order of the said Board. 4
- (b) The Central Government, without referring the matter to the Supreme Court of India for inquiry, removed a member of the competition commission of India on the ground that he has become physically or mentally incapable of acting as a member. Decide under the provisions of the Competition Act, 2002, whether removal of the member by the Central Government is lawful. 4
- (c) Explain briefly overriding preferential payments under Companies Act, 2013. 4
- (d) Can an intermediary be a director in the Insurance Company as per Insurance Act, 1938? 4
4. (a) Are there any restrictions to the appointment of a statutory auditor of a Private Limited becoming the consultant of the same company? Explain. 6
- (b) Explain compounding of certain offences in terms of Section 441 of the Companies Act, 2013. 4
- (c) Every Banking Company to furnish details of suspicious transaction as per the provision of the Prevention of Money Laundering Act, 2002 and the rules made thereunder. State in this context what is meant by Suspicious Transaction. 3
- (d) The concept of shareholder's democracy in the present day corporate world denotes the shareholder's supremacy in the governance of the business and affairs of corporate sector either directly or through their elected representatives. Explain what is meant by shareholders' democracy. 3

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5. (a) State the manner of initiation of corporate insolvency resolution process by financial creditor under the Insolvency and Bankruptcy code 2016. 7
- (b) Distinguish between the title FERA and FEMA of Legislation. 4
- (c) State briefly obligation pertaining to material subsidiary as per PART-B revised clause 49 of the Listing agreement and guidelines issued under clause 49. 5
6. (a) Mr X a director of ABC Ltd. He has approached Housing Finance Co. Ltd. for the purpose of obtaining a loan of INR 50 lakhs to be issued for construction of building of his residential house. The loan was sanctioned subject to the condition that ABC Ltd. should provide the guarantee for the repayment of loan instalments by Mr. X. Advise Mr. X. 3
- (b) Referring to the provisions of the securitisation and reconstruction of financial asset 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. 5
- (c) (i) 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 shareholders? 4+2=6
- (d) Briefly explain Lokvani Project in U.P. 2
7. (a) What are the duties of Inspector as enumerated in Sec. 223 of the Companies Act, 2013, in relation to his report? 5
- (b) Corporate Governance is about stakeholder's satisfaction. Comment. 3
- (c) Explain "Derivative" as per Section 2 (ac) of Securities Contracts Regulation Act, 1956. 4
- (d) As per Section 36(4) of Insolvency and Bankruptcy Code, 2016, certain assets shall not be included in the liquidation estate assets. What are those assets? 4
8. Write short notes (*any four*): 4×4=16
 - (a) Appointment of Resolution Professional by C.O.C
 - (b) Lock-in of specified securities held by promoters
 - (c) Difference between mediation and conciliation
 - (d) Activities not to be considered as CSR activities
 - (e) Types of Listing

SUGGESTED ANSWERS TO QUESTIONS

1.

- (i) (D)
- (ii) (C)
- (iii) (B)
- (iv) (D)
- (v) (D)
- (vi) (A)
- (vii) (C)
- (viii) (A)
- (ix) (B)
- (x) (B)

2. (a)

- i) Inspection
- ii) Interim finance
- iii) Insolvency Professional Agency
- iv) Associate company

2. (b)

As per section 182 of the Companies Act, 2013 a company shall not make a political contribution unless the following conditions satisfied:

- a) The company is not a Government company.
- b) The company has been in existence for 3 or more financial years.
- c) The aggregate amount of political contribution in a financial year shall not exceed 7.5% of average net profits during immediately preceding 3 financial years.
- d) The Board shall make a political contribution only by passing a resolution at a Board meeting.
- e) The company shall disclose in its profit and loss account the amount of political contribution and the name of political party or person to whom such amount has been contributed.

Applying the provisions of section 182 of Companies Act 2013 to the given problem, Amar Cement Limited is not prohibited from making political contribution since it has been in existence for more than 3 financial years. Amar Cement Limited has made an average net profits of Rs. 8 lakhs during immediately preceding 3 financial years. Accordingly, it can make a maximum political contribution of Rs.60,000 (being 7.5% of Rs. 8 Lakhs). Accordingly, the proposal of the Board of directors to make a donation of Rs. 50,000 to a political party is valid. Such political contribution shall be made by passing a resolution at a Board meeting only.

