

PAPER-13: CORPORATE AND ECONOMIC LAWS

SUGGESTED ANSWER

SECTION-A

1.

- (i)** (D)
- (ii)** (B)
- (iii)** (A)
- (iv)** (C)
- (v)** (A)
- (vi)** (C)
- (vii)** (B)
- (viii)** (A)
- (ix)** (D)
- (x)** (B)
- (xi)** (C)
- (xii)** (D)
- (xiii)** (A)
- (xiv)** (A)
- (xv)** (B)

SECTION-B

2. (a)

Investment to be in the name of the company: Sec 187

- (a) All investments made or held by a company in any property, security or other asset shall be made and held by it in its own name:

Provided that the company may hold any shares in its subsidiary company in the name of any nominee or nominees of the company, if it is necessary to do so, to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.

Example:

ABC Ltd. holds 100% of XYZ Ltd. which is a private limited company, where at least two members shall be there. ABC Ltd. is one member. ABC Ltd can, therefore, nominate someone as shareholder but only one, since this is the minimum requirement of members which it will fall below to statutory limit of two members.

(b) **Nothing in this Section shall be deemed to prevent a company:**

- from depositing with a bank, any shares or securities for the collection of any dividend or interest payable thereon.
- from depositing with, or transferring to, or holding in the name of, the State Bank of India or a scheduled bank, being the bankers of the company, shares or securities, in order to facilitate the transfer thereof:

- from depositing with, or transferring to, any person any shares or securities, by way of security for the repayment of any loan.
 - from holding investments in the name of a depository when such investments are in the form of securities held by the company as a beneficial owner.
- (c) Where any shares or securities in which investments have been made by a company are not held by it in its own name, the company shall maintain a register which shall contain such particulars as may be prescribed and such register shall be open to inspection by any member or debenture-holder of the company without any charge during business hours.

2. (b)

Management of affairs of corporate debtor by interim resolution professional from the date of appointment of the interim resolution professional, the management of the affairs of the corporate debtor shall vest in the interim resolution professional.

The powers of the Board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional.

The officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional.

The financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional [Section 17(1) of Insolvency and Bankruptcy Code, 2016].

The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.

For this purpose, he can take any of the actions specified in Section 20(2) of Insolvency and Bankruptcy Code, 2016.

This includes appointments of professionals, entering into contracts, raise interim finance, issue instructions to the employees and any action deemed necessary.

3. (a)

Quorum for Board meetings

The provisions relating to quorum for a Board meeting are contained in section 174.

Unless the articles provide for a higher quorum, the quorum shall be 1/3rd of the total strength' (any fraction contained in that 1/3rd shall be rounded off to one) or two directors whichever is higher [Section 174(1)].

However, section 174(3) states that where at any time the number of interested directors (present in the Board meeting) exceeds or is equal to 2/3rd of the 'total strength' (any fraction contained in that 2/3rd shall be rounded off as one), the number of disinterested directors present at the meeting, being not less than two, shall be the quorum.

- In the instant case, $\frac{1}{3}$ rd of 11 comes to 3.67; the fraction 0.67 shall be rounded off to 1. Thus, at least 4 disinterested directors must be present in the Board meeting. However, only 3 directors are present in the Board meeting.

Moreover, there is no interested director present in the meeting and so, the benefit of section 174(3) cannot be availed.

Hence, the quorum was not present and so the meeting has not been validly held.

- In the given case, the required quorum comes to 4 directors, 5 were present, so the basic requirement is fulfilled.

During one of the transactions, only 2 directors were not interested. The requirement of section 174(3) is met with.

The quorum requirement is thus fulfilled.

3.(b)

Corporate Governance in Family Business – Summary

1. Balancing Family and Business Interests

Family businesses often struggle to balance emotional family ties with professional business decisions. Good governance helps manage conflicts, ensures objectivity, and separates personal issues from business matters.

2. Importance of Succession Planning

A major governance challenge is preparing for leadership transition. Clear succession plans reduce uncertainty, prevent disputes, and ensure business continuity across generations.

