CA- Final

Corporate and Allied Laws

These questions are made exclusively for last minute revision only.

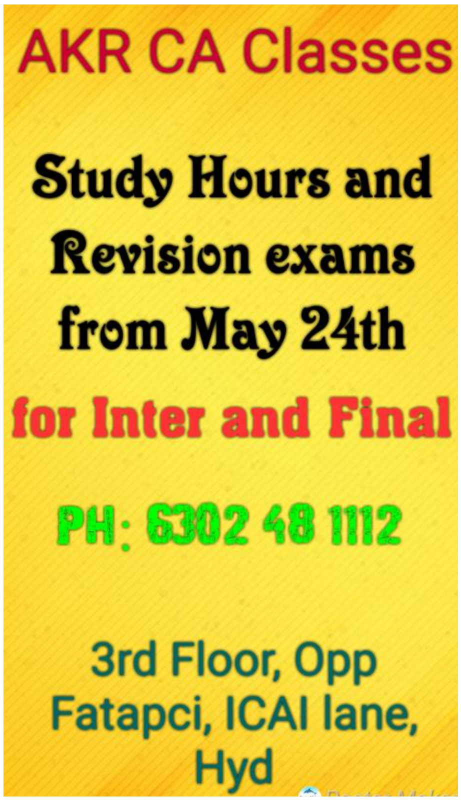
LMRQ

Last Minute Revision Questions

CA Anil K Reddy. M. Com, ACA

Type of Returns To Be Filed Under Goods & Services Tax

RETURN FORM	WHAT TO FILE?	BY WHOM?	BY WHEN?
GSTR - 1	Details of outward supplies of taxable goods and /or services effected	Registered Taxable Supplier	10th of the next month
GSTR - 2	Details of inward supplies of taxable goods and /or services effected claiming input tax credit.	Registered Taxable Recipient	15th of the next month
GSTR - 3	Monthly return on the basis of finalization of details of outward supplies & inwards supplies along with the payment of amount of tax.	Registered Taxable Person	20th of the next month
GSTR - 4	Quarterly return for compounding taxable person	Composition Supplier	18th of the month succeeding quarter
GSTR - 5	Return for Non-Resident foreign taxable person	Non-Resident Taxable Person	20th of the next month
GSTR - 6	Return for Input Service Distributor	Input Service Distributor	13th of the next month
GSTR - 7	Return for authorities deducting tax at source.	Tax Deductor	10th of the next month
GSTR - 8	Details for supplies effected through e-commerce operator and the amount of the tax collected	E-commerce Operator / Tax Collector	10th of the next month
GSTR - 9	Annual Return	Registered Taxable Person	31st December of next financial year
GSTR - 10	Final Return	Taxable person whose registration has been surrendered or cancelled.	Within three months of the date of cancellation or date of cancellation order, whichever is later.
GSTR - 11	Details of inwards supplies to be furnished by a person having UIN	Person having UIN and claiming refund	28th of the month following the month for which statement is filed.



Last Minute Revision Questions
Compiled By CA Anil K Reddy. M.Com, ACA
For CA Final May 2018 Exams

Ph: 9985091719

Watch live discussion of these questions in FB on Post Audit Exam from 6.15PM onwards. Link: www.facebook.com/caanilkreddy.

Q1. ***A Public Company has been declaring dividend at the rate of 20% on equity shares during the last 3 years. The Company has not made adequate profits during the year ended 31st March, 2015, but it has got adequate reserves which can be utilized for maintaining the rate of dividend at 20%. Advise the Company as to how it should go about if it wants to declare dividend at the rate of 20% for the year 2014-15 as per the provisions of the Companies Act, 2013.***

Ans

As per Rule 3 of the *Companies (Declaration and Payment of Dividend) Rules), 2014,* in the event of inadequacy or absence of profits in any year, a company may declare dividend out of surplus subject to the fulfillment of the following conditions:

1. The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year;
   Provided that this sub-rule shall not apply to a company, which has not declared any dividend in each of the three preceding financial year.
2. The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement;
3. The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared;
4. The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement.

In the given case therefore, the company can declare a dividend of 20% provided it has the required residual reseve, after such payment, of 15% of its paid up capital as appearing it its latest audited financial statement. The company should have the dividend recommended by the Board and put up for the approval of the members at the Annual General Meeting as the authority to declare lies with the members of the company.

Q2. ***Star Ltd. declared and paid dividend in time to all its equity holders for the financial year 2014-15, except in the following two cases:***

(i) ***Mrs. Sheela, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheela about this discrepancy.***

(ii) ***Dividend amount of ` 50,000 was not paid to Mr. Mohan, deceased, in view of court order restraining the payment due to family dispute about succession.***

You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends.

Ans

(i) *Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to her.*
In the given situation, the company has failed to communicate to the shareholder Mrs. Sheela about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.

(ii) *Section 127, inter-alia, provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law.*
In the present circumstance, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession. Hence, there will not be any liability on the company and its Directors etc.

Q3 Construction Ltd. took up a project of the National Highways Authority of basis of a guarantee provided by the Central Government regarding dividends to the shareholders of the company. Can the company pay of the above guaranteed money? Referring to the applicable provisions Companies Act, 2013, advise the company regarding the sources out of company can pay dividends.

Ans. Section 123 of the Companies Act, 2013 provides for declaration of dividend. According to this section, Dividend shall be declared or paid by a company for any financial year only—

- out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of section 123(2), or
- out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub- section and remaining undistributed, or
- out of both; or
- out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government.

In the light of the above provisions we can conclude that Construction limited can pay dividends out of the money provided by the Central Government.

Q4. Name the authority who may establish the Investor Education and Protection Fund to safe guard the interest of the shareholders with respect to the refund of unclaimed and unpaid dividend. Specify the list of amounts that can be entrusted to the Fund.

Ans

Establishment of Fund: The Central Government shall establish a Fund to be called the Investor Education and Protection Fund (herein referred to as the Fund).

Following Amount of that can be credited/entrusted to the fund are —

(a) **Amount given by the Central Government as a grants** - the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund;

(b) **Donations by the Central Government-** donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund;

(c) **Amount of Unpaid Dividend Account**- the amount in the Unpaid Dividend Account (UDA) of companies transferred to the Fund under section 124(5);

(d) **Amount of the general revenue account of the Central Government**- the amount in the general revenue account of the Central Government which had been transferred to that account under section 205A(5) of the Companies Act, 1956, as it stood immediately before the commencement of the Companies (Amendment) Act, 1999 and remaining unpaid or unclaimed on the commencement of this Act;

(e) **Amount in IEPF**- the amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956;

(f) **Income from investments**- the interest or other income received out of investments made from the Fund;

(g) **Amount received through disgorgement or disposal of securities**- Amount received through disgorgement or disposal of securities under section 38(3) shall be credited to the IEPF provided under section 38(4);

(h) **Application money**- the application money received by companies for allotment of any securities and due for refund;

(i) **Matured deposits**- matured deposits with companies other than banking companies;

(j) **Matured debentures-** matured debentures with companies;

(k) **Interest**- interest accrued on the amounts referred to in clauses (*h*) to (*j*);

(l) **Amount received from sale proceeds-** sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;

(m) **Redemption amount-** redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and

(n) **Other amount**- such other amount as prescribed under the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

Exception- Provided that no such amount referred to in clauses (*h*) to (*j*) shall form part of the Fund unless such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment.