2. (c)

An additional directors holds office upto the date of next annual general meeting (Section 161(1) of the Companies Act, 2013). However, he is not a 'retiring director' as per Explanation to Section 152(7). As per Explanation to Section 152(7), 'retiring director' means a director retiring by rotation. Therefore, an additional director may be appointed as a regular director in the annual general meeting only if the conditions prescribed under section 160 are complied with.

The opening words of section 2(54) of the Companies Act, 2013 defines a 'managing director' as 'Managing director means a director who.....'. Thus, the definition suggests that a managing director has to be a director first. If a managing director. In the given case, Mr. X will hold office upto the date of next annual general meeting. Since, he will cease to be a director, he will also vacate the office of managing director. Further, even if the annual general meeting is not held, he will cease to be an additional director on the last day, on which the annual general meeting ought to have been held (Section 161(1) of the Companies

Act, 2013). However, If a notice is given of the candidature of Mr. X under section 160 and at the annual general meeting he is appointed as a director, he shall continue as a managing director.

2. (d)

As per section 2(42) of the Companies Act 2013 foreign company means any company or body corporate outside India which-

- a. Has a place of business in India by itself or through an agent, physically or through an electronic mode; and
- b. Conducts any business activity in India in any other manner.

The answer to the given problem is as follows:

- i. A Share transfer office or share registration office constitutes a place of business (Section 386 of the Companies Act, 2013). However, a body corporate incorporated outside India does not become a foreign company merely by having a place of business in India. It becomes a foreign company only if it carries on business in India. Thus, the company incorporated outside India having a share registration office at Mumbai shall be a foreign company only if it carries on business in India.
- ii. In this case, Indian citizens have formed the company outside India. Since, the company has not established any place of business in India, and the company does not conduct any business activity in India in any other manner, the company cannot be said to be a foreign company. The fact that Indian citizens have formed a company in a foreign country is immaterial in deciding whether the company is a foreign company or not.

3. (a)

Remedy against order of SEBI:

ABC Limited was penalized by the SEBI. The following remedies are available to the Company:

- i. Appeal to the Securities Appellate Tribunal: Section 15 T of the SEBI Act, 1992 provides that any person aggrieved by an order of the Board may prefer an appeal to the Securities Appellate Tribunal. Such appeal shall be filed within 45 days from the date on which a copy of the order of the Board was received. However, the Tribunal may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within the said period of limitation.
- ii. Appeal to the Supreme Court: Section 15Z of the SEBI Act, 1992 provides that any person aggrieved by the decision or order of the SAT may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order on any question of law arising out of such order. The Supreme Court may entertain such appeal even after the expiry of said period of limitation for a future period not exceeding sixty days, if there was reasonable cause for such delay.

3. (b)

Removal of Member of Competition Commission: Section 11(2) of the Competition Act, 2002 empowers the Central Government to remove, by an order, a member of the competition commission of India from his office if such member has become physically or mentally incapable of acting as a member. However, provisions of Section 11(3) of the said Act put some restrictions on such power of the Central Government. According to this Section, the Central Government has to make a reference to the Supreme Court of India under the two conditions-where the member has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member, or where a member has abused his position as to render his continuance in office prejudicial to the interest. As the ground of removal mentioned in the question does not fall under these two categories, thus, the Central Government can remove a member of the Competition Commission of India without referring the matter to the Supreme Court for Inquiry. In view of the above, the action of the Central Government as in order and removal of member is valid.

3. (c)

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 debt rank under clause (iii) of the proviso to section (1) of Section 325 paripassu 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 second 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.