3. Formal Governance Structures

Introducing structured governance mechanisms like a board of directors, family council, and family constitution helps define roles, responsibilities, and decision-making processes, fostering transparency and accountability.

4. Professionalization of the Business

Hiring non-family professionals and setting clear job descriptions and performance expectations reduces nepotism, enhances efficiency, and ensures business decisions are made on merit.

5. Conflict Resolution Mechanisms

Family businesses are prone to internal conflicts. Having pre-agreed mechanisms (e.g., mediation clauses, voting rights, conflict resolution committees) ensures smooth functioning and preserves relationships.

6. Communication and Transparency

Open communication builds trust between family members and non-family stakeholders. Regular meetings, clear financial reporting, and shared vision statements are critical for alignment.

7. Preserving Family Legacy and Values

Governance is not only about business—it also protects the family's long-term values and legacy. A documented set of shared principles (e.g., mission, vision, code of ethics) guides behaviour and preserves identity.

4. (a)

Grant of loan by a public company

Section 186 of the Act provides Loan and Investment by a Company.

As stated therein, a company will not acquire by way of subscription, purchase or otherwise, the securities of any other body corporate

- exceeding 60% of its paid-up share capital, free reserves and securities premium account and debit or credit balance of profit or loss account or
- 100% of its free reserves and securities premium account, whichever is higher.

However, a company can give loans, guarantees and securities or make investments above the prescribed limit when it is previously authorised by a special resolution passed in a general meeting.

Loan amount ₹ 40 lakhs

In the present case, Limit (a) above is

Particulars	Amount (₹ in lakhs)
Authorised capital	Not relevant
Paid-u capital	40
P & L account balance	22
Share premium account	10
Machinery revaluation reserve	Not to be considered
Secured loan taken from a nationalised bank (at 11% rate of interest)	Not relevant
Total	72
Eligible amount 60% of 72	43.2

Limit (b) above is

P & L account balance	22
Share premium account	10
Eligible amount (100%)	32

Higher of the above is 43.2 lakhs. Hence as regards the quantum of loan, ₹ 40 lakhs can be granted by the Board.

Loan amount ₹ 45 lakhs

The Company can give loan with approval of Board. Where the giving of any loan or guarantee or providing any security or the acquisition under Sub-Section (2) exceeds the limits specified in that Sub-Section, prior approval by means of a special resolution passed at a general meeting shall be necessary.

Rate of interest

No loan shall be given under this Section at a rate of interest lower than the prevailing yield of one year, three-year, five year or ten-year Government Security closest to the tenor of the loan.

The tenor is 40 months and hence 3 years yield has to be taken, i.e. 6.9%

Hence, the loan cannot be granted at 6.5%, it must be minimum 6.9.

4. (b)

Obligations of the target company

- the Board of directors of such target company shall ensure that during the offer period, the business of the target company is conducted in the ordinary course consistent with past practice.
- the target company shall be prohibited from fixing any record date for a corporate action on or after the third working day prior to the commencement of the tendering period and until the expiry of the tendering period.
- furnish to the acquirer within two working days from the identified date, a list of shareholders as per the register of members of the target company containing names, addresses, shareholding and folio number, in electronic form, wherever available, and a list of persons whose applications, if any for registration of transfer of shares are pending with the target company
- during the offer period:
- unless the approval of shareholders of the target company by way of a special resolution by postal ballot is obtained, the board of directors of either the target company or any of its subsidiaries shall not
- alienate any material assets whether by way of sale, lease, encumbrance or otherwise or enter into any agreement therefore outside the ordinary course of business.

Exemptions

The following types of acquisition shall not come under the purview of this regulation

- (a) acquisition in the ordinary course of business by
 - (i) Underwriter registered with SEBI
 - (ii) Stock Broker registered with SEBI on behalf of client in exercise of lien over the shares purchased on behalf of the client
 - (iii) merchant banker registered with the Board or a nominated investor in the process of market making
- (b) any person acquiring shares pursuant to a scheme of safety net
- (c) a merchant banker registered with the Board acting as a stabilizing agent.
- (d) acquiring shares pursuant to an agreement of disinvestment to Reconstruction / Merger / Reconstruction/Merger/Amalgamation / Demerger under order of Court to provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to provisions of Delisting of shares Upon Share Forfeiture of Equity Shares by a Company.