Q5. ***Mr. Bhagvath, recently acquired 76% of the equity shares of M/s Renowned Company Ltd., in the hope of earning good dividend income. Unfortunately the existing Board of Directors have been avoiding declaration of dividend due to alleged inadequacy of profits. Unconvinced, Mr. Bhagvath seeks permission of the Company to allow him to examine the Books of Accounts, which is summarily rejected by the Company. Examine and advise the provisions relating to inspection of Books of Accounts and remedy available.***

Ans

Inspection of Books of Accounts of the Company (Section 128 of the Companies Act, 2013)-

Mr. Bhagvath has no right to carry out an inspection of the books of accounts of the company despite the fact that he holds 76% of the equity shares of M/s Renowned Company Ltd. According to sections 128(3) and 206 of the Companies Act, 2013, following persons have the right to carry out the inspection of the books of accounts of the company.

(i) Directors of the Company [Section 128(3) of the Companies Act, 2013]

(ii) Registrar of Companies [Section 206 of the Companies Act, 2013]

(iii) Such officer of Government as may be authorised by the Central Government in this behalf (Section 206 of the Companies Act, 2013).

(iv) Such officers of SEBI as may be authorised by SEBI [Section 206 read with Section 24 of the Companies Act, 2013].

Since Mr. Bhagvath does not fall in any of above mentioned categories, he is not eligible to carry out the inspection.

[Note: According to Regulation 89(ii) of the Table F of the Schedule I of the Companies Act, 2013, a member shall have right of inspecting any account or book or document of the company only if conferred by law or authorized by the Board or by the company in general meeting]

Q6. Drishti Ltd. finalized its books of accounts as per the applicable provisions of the companies Act, 2013. It also filed the Income tax return for the assessment year 2016- 2017 within the due date. The Income Tax Authorities found some irregularities in the said accounts and want the company to revise the accounts. Referring to the provisions of the Companies Act, 2013 advise whether and how the accounts of the company can be re-opened and revised.

Re-opening of Accounts on Court's or Tribunal's Orders

As per section 130 of the Companies Act, 2013, a company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by-

(a) the Central Government,

(b) the Income-tax authorities,

(c) the Securities and Exchange Board,

(d) any other statutory regulatory body or authority or any person concerned

and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—

(i) the relevant earlier accounts were prepared in a fraudulent manner; or

(ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

Provided that the court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned before passing any order under this section.

Without prejudice to the provisions contained in this Act the accounts so revised or re-cast, shall be final.

So, the accounts of Drishti Limited can be re-cast and revised in the above manner.

Q7. Examine the validity and advice on the following matters with reference to the provisions of the Companies Act, 2013:

(i) Prakash Carriers Limited appointed Mr. Rahul as its auditor in the Annual General Meeting held on 30th September, 2017. Initially, he accepted the appointment but he resigned from his office on 31st October, 2017 due to personal reasons. The Board of directors seeks advice for filling up the vacancy by appointment of Mr.

Samuel as auditor.

(ii) The Board of Directors of ABC Ltd. wants to circulate unaudited accounts before the shareholders of the Company at the Annual General Meeting. Whether such an act of ABC Ltd. is tenable?

(iii) Managing Director of PQR Ltd. himself wants to appoint Mr. Raj, a practicing Chartered Accountant, as first auditor of the company. Comment on the proposed action of the Managing Director.

(iv) "Mr. P" is a practicing Chartered Accountant and "Mr. Q", the relative of "Mr. P", is holding securities of "ABC Ltd." having face value of ` 90,000/-. Whether "Mr. P" is Qualified from being appointed as an Auditor of "ABC Ltd."?

(v) XYZ Ltd. is a listed company having turnover of ` 1200 crore during the financial year 2016-17. The CSR committee of the Board formulated and recommended a CSR project which was approved by the Board. Company finalised the project under its CSR initiatives which require funds @ 5 % of average net profit of the company for last three financial years. Will such excess expense be counted in subsequent financial years as a part of CSR expenditure? Advise.

Ans

(i) In the present case, as the auditor Mr. Rahul has resigned, the casual vacancy so created can be filled up by the Board appointing Mr. Samuel. However, the appointment of Mr. Samuel must be approved by the company by passing of an ordinary resolution at a general meeting of the company which must be convened by the Board within 3 months of the recommendation of the Board. Mr. Samuel will be entitled to hold office till the conclusion of the next Annual General Meeting.

(ii) Section 129(2) of the Companies Act, 2013 provides that at every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year. Further section 134(7) provides that signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of:

(a) any notes annexed to or forming part of such financial statement;

(b) the auditor's report; and

(c) the Board's report.

It, therefore, follows that unaudited accounts cannot be sent to members or unaudited accounts cannot be filed with the Registrar of Companies. So such an act of ABC Ltd. is not tenable.

(iii) Section 139(6) of the Companies Act, 2013 lays down that "the first auditor or auditors of a company shall be appointed by the Board of directors within 30 days from the date of registration of the company". In the instant case, the appointment of Mr. Raj, a practicing Chartered Accountant as first auditors by the Managing Director of PQR Ltd by himself is in violation of Section 139(6) of the Companies Act, 2013, which authorizes the Board of Directors to appoint the first auditor of the company.

In view of the above, the Managing Director of PQR Ltd should be advised not to appoint the first auditor of the company.

(iv) As per section 141 (3)(d)(i) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ` 1,00,000.

In the present case, Mr. Q. (relative of Mr. P, an auditor), is having securities of ` 90,000 face Value in the ABC Ltd., which is as per requirement of proviso to section 141 (3)(d)(i), Therefore, Mr. P will not be disqualified to be appointed as an auditor of ABC Ltd.

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

Q8. ***Examine the validity of the following with reference to the provisions of the Companies Act, 2013:-***

(i) EF Limited appointed a individual firm, Naresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30th September, 2014. Mrs. Kamala, wife of Mr. Naresh, invested in the equity shares face value of Rs. 1 lakh of EF Limited on 15th October, 2014. But Naresh & Company continues to function as statutory auditors of the company.

(ii) Mr. Suresh, a Chartered Accountant, was appointed by the Board of Directors of AB Limited as the First Auditor. The company in General Meeting removed Mr. Suresh without seeking the approval of the Central Government and appointed Mr. Gupta as Auditor in his place.

Ans

(i) Disqualification of auditor: According to section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the *Companies (Audit and Auditors) Rules, 2014.*

In the case Mr. Naresh, Chartered Accountants, did not hold any such security. But Mrs. Kamala, his wife held equity shares of EF Limited of face value Rs. 1 lakh, which is within the specified limit.

Further Section 141(4) provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 141, he shall be deemed to have vacated his office of auditor. Hence, Naresh & Company can continue to function as auditors of the Company even after 15th October 2014 i.e. after the investment made by his wife in the equity shares of EF Limited.

(ii) Removal of first auditor: Section 140(1) stipulates that any auditor appointed under section 139 may be removed from office before the expiry of his term by passing special resolution in general meeting, after obtaining the previous approval of the Central Government in that behalf.