3. (d)

1. Intermediary not be director {Section 48 A (1)} No insurance agent or intermediary or insurance intermediary shall be eligible to be or remain a director in insurance company.
2. Transitional period of 6 months for existing Directors {first proviso to section 48 A (1)} Any director holding office at the commencement of the Insurance Laws (amendment) Act 2015 shall not become ineligible to remain a director by reason of this section until the expiry of 6 months from the date of commencement of the said Act.

Intermediary may be director with permission of authority {Second proviso to section 48 A (1)} The Authority may permit an agent or intermediary or insurance intermediary to be on the Board of an insurance company subject to such conditions or restrictions as it may impose to protect the interest of policyholders or to conflict of interest.

4. (a)

Section 144 of the Companies Act, 2013 prescribes certain services not to be rendered by the auditor. An auditor appointed under this Act shall provide to the company only such other services as per approved by the Board of Directors or the audit committee, as the case may be, but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company), namely:

- i. Accounting and book keeping services
- ii. Internal audit
- iii. Design and implementation of any financial information system
- iv. Actuarial services
- v. Investment advisory services
- vi. Investment banking services
- vii. Rendering of outsourced financial services
- viii. Management services ; and
- ix. Any other kind of services as may be prescribed.

Further section 141(3)(i) of the Companies Act, 2013 also disqualify a person for appointment as an auditor of a company who is engaged as on the date of appointment in consulting and specialized services as provided in section 144.

4. (b)

Compounding of Certain offences (Section 441)

This Section contains the provision as to compounding of offence. In terms of this Section, subject to the code of Criminal Procedure, 1973 any offence punishable under this Act not being an offence punishable with imprisonment only and fine may either before or after the institution of any prosecution be compounded by:

- a. The Tribunal, or
- b. Where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, by the Regional Director or any officer authorized by the Central Government, on payment or credit, by the company or as the case may be the officer to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorized by the Central Government as the case may be specify.

4. (c)

STR (Suspicious Transaction Reports)

The Prevention of Money laundering Act, 2002 and the Rules made there under require every banking company to furnish details of suspicious transactions whether or not made in cash. Suspicious transaction means a transaction whether or not made in cash which, to a person acting in good faith:

- a. Gives rise to a reasonable ground of suspicious that it may involve the proceeds or crime, or
- b. Appears to be made in circumstances of unusual or unjustified complexity, or
- c. Appears to have no economic rationale or bona fide purpose.

4. (d)

The concept of shareholders democracy in the present day corporate world denotes the shareholders' supremacy in the governance of the business and affairs of corporate sector either directly or through their elected representatives. Democracy means the rule of people, by people and for people. In that context the shareholders democracy means the rule of shareholders, by the shareholders, and for the shareholders in the corporate enterprise, to which the shareholders belong. Precisely it is a right to speak, congregates and communicates with co-shareholders and to learn about what is going on in the company.

5. (a)

Section 7 of Insolvency and Bankruptcy Code deals with initiation of corporate insolvency resolution process by a financial creditors. The Process can be explained as under:

1. Filing of application before the Adjudicating Authority for initiating corporate insolvency resolution process
A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.
For this purpose, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.
2. Form and manner of making application
The application shall be in such form and manner and accompanied with such fee as may be prescribed.
3. Enclosures to application

Following documents and information shall be furnished along with the application:

- a. Record of the default recorded with the information utility or such other record or evidence of default as may be specified.
- b. The name of the resolution professional proposed to act as an interim resolution professional.
- c. Any other information as may be specified by the Board.

4. Duty of Adjudicating Authority to ascertain the existence of a default

The Adjudicating Authority shall, within 14 days of the receipt of the application, ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor.

5. Admission of application by the Adjudicating Authority

The Adjudicating Authority may, by order, admit such application, if it is satisfied that-

- a. A default has occurred
 - b. The application for initiating corporate insolvency resolution process is complete; and
 - c. No disciplinary proceeding are pending against the proposed resolution professional.
6. Rejection of application by the Adjudicating Authority

The Adjudicating Authority may, by order, reject such application, if it is satisfied that-

- a. Default has not occurred; or
- b. The application for initiating corporate insolvency resolution process is incomplete; or
- c. Any disciplinary proceeding is pending against the proposed resolution professional.