5. (a)

Responsibilities of Audit Committee:

Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include:

- (1) the recommendation for appointment, remuneration and terms of appointment of auditors of the company.

Note: In case of Government companies, in this clause, for the word ‘recommendation for appointment, remuneration and of appointment’ the words ‘recommendation for remuneration’ shall be substituted, as in case of Govt. company, appointment is made by the C&AG.

- (2) review and monitor the auditor ‘s independence and performance, and effectiveness of audit process.

- (3) examination of the financial statement and the auditors' report thereon.
- (4) approval or any subsequent modification of transactions of the company with related parties.

The Audit Committee may make omnibus approval for related party transactions proposed to be entered by the company subject to such conditions as may be prescribed.

- (5) scrutiny of inter-corporate loans and investments.
- (6) valuation of undertakings or assets of the company, wherever it is necessary.
- (7) evaluation of internal financial controls and risk management systems.
- (8) monitoring the end use of funds raised through public offers and related matters.

Binding nature of recommendation of Audit Committee

Like any other committee, shall be recommendatory in nature.

However, if the Board had not accepted any recommendation, the reasons for the same shall be recorded in the Minutes of the Board Meeting.

If the company is a listed company, SEBI (LODR) Regulations require the company to disclose the reasons for not accepting, in the corporate governance section of the Annual Report or to the Stock Exchange.

5. (b)

(i) Cybercrimes against persons are:

Cyber-Stalking:

It means to create physical threat that creates fear to use the computer technology such as internet, e-mail, phones, text messages, webcam, websites or videos.

Obscenity:

It includes Indecent exposure/ Pornography (basically child pornography), hosting of web site containing these prohibited materials.

Defamation:

It is an act of imputing any person to lower down the dignity of the person by hacking his mail account and sending some mails with using vulgar language to unknown persons.

Hacking:

unauthorized control/access over computer system and act of hacking completely destroys the whole data as well as computer programmes

Cracking:

Cracking means that a stranger has broken into your computer systems without your knowledge and consent and has tampered with precious confidential data and information.

Spoofing:

A spoofed e-mail may be said to be one, which misrepresents its origin. It shows its origin to be different from which actually it originates.

Spoofing is a blocking through spam which means the unwanted uninvited messages. Wrongdoer steals mobile phone number of any person and sending SMS via internet and receiver gets the SMS from the mobile phone number of the victim.

Carding:

It means false ATM cards i.e. Debit and Credit cards used by criminals for their monetary benefits through withdrawing money from the bank account in a mala-fide manner.

Fraud:

It means the person who is doing the act of cyber crime i.e. stealing password and data storage has done it with having guilty mind which leads to fraud and cheating.

Threat:

refers to threatening a person with fear for their lives or lives of their families through the use of a computer network i.e. E-mail, videos or phones.

(ii) Manner and effect of takeover of management (Section 15)

Section 15 of the SARFAESI Act, 2002 provides for the manner and effect of takeover of management. When the management of business of a borrower is taken over by an asset reconstruction company it can appoint as many persons as it thinks fit to be the directors, where the borrower is a company, or the administrators of the business of the borrower, in any other case. The secured creditor is required to publish a notice in a newspaper published in English language and in a newspaper published in an Indian language in circulation in the place where the principal office of the borrower is situated.

On the publication of the notice all persons who were directors of the company or administrators of the business, as the case may be, are deemed to have vacated their office. It also has the effect of termination of all contracts entered into by the borrower with such directors or administrators.

Where the management is taken over by the secured creditor, then, the shareholders shall not nominate or appoint any person to be director of the company unless approved by secured creditor

No proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any court, except with the consent of the secured creditor.

Where the management of the business of a borrower had been taken over by the secured creditor, the secured creditor shall, on realization of his debt in full, restore the management of the business of the borrower.

6. (a)**Registers and records to be maintained by companies**

Every company has to maintain at its registered office certain registers and records for statutory, statistical, disclosure, information management and MIS purposes.