Provided that before taking any action under subsection (1) of Section 140, the auditor concerned shall be given a reasonable opportunity of being heard.

The first auditors appointed by Board of Directors can be removed in accordance with the provision of Section 140(1) of the Companies Act, 2013. Hence the removal of the first auditor appointed by the Board without seeking approval of the Central Government is invalid. The company contravened the provision of the Act.

Q9. XYZ Limited is an unlisted public company having a paid-up capital of twenty crore rupees as on 31st March, 2017 and a turnover of one hundred fifty crore rupees during the year ended 31st March, 2017. The total number of directors is thirteen.

State the following answers:

(i) Minimum number of directors appointed as Independent Director in XYZ Limited.

(ii) What will be the consequences where XYZ Ltd. ceases to fulfill any of the required conditions with respect to appointment of Independent directors for three continuous years?

(iii) If suppose XYZ Ltd. (Unlisted public company) is a dormant company, what shall be the law related to the appointment of Independent director?

Ans

1(i) According to Rule 4(1) of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following class or classes of companies shall have at least 2 directors as independent directors:

(1) the Public Companies having paid up share capital of 10 crore rupees or more; or

(2) the Public Companies having turnover of 100 crore rupees or more; or

(3) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees.

In the present case, XYZ Limited is an unlisted public company having a paid-up capital of ` 20 crores as on 31st March, 2017 and a turnover of ` 150 crores during the year ended 31st March, 2017. Thus, as per the Companies (Appointment and Qualification of Directors) Rules, 2014, XYZ Limited shall have at least 2 directors as independent directors.

(ii) Where a company ceases to fulfil any of 3 conditions for three consecutive years, it shall not be required to comply with these provisions (i.e., related to appointment of Independent directors) until such time as it meets any of such conditions.

As per Rule 4(2) of the Companies (Appointment and Qualification of Directors) Rules, 2014 the following classes of unlisted public company are not covered under Rule 4(1), namely:-.

(a) a joint venture;

(a) a wholly owned subsidiary; and

(b) a dormant company as defined under section 455 of the Act.

Accordingly, XYZ, a dormant company does not require to fulfil the conditions stated in Rule 4(1) for appointment of Independent Directors.

Q10. ***Annual general meeting of Hero Ltd. has been scheduled in compliance with the requirements of the Companies Act, 2013. In this connection, it has some directors who are rotational and out of which some have been appointed long back, some have been appointed on the same day.***

Decide in this connection:

(i) Which of the directors shall be retiring by rotation?

(ii) In case two directors were appointed on the same day, how would you decide their retirement by rotation?

(iii) In case the meeting could not decide how the vacancies caused by retirement to be dealt with, what shall be consequences?

Ans

Rotational Directors and Retirement:

(i) According to section 152(6)(a)(i) of the Companies Act, 2013, unless the articles provide for the retirement of all directors at every annual general meeting, not less than two- thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement of directors by rotation.

Further, section 152(6)(c) of the Act states that one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

From the above provisions, it is clear that the directors who are liable for rotation at every annual general meeting shall be one third of those directors who constitute the two thirds of the total number of directors and who are liable for rotation at every AGM.

(ii) Under section 152(6)(d) the directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.. Therefore, the directors who will retire by rotation shall be those who have been in office for the longest term since their appointment. In case of two or more directors who were appointed on the same date at the same AGM, the retiring directors will be mutually agreed by them or in the absence of such agreement, will be determined by lots.

(iii) Under section 152(6)(e) of the Companies Act, 2013 the Vacancy caused by the retirement of directors at the AGM may be filled in the same annual general meeting by appointing either the retiring directors or some other person. The annual general meeting may also decide not to fill the vacancy arising from the retirement of one or more directors.

Section 152(7) (a) provides that if the vacancy of the director retiring by rotation, is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

Section 152 (7)(b) further provides that if at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless:

(a) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;

(b) the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed;

(c) he is not qualified or is disqualified for appointment;

(d) a resolution, whether special or ordinary, is required for his appointment or re- appointment by virtue of any provisions of this Act; or

(e) section 162 (appointment of directors to be voted individually) is applicable to the case.

Q11. ***The Board of directors of XYZ Ltd. filled up a casual vacancy caused by the death of Mr. P by appointing Mr. C as a director on 3rd April, 2014. Unfortunately Mr. C expired on 15th May, 2014 after working about 40 days as a director. The Board now wishes to fill up the***

casual vacancy by appointing Mrs. C in the forthcoming meeting of the Board. Advise the Board in this regard as per the provisions under the Companies Act, 2013.

Ans

Section 161(4) of the Companies Act, 2013 provides that in the case of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board.

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

In view of the above provisions, in the given case, the appointment of Mr. C in place of the deceased director Mr. P was in order. In normal course, Mr. C could have held his office as director up to the date to which Mr. P would have held the same.

However, Mr. C expired on 15th May, 2014 and again a vacancy has arisen in the office of director owing to death of Mr. C who was appointed by the board to fill up the casual vacancy resulting from P's demise. Vacancy arising on the Board due to vacation of office by the director appointed to fill a casual vacancy in the first place, does not create another casual vacancy as section 161 (4) clearly mentions that such vacancy is created by the vacation of office by any director appointed by the company in general meeting. Hence, the Board cannot fill in the vacancy arising from the death of Mr. C.

The Board may however appoint Mrs. C as an additional director under section 161 (1) of the Companies Act, 2013 provided the articles of association authorises the board to do so, in which case Mrs. C will hold the office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

Q12 (i) The composition of the Board of Directors of a listed company as on 31-03-2017 comprised of (i) Mr. A, Director, (ii) Mr. B, Director (iii) Mr. C, Director (iv) Mr.· D, Director, (v) Mrs. E, Independent Director, (vi) Mr. F, Independent Director and (vii) Mr. G, Independent Director.

Mr. D & Mrs. E vacated their office of Director on 15-04-2017.

You are required to examine with reference to the provisions of the Companies Act, 2013 and what course of action would you suggest which can be taken up by the Company in this regard?

(ii) Examine the following with reference to the provisions of the Companies Act, 2013:

(a) Mr. Arthav, a director resigns after giving due notice to the company and he forwards a copy of resignation in e-form DIR-11 to the Registrar of Companies (RoC) within the prescribed time. What would be the status of Mr. Arthav if the company fails to intimate about the resignation of Mr. Arthav to RoC?

(b) The Board of Directors of Superwood Limited decides to appoint on its Board, Mr. Ramakant as a nominee director upon the request of a bank which has extended a long term financial assistance to the company. The Articles of Association of the company do not confer upon the Board any such power. Also, there is no formal agreement between the company and the bank for any such nomination.

Ans

(i) The second proviso to sub-section 1 of section 149 provides that such class or classes of companies as may be prescribed, shall have atleast one women director. Rule 3 of *Companies (Appointment and Qualification of Directors) Rules, 2014* provides that the following class of companies shall appoint at least one women director –

(1) every listed company;

(2) every other public company having-

- paid-up share capital of one hundred crore rupees or more; or
- turnover of three hundred crore rupees or more.

It further provides that any intermittent vacancy of a women director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

In this case the Company is a listed and under the provisions of the Companies Act, 2013, it is required to have at least 1 Women Director on its Board.