Before rejecting the application, the Adjudicating Authority shall give a notice to the applicant to rectify, within 7 days, the defect in his application.

7. Commencement of corporate insolvency resolution process

The corporate insolvency resolution process shall commence from the date of admission of the application by the Adjudicating Authority.

5. (b)

The difference between the title, FERA and FEMA of legislations

In view of the stated change, the title of the legislation has rightly been changed from 'Foreign Exchange Regulation Act' to 'Foreign Exchange Management Act. The main change that has been brought is that FEMA is a civil law, whereas the FERA was a criminal law. In simple word, for contravention of provision under the FEMA arrest and imprisonment would not be resorted whereas it was the norm under the previous act. Drastic tenor of FERA can be gauged from the fact that it provided for imprisonment for violation of even very minor offenses. In FERA, the presumption was upon the accused to defend himself as he was deemed guilty, whereas in FEMA the onus is upon the Enforcement Directorate to prove the guilt of the accused. In other words the stringent stipulations under FERA have been relaxed in FEMA.

5. (c)

- At least 1 ID to be director of unlisted Indian material subsidiary
- Audit committee to review the Financial Statement
- Minutes of Board meetings to be placed before Board of the holding company
- Statement of all significant transactions and arrangements entered into by the unlisted subsidiary to be placed before Board of the holding company
- SR will be required in case of-
 1. Disposal of shares resulting in reduction of its shareholding to less than 50% or cessation of control over the subsidiary.
 2. Selling, disposing and leasing of assets amounting to more than 20% of the assets of the material subsidiary on an aggregate basis during a financial year.

6. (a)

According to section 185 of the Companies Act, 2013, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

Thus, Mr. X is not allowed for loans of INR 50 Lacs against guarantee by the company ABC Ltd.

6. (b)

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.

Cancellation of Certificate of Registration (Section 4 of the securitization 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 securitization 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;
 - b. Maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Act;
 - c. Submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank;
 - d. Obtain prior approval of the Reserve Bank required under sub-section (6) of section 3.

6. (c)

- (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:

Not less than 100 members of the company or not less than one-tenth of the total numbers of members whichever is less or 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 share. In the given case, since the absence of any information regarding number of shareholders, whether condition (a) stated above is satisfied or could not be ascertained. If the condition relating to the number of members as per (a) stated above is satisfied then only 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) Does the scheme of compromise or arrangement require approval of 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.

6. (d)

Lokvani Project in UP. It is a Public-Private Partnership project to provide a single window, self sustainable e-Governance solution with regards to handling of grievances, land record maintenance and providing a mixture of essential services. This project is known as Lokvani Project in UP.

7. (a)

Section 223 of the Companies Act, 2013 deals with Inspector's report. The following provisions are applicable in respect of the Inspector's report on investigation:

- (i) Submission of interim report and final report [Sub section (1)]: An inspector appointed under this Chapter (Chapter XIV – inspection, Inquiry and investigation) may, and if so directed by the Central Government shall, submit interim report to that Government, and on the conclusion of the investigation, shall submit a final reports to the Central Government.
- (ii) Report to be writing or printed [Sub section (2)]: Every report made under sub section (1) above shall be in writing or printed as the Central Government may direct.
- (iii) Obtaining copy or report [Sub-section (3)]: A copy of the above report may be obtained by making an application in this regard to the Central Government.
- (iv) Authentication of report [Sub-section (4)]: The report of any inspector appointed under this Chapter shall be authenticated either-
 - a) by the seal, if any, of the company whose affairs have been investigated; or
 - b) by a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872, and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.
- (v) Exceptions: [Sub section (5)] Nothing in this section shall apply to the report referred to section 212 of the Companies Act, 2013.

7. (b)

“Corporate governance is about Stakeholder’s satisfaction”.

Corporate governance is about stakeholder's satisfaction: The term “Corporate Governance” is not easy to define. The term governance relates to a process of decision making and implementing the decision in the interest of all stakeholders, it basically relates to enhancement of corporate performance and ensure proper accountability for management in the interest of all stakeholders. It is a system through which an organization is guided and directed. On the basis of this definition, the core of objectives of Corporate Governance are focus, predictability, transparency, participation, accountability, efficiency and effectiveness and satisfaction of stakeholders.