Further, the company is also required to keep these records within the vicinity of the place prescribed for it by the laws.

Every company incorporated under the Act is required to keep at its registered office, inter alia, the following statutory books and registers:

- Register of investments in securities not held in company's name in Form MBP-3. [Under Section 187(3)]
- Register of deposits. [Section 73 and Rule 14 of the Companies (Acceptance of Deposits) Rules, 2014]

- Register of securities bought back in Form SH-10. [Section 68(9)]
- Register of charges in Form CHG-7. [Section 85(1)]
- Register and index of members in Form MGT-1. [Section 88(1)(a)]
- Register and index of debenture holders in Form MGT-2. [Section 88(1)(b)]
- Register and index of beneficial owners. [Section 88(1)(3)]
- Foreign register of members and debenture holders and their duplicates in Form MGT-3. [Section 88(1)(4)]
- Copies of Annual Return [Section 94(1)]
- Books containing minutes of general meeting and of Board and of committees of Directors. [Section 118]
- Register of Postal Ballot [Section 110]

6. (b)

Penalty for offences in relation to furnishing of information

Without prejudice to the provisions of section 44, if a person, who furnishes or is required to furnish under this Act any particulars, documents or any information, —

- (a) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular; or
- (b) omits to state any material fact knowing it to be material; or
- (c) wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid, such person shall be punishable with fine which may extend to rupees one crore as may be determined by the Commission.

then they are liable to a penalty of up to ₹ 1 lakh for each day during which such failure continues, subject to a maximum of ₹ 1 crore.

The Commission may, if it is satisfied impose lesser penalty where it is satisfied that any person has made a full and true disclosure in respect of the alleged violations, a lesser penalty.

However, lesser penalty shall not be imposed by the Commission in cases where the report of investigation directed under section 26 of the Indian Competition Act has been received before making of such disclosure.

Lesser penalty shall not be imposed by the Commission if the person making the disclosure does not continue to cooperate with the Commission till the completion of the proceedings before the Commission.

7. (a)

Exceptions to the Rule enunciated in the case of Foss vs Harbottle

The Rule in Foss v. Harbottle is not absolute but is subject to certain exceptions. In other words, the Rule of supremacy of the majority is subject to certain exceptions and so that, the minority shareholders are not left helpless and desperate, but they are protected by:

- The Common Law.
- the provisions of the Companies Act, 2013.
- Action may be taken by Shareholders under Common Law

The cases in which the majority rule does not prevail are commonly known as exceptions to the rule in Foss v. Harbottle and are available to the minority. In all these cases an individual member may sue for declaration that the resolution complained of is void, or for an injunction to restrain the company from passing it.

The majority rule will not apply in the following cases.

- **Ultra Viresacts**
Where the directors representing the majority of shareholders perform an illegal or ultravires act for the company, an individual shareholder has right to bring an action. In such case a shareholder has the right to restrain the company by an order or injunction of the court from carrying out an ultra vires act.
- **Fraud on Minority**
Where an act done by the majority amounts to a fraud on the minority. an action can be brought by an individual shareholder.
- **Wrong doers in charge of the management control**
If the wrongdoers are in control of the company, the minority shareholders' representative action for fraud on the minority will be entertained by the Court as the voice of the Minority Shareholders must be heard in such a situation.
- **Resolution requiring Special Majority but is passed by a simple majority**
A Minority shareholder can sue if an act requiring a special majority but is passed by a simple majority. An individual shareholder has the right of action to restrain the company from acting on a special resolution to which the insufficient notice is served.
- **Personal actions by shareholders**
Individual member is entitled to all the rights and privileges according to his status as a member. He can insist on the strict compliance with the legal rules, statutory provisions. Provisions in the memorandum and the articles are mandatory in nature and cannot be waived off by majority shareholders.
- **Breach of duty**
The minority shareholder may bring an action against the company, where although there is no fraud, there is a Breach of duty by directors and majority shareholders to the detriment of the company.

7. (b)

(i) MSME

MSME Stands for Micro, Small and Medium Enterprises which has become a crucial sector to provide large scale employment with low Capital base and is defined based on the investment and turnover criteria as per MSMED Act ,2006.