The provision of section 149(4) provides that every listed company shall have at least 1/3rd of the total number of Directors as Independent Directors.

As per the facts stated in the question, composition of board of directors of listed company as on 31-3-2017 comprised of total 7 directors. Out of which 4 were directors and 3 were independent directors. Later Mr. D (Director) and Mrs. E

(Independent Director) vacated their offices of director on 15-4-2017.

So accordingly, listed company as stated above, shall have at least one women director and one-third of the total number of directors as independent directors in the Board. However, on 15-4-2017, total number of directors left were 5 due to vacation of Mr. D and Mrs. E. Further, Rule 3 of the *Companies (Appointment and Qualification of Directors) Rules, 2014*, provides that if there is an intermittent vacancy of a women director, it shall be filled up by the Board at the earliest but not later than immediate next board meeting or three months from the date of such vacancy whichever is later.

As per the requirement of the above sections, there is compliance of section 149(4) as 1/3rd of the total number of directors comprises of (1/3x5) 1.6 rounded off as 2, which complies with the minimum requirement of 2 independent directors in the board, however, pertaining to women director, Board have to fill up the intermittent vacancy at the earliest but not later than immediate next board meeting or three months from the date of such vacancy whichever is later.

(ii) (a) **Resignation of Director (Section 168 of the Companies Act, 2013)**

A director may resign from his office by giving a notice in writing to the company. The Board shall on receipt of such notice take note of the same. The company shall within 30 days from the date of receipt of notice of resignation from a director, intimate the Registrar in *Form DIR -12* and post the information on its website, if any.
Such director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30 days from the date of resignation in FORM *DIR-11* along with the prescribed fee. The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

In the present case, Mr. Arthav, a director resigns after giving due notice to the company and he forwards a copy of resignation in e-form DIR-11 to the RoC within the prescribed time.

If the company fails to intimate about the resignation of Mr. Arthav to RoC, even then the resignation of Mr. Arthav shall take effect from the date on which the notice is received by the company or the date, if any, specified by Mr. Arthav in the notice, whichever is later.

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

In the given case, the Articles of Association of Superwood Limited do not confer upon the Board of Directors any such power. Hence, the Board cannot appoint Mr. Ramakant as a nominee director even on the request of a bank which has extended a long term financial assistance to the company.

Q13 State the legal position in the given situations:

(i) Mr. Khan appointed as an Independent Director on the Board of a company, be appointed in its subsidiary or its holding or its associate company.

(ii) Mr. D, proposes his candidature as a director in X Ltd. along with the deposit of 1 lac rupees. Later Mr. D failed to be appointed but received 30 % of total votes. D asked X Ltd. to refund the deposit but the company denied to pay as he failed to be elected.

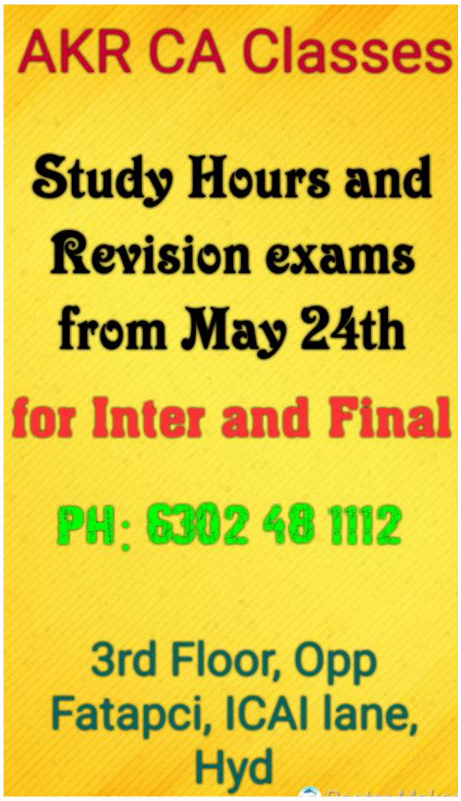
Ans (i) **As per the definition of the independent director (ID) given under section 149 of the Companies Act, 2013, an independent director means a director other than a managing director or a whole time director or a nominee director and who fulfills the criteria laid out u/s 149(6).**

Therefore, if ID meets the above qualifications, then the same person can be appointed as an ID in the company or its holding, subsidiary or associate company. So Mr. Khan can be appointed in the Board of a Company, in its subsidiary or its holding or associate company.

(ii) As per section 160, a company shall refund amount deposited along with the candidature of a person who has been elected as a director or who has received more than 25% of total votes. Since in the given case, Mr. D though failed to be appointed but acquired 30% of the total votes, so he is eligible for the refund of the deposit amount of 1lac rupees.

Type of Returns To Be Filed Under Goods & Services Tax

RETURN FORM	WHAT TO FILE?	BY WHOM?	BY WHEN?
GSTR - 1	Details of outward supplies of taxable goods and /or services effected	Registered Taxable Supplier	10th of the next month
GSTR - 2	Details of inward supplies of taxable goods and /or services effected claiming input tax credit.	Registered Taxable Recipient	15th of the next month
GSTR - 3	Monthly return on the basis of finalization of details of outward supplies & inwards supplies along with the payment of amount of tax.	Registered Taxable Person	20th of the next month
GSTR - 4	Quarterly return for compounding taxable person	Composition Supplier	18th of the month succeeding quarter
GSTR - 5	Return for Non-Resident foreign taxable person	Non-Resident Taxable Person	20th of the next month
GSTR - 6	Return for Input Service Distributor	Input Service Distributor	13th of the next month
GSTR - 7	Return for authorities deducting tax at source.	Tax Deductor	10th of the next month
GSTR - 8	Details for supplies effected through e-commerce operator and the amount of the tax collected	E-commerce Operator / Tax Collector	10th of the next month
GSTR - 9	Annual Return	Registered Taxable Person	31st December of next financial year
GSTR - 10	Final Return	Taxable person whose registration has been surrendered or cancelled.	Within three months of the date of cancellation or date of cancellation order, whichever is later.
GSTR - 11	Details of inwards supplies to be furnished by a person having UIN	Person having UIN and claiming refund	28th of the month following the month for which statement is filed.



Q14 (i) While counting the limit of 20 for holding directorship under section 165 should section 8 companies and foreign body corporate (whether holding or subsidiary or otherwise) be also included?

(ii) Xyz, a small company held its Board meetings on 1st January, 2016, 31st December 2016 and 1st January, 2017 then what is the due date of next board meeting?

Ans

(i) As per Section 165(1) of the Companies Act no person shall hold office as a director, including any alternate directorship, in more than 20 companies at the same time.

As the section uses the term "company" therefore while counting the limit of 20, all companies will be included. However, it may be inferred that foreign body corporates, whether a holding, subsidiary or otherwise, will not be included in the said limit of holding directorship in 20 companies. Further, as per the notification dated 5th June 2015, section 165(1) shall not apply to section 8 companies. Therefore, the directorships in section 8 companies will be excluded while calculating the limit of 20 companies

ii. As per section 173(5), OPC, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one meeting of the board of 'directors' has been conducted in each half of a calendar year and the gap between the two meetings is not less than 90 days.