7. (c)

Section 2 (ac) of Securities Contract Regulation Act, 1956 [as amended by Finance Act, 2015] explains Derivatives as follows:

“Derivative” Includes:

- 1. A security derived from a debt instrument, share, loan, whether secured or unsecured. Risk instrument or contract for differences or any other form of security.
- 2. A contract which derives its value from the prices, or index of prices, of underlying securities.
- 3. Commodity derivatives, and'
- 4. Such other instruments as may be declared by the Central Government to be derivatives.

7. (d)

Assets which will not form part of liquidation assets - As per Section 36(4) of Insolvency and Bankruptcy Code, 2016, the following shall not be included in the liquidation estate. These shall not be used for recovery in the liquidation.

- a) Assets owned by a third party which are in possession of the corporate debtor. Including. (i) assets held in trust for any third party (ii) bailment contracts (iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund (iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets and (v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

- b) Assets in security collateral held by financial services providers and are subject to netting and setoff in multi-lateral trading or clearing transactions.
- c) Personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions.
- d) Assets of any Indian or foreign subsidiary of the corporate debtor, or
- e) Any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

8. (a)

Appointment of resolution professional by COC

The Committee of Creditors (COC), may in the first meeting, by a majority vote of not less than sixty six per cent of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional (section 22(2) of Insolvency code, 2016).

If they decide to continue interim resolution professional, subject to a written consent from the interim resolution professional in the specified form they will inform its decision to the interim resolution professional, the corporate debtor and the Authority (section 22(3)(a) of Insolvency Code, 2016).

However, if they decide to replace the interim resolution professional the CoC shall file application before the Adjudicating Authority for the appointment of Resolution Professional, along with a written consent from the proposed resolution professional in the specified form (section 22(3)(b) of Insolvency Code, 2016).

The Adjudicating Authority (NCLT) shall inform name of proposed new Resolution Professional to IBBI. The resolution professional can be appointed only with approval of Board (IBBI). Till then, interim resolution professional will continue.

8. (b)

Lock-in of Specified Securities held by promoters

In a public issue, the equity shares and convertible debentures held by promoters are locked-in for the / period stipulated below:

1. Minimum promoters' contribution is locked-in for period of 3 years from the date of commencement of commercial production or date of allotment in the public issue, whichever is later.
2. Promoters' holding in excess of minimum promoters' contribution is locked-in for a period of 1 year. However, excess promoters' contribution in a further public offer is not subject to lock-in. However, excess promoters' contribution in a further public offer is not subject to lock-in.

8. (c)

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'. '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.

8. (d)

Types of Listing

Listing of securities falls under 5 groups:

1. Initial listing: If the shares or securities are to be listed for the first time by a company on a stock exchange is called initial listing.
2. Listing for Public Issue: When a company whose shares are listed on a stock exchange comes out with a public issue of securities, it has to first such issue with the stock exchange.
3. Listing for Rights Issue: When companies whose securities are listed on the stock exchange issue further securities to existing shareholders on rights basis, it has to list such rights issues on the concerned stock exchange.
4. Listing of Bonus Shares: Companies issuing shares as a result of capitalization of profits through bonus issue shall list such issues also on the concerned stock exchange.
5. Listing for merger or amalgamation: When new shares are issued by an amalgamated company to the shareholders of the amalgamating company, such shares are also required to be listed on the concerned stock exchange.

8. (e)

Activities not to be considered as CSR Activities

Companies (CSR Policy) Rules, 2014 provides for some activities which are not considered as CSR activities:

1. The CSR projects or programs or activities undertaken outside India.
 2. The CSR projects or programs or activities that benefit only the employees of the company and their families.
 3. Contribution of any amount directly or indirectly to any political party under section 182 of the Act.
 4. Expenses incurred by companies for the fulfillment of any Act / Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act
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