Micro Enterprises

Enterprises with Investment in Plant and Machinery or Equipment of not more than INR 1 crore and Annual Turnover of not more than INR 5 crores in a financial year.

Small Enterprises

Enterprises with Investment in Plant and Machinery or Equipment of not more than INR 10 crores and Annual Turnover of not more than INR 50 crores.

Medium Enterprises

Enterprises with Investment in Plant and Machinery or Equipment of not more than INR 50 crores and Annual Turnover of not more than INR 250 crores.

(ii) Objective behind setting up IRDA

The Insurance Regulatory and Development Authority (IRDA) was established in the year 1999 by the Indian Government with the following objectives:

- To protect the interests of holders of insurance policies.
- To regulate, promote and ensure orderly growth of the industry
- Matters connected therewith or incidental thereto.

8. (a)

(1) Compliance Requirements under FEMA:

(i) Form FC-GPR Filing Timeline and Procedure:

As per FEMA regulations, when a company receives FDI through equity instruments, it must file Form FC-GPR within 30 days of share allotment. In this case, shares were allotted on 15th May, 2024, so the due date was 14th June 2024. The Form must be filed online via the RBI's FIRMS portal, along with requisite documents such as FIRC, KYC, valuation certificate, Board resolution, etc.

(ii) Entity Master Maintenance:

Every Indian company receiving FDI is required to create and maintain an Entity Master on the FIRMS portal. It must be updated regularly to reflect current foreign holdings. Failure to update the Entity Master is treated as non-compliance under FEMA and may block the ability to file any forms related to FDI.

(2) Consequences and Remedial Steps:

Consequences of Non-Compliance:

- (i) Delay in FC-GPR filing beyond 30 days attracts penalty under Section 13 of FEMA, which may include a monetary penalty up to thrice the sum involved.
- (ii) Inability to file further FDI-related forms due to a non-updated Entity Master.
- (iii) Regulatory risk and potential scrutiny from RBI.

Remedial Steps (as on August 2024):

Immediately update the Entity Master with correct details on FIRMS.

File the delayed FC-GPR on FIRMS portal and await rejection due to delay.

Apply for compounding with RBI for the delay, as FC-GPR delay is compoundable offence.

Penalty for Non-Compliance

As per the Foreign Exchange Management Act (FEMA), 1999, failure to file Form FC-GPR within the prescribed time can attract penalties:

- Late Submission Fee (LSF) is applicable if the delay is condoned by the RBI.
- If the company fails to file entirely, it may be liable for:
 - A penalty up to thrice the sum involved in the contravention (where the amount is quantifiable), or
 - A penalty up to ₹2 lakh if the amount is not quantifiable.
 - An additional penalty of ₹5,000 per day for continuing contraventions.

8. (b)

Key features of PMLA

The Prevention of Money Laundering Act (PMLA), 2002, was enacted to prevent money laundering and to provide for the confiscation of property derived from or involved in money laundering. Here are seven key features of the Act:

1. Definition of Money Laundering:

Under Section 3 of PMLA, money laundering is defined as any process or activity connected with the proceeds of crime, including its concealment, possession, acquisition, or use.

2. Attachment of Property:

Authorities under PMLA can provisionally attach property believed to be involved in money laundering, to prevent its transfer or disposal before the completion of investigation.

3. Adjudicating Authority:

An Adjudicating Authority is appointed to confirm the attachment of property and take further action regarding its confiscation.

4. Special Courts:

Special Courts are designated under the Act to try offenses of money laundering. These courts are set up under the Prevention of Money Laundering Act in consultation with the Chief Justice of the High Court.

5. Reporting Entities and KYC:

Banks, financial institutions, and intermediaries are required to maintain records and report suspicious transactions to the Financial Intelligence Unit – India (FIU-IND). They must also follow Know Your Customer (KYC) norms.

6. Presumption in Certain Cases:

The Act presumes the existence of a money laundering offense in cases involving interconnected transactions and gives enforcement agencies more power in prosecution.

7. Confiscation of Property:

Once a person is found guilty of money laundering, the involved property can be permanently confiscated by the government.