Therefore, the meetings held on 1st January, 2016 and 31st December 2016 have complied with the above provision and will be deemed to be proper board meetings. However, the meeting held on 1st January 2017 will not be considered as board meeting required for the purpose of the meeting the criteria of holding minimum 2 Board meetings with a gap of 90 days. Hence, while the Board meeting held on 1st January 2017 will be valid, however, the next board meeting must be held between April-June, 2016 i.e., after a gap of 90 days from 31st December, 2016.

Q15. There are four directors in Shine Paper Limited. Mr. Madhav, being the director in station, has been authorized to draw and endorse cheque or other negotiable instruments on account of the company and also to direct registration of transfer of shares and signing the share certificates etc. Whether as per provisions of the Companies Act, 2013, he will be treated as managing director of the company? Also narrate the procedure of appointment of a managing director in a company.

Ans

Managing Director [Section 2(54)]: Section 2(54) of the Companies Act, 2013 defines a "Managing Director" as a director who is entrusted with substantial powers of management of the affairs of the company by:

(i) virtue of articles of a company or

(ii) an agreement with the company or

(iii) a resolution passed in its general meeting, or by its Board of Directors, and includes a director occupying the position of the managing director, by whatever name called.

Explanation to Section 2 (54) clarifies that substantial powers of the management shall not be deemed to include the power to do such administrative acts of a routine nature when so authorised by the Board such as:

(i) the power to affix the common seal of the company to any document or

(ii) to draw and endorse any cheque on the account of the company in any bank or

(iii) to draw and endorse any negotiable instrument or

(iv) to sign any certificate of share or

(v) to direct registration of transfer of any share.

In the instant case, Mr. Madhav, a director in Shine Paper Limited has been authorized to draw and endorse cheque or other negotiable instruments on account of the company and also to direct registration of transfer of shares and signing the share certificates etc.

Hence, according to explanation to section 2(54), Mr. Madhav will not be treated as Managing Director of the company as he is authorized to do administrative acts of a routine nature.

Procedure of appointment of a Managing Director [Section 196(4)]

(1) Subject to the provisions of section 197 and Schedule V, a managing director shall be appointed, and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting.

(2) The terms and conditions and remuneration approved by Board of Directors as above shall be subject to the approval of shareholders by a resolution at the next general meeting of the company.

(3) In case such appointment is at variance to the conditions specified in the Schedule V of the Companies Act, 2013, the appointment shall be approved by the Central Government.

(4) The notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any.

(5) A return in the prescribed form (Form No. *MR.1*) along with the prescribed fee shall be filed with the Registrar within sixty days of such appointment.

Q16. ***Due to internal problems in the working of Infighting Detergents Ltd., Mr. Satyam and Mr. Shivam, a Director, have submitted their resignations and decided to disassociate themselves with the working of the company. Mr. Sundram, the Managing Director, decides to refuse their resignations. Examine whether the Managing Director can compel Mr. Satyam and Mr. Shivam to continue as per the provisions of the Companies Act, 2013.***

Ans

Section 168(1) of the Companies Act, 2013 provides that a director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and company shall intimate the Registrar in Form DIR-12 as prescribed in *Companies (Appointment & Qualification of Directors) Rules, 2014* and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company.

The proviso to section 168(1) states that a director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed. Under the *Companies (Appointment & Qualification of Directors) Rules, 2014* the director shall within 30 days of resignation forward to the Registrar a copy of his resignation alongwith the reasons for his resignation in Form DIR-11 along with the prescribed fee.

Further, section 168(2) states that the resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

The law does not give an option to the Managing Director or the Company or the Board to reject the resignation of a director and force him to continue.

Therefore, in the given case, the Managing Director cannot compel Mr. Satyam and Mr. Shivam to continue as directors in view of the above provisions.

Q17. ***DD Ltd. is a listed company and it has been served with notice for appointment of small shareholders' director. Referring to the provisions of the Companies Act, 2013, advise on the following:***

(i) Define the expression 'small shareholder' and specify the number of small shareholders who may serve notice on the company for a director representing them.

(ii) Is it possible to appoint a person who does not hold any share in the company, as small shareholders' director?

(iii) What is the tenure of small shareholders' director and whether he can be re- appointed as such, after expiry of his tenure? Also state whether he can be appointed as an officer of the company on expiry of his tenure as small shareholders' director.

Answer

(i) *According to section 151 of the Companies Act, 2013, a listed company may have one director elected by small shareholders in such manner and on such terms and conditions as may be prescribed.*

Here, "Small Shareholders" means a shareholder holding shares of nominal value of not more than ` 20,000 or such other sum as may be prescribed.

A listed company may upon notice of not less than

(a) *one thousand small shareholders; or*
(b) *one- tenth of the total number of such shareholders,*

whichever is lower, have a small shareholders' director elected by the small shareholders.

(ii) *The small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall leave a notice of their intention with the company at least fourteen days before the meeting under their signature specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director.*

However, if the person being proposed does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice.

Further, the notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders' director stating-

(a) *his Director Identification Number;*
(b) *that he is not disqualified to become a director under the Act; and*
(c) *his consent to act as a director of the company*

(iii) *The tenure of small shareholders' director shall not exceed a period of 3 consecutive years and on the expiry of the tenure, such director shall not be eligible for re-appointment.*

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

Q18

(i) During investigations conducted on the affairs of a company in the public interest, the inspector observed that the Directors of the company had been acting on the instructions of the holding company and he proceeded to investigate the holding company. Is Inspector permitted to do under the provisions of the Companies Act, 2013?

(ii) Decent Marbles Limited has been incurring business losses for past couple of years. The company, therefore, passed a special resolution for voluntary winding up. Meanwhile, complaints were made to the Tribunal and to the Central Government about foul play of the directors of the company, which adversely affected the interests of shareholders of the company as well as the public. In this situation advise whether investigation may be initiated against the company under the provisions of the Companies Act, 2013.

Ans

(i) Investigation into affairs of related companies: Section 219 of the 2013, provides for power of Inspector to conduct investigation into the related companies etc., if an inspector appointed under section 210 or section 213 to investigate into the affairs of a company considers it necessary purposes of the investigation, to investigate also the affairs of:-

(a) any other body corporate which is, or has at any relevant time been the company's subsidiary company or holding company, or a subsidiary company of its holding company;

(b) any other body corporate which is, or has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company;

(c) any other body corporate whose Board of Directors comprises nominees of the company or is accustomed to act in accordance with the directions or instructions of the company or any of its directors; or

(d) any person who is or has at any relevant time been the company's managing director or manager of employee, he shall, subject to the prior approval of the Central Government, investigate into and report on the affairs of the other body corporate or of the managing director or manager, in so far as he considers that the results of his investigation are relevant to the investigation of the affairs of the company for which he is appointed.

Therefore, the inspector shall subject to the prior approval of the Central Government, investigate into and report on the affairs of the other body corporate or of the Managing Director or Manager, in so far as he considers that the results of his investigation are relevant to the investigation of the affairs of the Company for which he is appointed. In view of above, the Inspector is permitted to investigate the holding company.

(ii) According to section 226 of the Companies Act, 2013, an investigation may be initiated notwithstanding, and no such investigation shall be stopped or suspended by reason only of, the fact that—

(a) an application has been made under section 241;

(b) the company has passed a special resolution for voluntary winding up; or

(c) any other proceeding for the winding up of the company is pending before the Tribunal.

In the instant case, Decent Marbles Limited has been incurring business losses for past couple of years. The company passed a special resolution for voluntary winding up. Meanwhile complaints were made to the Tribunal and to the Central Government about foul play of the directors of the company, which adversely affected the interests of shareholders of the company as well as the public.

As, the company has passed a special resolution for voluntary winding up of the company, then also the investigation may be initiated against the company under section 226 of the Companies Act, 2013.

Q19. What is meant by oppression'? State whether the aggrieved party would succeed in obtaining relief from Tribunal on the ground of oppression in the following cases:

(i) The majority of the Board of directors override the minority directors and the minority directors apply to Tribunal complaining oppression by majority directors.

(ii) A petition by majority shareholders complaining oppression by minority shareholders.

Give your answer according to the provisions of the Companies Act, 2013

Ans

Oppression: Oppression, according to the Dictionary meaning of the word, is any act exercised in a manner burdensome, harsh and wrongful. The meaning of the term 'oppression' was explained by Lord Cooper in the Scottish case of *Elder v. Elder and Watson Ltd,* as given below:

"The conduct complained of should be at the lowest involve a feasible departure from the standards of fair dealing and the violation of the conditions of fair play on which every shareholder entrusting his money to the company is entitled to rely.

(i) **Oppression of a member as a director**: The oppression dealt with by section 241 of the Companies Act, 2013, is only oppression of members in their character as such; and it is only in that character they can involve section 241. The harsh treatment, for instance, of a member who is a director or other officer or employee, by the Board of directors or management does not come within section 241. It has been held in *Re. Bellador Silk Ltd.* that if the majority of the Board of directors override the minority directors the latter cannot resort to section 241 and hence the minority directors will not succeed in getting relief from Tribunal on the ground of oppression.

(ii) **Right not confined to minority**: According to section 244, the right to apply for relief under section 241/242 is given to 100 members or 1/10th of the total number of members or any member or members holding not less than 1/10th of the issued share capital of the company. There is nothing in this section which suggests even indirectly that unless the application is made by minority shareholders, it is not maintainable. The right to apply is, therefore, not confined to oppressed minority of the shareholders alone. It was held by Calcutta High Court in *Re. Sindhri Iron Foundry (P) Ltd*. that the oppressed majority also might apply for relief under section 241. Therefore, the petitioners are likely to succeed in getting relief provided the other condition laid down in section 242 (i.e. that to wind up the company would unfairly prejudice such members, but that otherwise the facts would justify the making of a winding-up order on just and equitable ground) is satisfied, even though the Delhi High Court held a contrary view in *Suresh Kumar Sanghi v. Supreme Motors Ltd***.**

Q20. The issued and paid up capital of Crown Jewels Limited is ` 5 crore consisting of 5,00,000 equity shares of ` 100 each. The said company has 500 members. A petition was submitted before the Tribunal signed by 80 members holding

10,000 equity shares of the company for the purpose of relief against oppression and mismanagement by the majority shareholders. Examining the provisions of the Companies Act, 2013, decide whether the said petition is maintainable. Also explain the impact on the maintainability of the above petition, if subsequently 40 members, who had signed the petition, withdrew their consent.

Ans

Right to apply for oppression and mismanagement: As per the provisions of Section 244 of the Companies Act, 2013, in the case of a company having share capital, members eligible to apply for oppression and mismanagement shall be lowest of the following:

100 members; or

1/10th of the total number of members; or

Members holding not less than 1/10th of the issued share capital of the company. The share

holding pattern of Crown Jewels Limited is given as follows:

` 5,00,00,000 equity share capital held by 500 members

The petition alleging oppression and mismanagement has been made by some members as follows:

(i) No. of members making the petition – 80

(ii) Amount of share capital held by members making the petition – ` 10,00,000 The petition

shall be valid if it has been made by the lowest of the following:

100 members; or

50 members (being 1/10th of 500); or

Members holding ` 50,00,000 share capital (being 1/10$^{th}$ of ` 5,00,00,000)

As it is evident, the petition made by 80 members meets the eligibility criteria specified under section 244 of the Companies Act, 2013 as it exceeds the minimum requirement of 50 members in this case. Therefore, the petition is maintainable.

The consent to be given by a shareholder is reckoned at the beginning of the proceedings. The withdrawal of consent by any shareholder during the course of proceedings shall not affect the maintainability of the petition [*Rajamundhry Electric Corporation Vs. V. Nageswar Rao A.I.R. (1956) Sc. 2013.]*.

Q21.

(a) Apex Limited failed to repay the amount borrowed from the bankers, Limited, which is holding a charge on all the assets of the company. The over management of the company in accordance with the provisions Securitization and Reconstruction of Financial Assets and Enforcement of Interest Act, 2002 by appointing four persons as directors. The company is by a Managing Director, Mr. X. Referring to the provisions of the said Act, whether Mr. X is entitled to compensation for loss of office and also explain of such takeover on certain rights of the shareholders of the company. *(8 Marks)*

(b) State the law with respect to the Establishment of Special Court? Mr. A is judicial magistrate in a lower court. He was appointed to hold the office of the special court for the speedy disposal of the pending cases under the Act. Decide in the light of the Companies Act, 2013, whether the appointment of Mr. A is tenable.

Ans

(a) Apex Limited failed to repay the amount borrowed from the bankers, ACE Bank Limited, which is holding a charge on all the assets of the company. The bank took over management of the company in accordance with the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by appointing four persons as directors. The company is managed by a Managing Director, Mr. X.

Here, Apex Limited is a borrower and ACE Bank Limited is a secured

Compensation to Managing director (Mr. X) for loss of office:

According to section 16 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, irrespective of anything contained in any contract or in any other law for the time being in force, no managing director or any other director or a manager or any person in charge of management of the business of the borrower shall be entitled to any compensation for the loss of office or for the premature termination under this Act. However any such managing director or any other director or manager or any such person in charge of management has the right to recover from the business of the borrower, moneys recoverable

Effect of takeover on rights of the shareholders:

Where the management of the business of a borrower, being a company as defined in the Companies Act is taken over by the secured creditor, then, notwithstanding anything contained, such borrower in the said Act or in the memorandum or articles of association of such company -

(1) it shall not be lawful for the shareholders of such company or any other to nominate or appoint any person to be a director of the company;

(2) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor

(3) 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.

The secured creditor is under an obligation to restore the management of the business of the borrower, on realisation of his debt in full, in case of takeover of the management of the business of a borrower by such secured creditor.

"Provided that if any secured creditor jointly with other secured creditors or any asset reconstruction company or financial institution or any other assignee has converted part of its debt into shares of a borrower company and thereby acquired controlling interest in the borrower company, such secured creditors shall not be liable to restore the management of the

(b) **Establishment of special court:** As per section 435 of the Companies Act, 2013, the Central Government may, for the purpose of providing speedy trial of offences punishable under this Act with imprisonment of two years or more, by notification, establish or designate as many Special Courts as

Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company

Appointment of judge: A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working. A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions

Since in the given case, Mr. A who is a judicial magistrate in a lower court, was appointed to hold the office of the special court for the speedy disposal of the pending cases under the Act. As per the above provision, person shall be qualified for appointment as a judge of a Special Court if he, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge. Here Mr A. was not complying with the eligibility criteria, so his appointment as a judge of special court is not

Q21

(a) Mr. X was appointed as company liquidator by tribunal during the liquidation proceedings in the sale of assets. Later it was discovered that Mr. X is relative of one of the director of the company. Certain creditors of the company filed an application before the tribunal that there is a lack of independence during the term of his appointment due to his relation with director. State the legal position of holding of Mr. X as a company liquidator during the liquidation proceedings**.** *(8 Marks)*

(b) What is the procedure for replacement of insolvency resolution professional? What are the key tasks to be performed by a Resolution Professional?

Ans

(a) As per section 276 of Insolvency & Bankruptcy Code, 2016, **t**he Tribunal may, on a reasonable cause being shown and for reasons to be recorded in writing, remove the provisional liquidator or the Company Liquidator, as the case may be, as liquidator of the company on any of the following grounds, namely:—

(a) misconduct;

(b) fraud or misfeasance;

(c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;

(d) inability to act as provisional liquidator or as the case may be, Company Liquidator;

(e) conflict of interest or lack of independence during the term of his appointment that would justify removal.

On removal, the Tribunal may transfer the work assigned to him or it to another Company Liquidator for reasons to be recorded in writing. In case of loss or damage, the Tribunal may recover or cause to be recovered such loss or damage from the liquidator and pass such other orders as it may think fit. The Tribunal shall, before passing any order under this section, provide a reasonable opportunity of being heard to the Company Liquidator.

In the given case, there seems to be lack of independence during the term of his appointment as of existence of a relationship of Mr. X the company liquidator and the company due to being the relative of the director of the company. However as per section 275 of the IB Code, on appointment as Company Liquidator, as the case may be, such liquidator shall file a declaration within seven days from the date of appointment disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal and such obligation shall continue throughout the term of his appointment.

(b) As per Section 27 of the Insolvency & Bankruptcy Code, the Committee of Creditors may at a meeting, by a vote of 75% of voting shares propose to replace the insolvency resolution professional with another resolution professional.

The Committee of Creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority and after the confirmation of the proposed insolvency resolution professional by the Board he shall be appointed in the same manner as laid down in Section 16.

Where any disciplinary proceedings are pending against the proposed resolution professional then the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section.

key tasks to be performed by a Resolution Professional

The following are the key tasks to be performed by a resolution professional:-

(a) Obtaining Valuation of the entity

(b) Preparation of Information Memorandum

(c) Preparation of Resolution plan

(d) Obtaining consent of the Committee of Creditors for the Resolution plan

(e) Periodic reporting to the Board

Q22 Answer the following

(a) M/s Samrat is a company engaged in the providing of services of supplying goods all over the world through aircrafts. The aircrafts of the said company is registered and insured in India with the reputed insurance company. Company found that the insurance policy of one of aircraft which is in Europe had expired. Company said to his officer to get new Insurance policy of that aircraft in Europe. State the validity of such an act of registration of aircraft in Europe.

(b) Universal, a foreign company, incorporated in Australia was carrying on its business in Delhi related to manufacturing of automobile parts. Due to failure of its compliance with the respective law of the country under which it was incorporated, it was ceased to exist. Decide in the light of the Companies Act, 2013 the status of the company and the effect on the conduct of business in India.

(c) State the circumstances when persons are not entitled to make an application to initiate corporate insolvency resolution process.

Suppose a corporate debtor has committed a default and is undergoing a corporate insolvency resolution process. A corporate applicant Mr. X thereof files an application for initiating corporate insolvency resolution process with the Adjudicating Authority, State whether he is entitled to make an application to initiate corporate insolvency resolution process?

(d) Explain the effect of usage developed by contemporary opinion through practice under any statute with an example.

(e) What is the effect of order of moratorium in the Insolvency and Bankruptcy Code, 2016?

Ans

(a) Given problem is based on the section 2CB of the Insurance Act, 1938. Said section deals with the Indian properties not to be insured with foreign insurers. According to the section, no person shall take out or renew any policy of insurance in respect of any property in India or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India, without the permission of the IRDAI.
In the given case, act of registration of aircraft of M/s Samrat which is an Indian property, with an insurer in Europe, is an invalid act.

(b) Section 376 of the Companies Act, 2013 provides the law related to the power of wind up Foreign Companies, although dissolved. Provision states that where a body corporate incorporated outside India which has been carrying on business in India, ceases to carry on business in India, it may be wound up as an unregistered company under this Part (i.e., Part I of the Chapter 21 which deals with the companies authorized to register under this Act), notwithstanding that the body corporate has been dissolved or otherwise ceased to exist as such under or by virtue of the laws of the country under
As per the facts given in the question, Universal, a foreign company, incorporated in Australia ceased to exist as per the law of the country, also ceased to carry on business in Delhi. Accordingly, Universal Company may be wound up as an unregistered company although it ceased to exist in

(c) Persons not entitled to make application.

The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process -

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

In this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor**.** **[Section 11]**

As per the facts corporate applicant Mr. X seems to be a independent individual and not a corporate applicant in relation to such corporate debtor who is undergoing a corporate insolvency resolution process. So, he shall be entitled to make an application to initiate corporate insolvency resolution process.

(d) **Effect of usage:** Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion. A uniform notorious practice continued under an old statute and inaction of the Legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law. When the usage or practice receives judicial or legislative approval it gains additional weight.

In this connection, we have to bear in mind two Latin maxims:

(i) *'Optima Legum interpresest consuetudo'* (the custom is the best interpreter of the law); and

(ii) *'Contempranea expositoest optima et fortissima in lege'* (the best way to interpret a document is to read it as it would have been read when made). Therefore, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority. Simply stated, old statutes and documents should be interpreted as they would have been at the time when they were enacted/written.

Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as contemporanea exposition to interpret not only ancient but even recent statutes in India.

Example: Documents issued by the Government simultaneously with the notification under section 16(1) of the Securities Contracts (Regulation) Act, 1956 were used as contemporanea expositio of the notification. *[Desh Bandhu Gupta & Co. v. Delhi Stock Exchange Association Ltd., AIR 1979 SC]*

(e) Moratorium has been explained in Section 14 of the Code, during the moratorium period the following acts shall be prohibited:

- The institution of suits or continuation of any pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the SARFAESI Act, 2002
- The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor

Q23. Mr. X, a Financial creditor filed an application against corporate debtor (defaulter) for the initiation of insolvency process before the NCLT on 1st of July, 2017. NCLT admitted the application on satisfaction that default has occurred and the application is complete from all the compliances, through an order passed on 10th of July, 2017. As per the Insolvency and Bankruptcy Code, 2016, state the initiation date for the corporate insolvency resolution process and the insolvency commencement date. Also calculate time period for the completion of the Insolvency Resolution Process by the NCLT.

As per the Section 5 (11) of the Insolvency & Bankruptcy Code, 2016, **Initiation date** is the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process. So accordingly, in the given case is an 1st of July 2017 initiation date for commencing of corporate insolvency resolution process.

Further section 5(12) states that **Insolvency commencement date** is the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be. In case of a financial creditor, the NCLT shall, within fourteen days of the receipt of the

As per the stated facts default has been determined within the given time period of 14 days from receipt of application.

Accordingly, 10th of July is the date on which the application for initiation of corporate insolvency process is admitted by the NCLT, so it is the insolvency commencement date

Time for completion of Insolvency Resolution Process (IRP): Section 12 of the Code states that any Insolvency Resolution Process shall be completed within a period of one hundred and eighty days (i.e., 6 months) from the date of admission of the application to initiate the process. So accordingly, corporate insolvency process should be completed by 10th of

January, 2018. However, the NCLT may on an application made by the resolution professional, under a resolution passed by the Committee of Creditors, by a vote of 75% of voting shares, after consideration provide one extension which shall not extend more than 90 days.

Q24. Pious Ltd. a wholly owned subsidiary of Heart Ltd. is desirous of getting merged with its holding company. Pious Ltd. has approached you to advise them what basic conditions are to be fulfilled if a wholly owned subsidiary wants to get merged with its holding company. Give your answer as per the provisions of the Companies Act, 2013.

As per section 233 of the Companies Act, 2013, a scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other class or classes of companies as given in Rule 25 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, subject to the following, namely:—

(i) a **notice of the proposed scheme inviting objections or suggestions**, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within thirty days is issued by the transferor company or companies and the transferee company;
(ii) the **objections and suggestions received are considered by the companies** in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent. of the total number of shares;
(iii) each of the companies involved in the merger files a **declaration of solvency**, in the prescribed form, with the Registrar of the place where the registered office of the company is situated; and
(iv) **the scheme is approved by majority** representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing

Thus, Pious Ltd. being a wholly owned subsidiary of Heart Ltd. can get merged with Heart Ltd. by satisfying the above basic conditions

Q25. Nida Ltd. is engaged in the business of manufacturing garments. However, due to a slump in the market it is not carrying on any business for a period of two immediately preceding financial years (i.e. 2015-16 & 2016-17). Now, on 1st July, 2017, the Registrar of Companies on seeing his records is the opinion that the name of the company must be rightfully be struck from the Register of companies. Advise the Registrar whether he can do so?

Ans

According to section 248 of the Companies Act, 2013, Where the Registrar has reasonable

cause to believe that—

(i) a company has failed to commence its business within one year of its incorporation, or;
(ii) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455,

he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

Thus, as per the provisions of section 248 of the Companies Act, 2013, if Nida Ltd. has also not made an application for obtaining the status of a dormant company under section 455, the Registrar can send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of 30 days from the date of the notice.

Q26. ***The Article of Association of a listed company have fixed payment of sitting fee for each Meeting of Directors subject to maximum of ` 30,000. In view of increased responsibilities of independent directors of listed companies, the company proposes to increase the sitting fee to ` 45,000 per meeting. Advise the company about the requirement under the Companies Act, 2013 to give effect to the proposal.***

Answer

Section 197(5) of the Companies Act, 2013 provides that a director may receive remuneration by way of fee for attending the Board/Committee meetings or for any other purpose as may be decided by the Board, provided that the amount of such fees shall not exceed the amount as may be prescribed. The Central Government through rules prescribed that the amount of sitting fees payable to a director for attending meetings of the Board or committees thereof may be such as may be decided by the Board of directors or the Remuneration Committee thereof which shall not exceed the sum of rupees 1 lakh per meeting of the Board or committee thereof. Further, the Board may decide different sitting fee payable to independent and non-independent directors other than whole-time directors.

From the above, it is clear that fee to independent directors can be increased from ` 30,000 to ` 45,000 per meeting by passing a resolution in the Board Meeting and alternating the Articles of Association by passing Special Resolution.

Q27. ***Examine with reference to the provisions of the Companies Act, 2013 whether notice of a Board Meeting is required to be sent to the following persons:***

(i) An interested Director;
(ii) A Director who has expressed his inability to attend a particular Board Meeting;
(iii) A Director who has gone abroad (for less than 3 months).

Ans

Notice of Board meeting

(i) Interested director: Section 173(3) of the Companies Act, 2013 makes it mandatory for every director to be given proper notice of every board meeting. It is immaterial whether a director is interested or not. In case of an Interested Director, notice must be given to him even though he is precluded from voting at the meeting on the business to be transacted.

(ii) A Director who has expressed his inability to attend a particular Board Meeting: In terms of section 173(3) even if a director states that he will not be able to attend the next Board meeting; notice must be given to that director.

(iii) A director who has gone abroad: A director who has gone abroad is still a director. Therefore, he is entitled to receive notice of board meetings during his stay abroad. The Companies Act, 2013, allows delivery of notice of meeting by electronic means also. This is important because the Companies Act, 2013 permits a director to participate in a meeting by video conferencing or any other audio visual means.

Q28 ***Out of the powers exercisable by the Board under section 179, the board wants to delegate to the Managing Director of the company the power to borrow monies otherwise than on debentures. Advise whether such a delegation is possible? Would your answer be different, if the delegation is given to the manager or any other principal officer including a branch officer of the company?***

Ans

Under section 179(3) of the Companies Act, 2013 the Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board:

a. To make calls on shareholders in respect of money unpaid on their shares;

b. To authorise buy-back of securities under section 68;
c. To issue securities, including debentures, whether in or outside India;
d. To borrow monies
e. To invest the funds of the company
f. To grant loans or give guarantee or provide security in respect of loans;
g. To approve financial statement and the Board's report;
h. To diversify the business of the company;
i. To approve amalgamation, merger or reconstruction;
j. To take over a company or acquire a controlling or substantial stake in another company;
k. Any other matter which may be prescribed:

Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify.

Matters referred to in clauses (d), (e), and (f) above, may be decided by the board by circulation instead of at a meeting in respect to the companies covered under section 8 of the Companies Act, 2013 vide Notification dated 5th June 2015.

From the above provisons it is clear that the power to borrow monies under (d) above, may be delegated to the Managing Director or to the manager or any other principal officer of the company.

Q29. ***The Board of Directors of LM Limited propose to donate `50,000 to a political party during the Financial year ending 31st March, 2014. The average net profits determined in accordance with the provisions of the Companies Act, 2013 during the three immediately preceding financial years is `40,00,000. Examine with reference to the provisions of the Companies Act, 2013 whether the proposed donation is within the power of the Board of Directors of company.***

Ans

Donation to political parties: Under section 182(1) of the Companies Act, 2013 a company may contribute any amount directly or indirectly to any political party without any limit.(Amended).

Hence, the Board of Directors is empowered to make a donation by passing a resolution at a Board meeting. The company is also required to make a proper disclosure in the profit and loss account.

Q30. ***What are the conditions to be fulfilled for calling meetings at shorter notice than as prescribed by Companies Act, 2013. One of the directors, a senior professional, objected to receiving the notice by e-mail. Advise him.***

Answer

Notice of The Board Meeting & Condition to Call Meeting at Shorter Notice - In terms of the proviso to Section 173(3) of the Companies Act, 2013 a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting. No exception is made for any class or classes of companies.

Under Section 173 (3) a meeting of the Board shall be called by giving not less than 7 days notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

Hence the senior Director's objections to receiving the notice by email is not sustainable.

Q31. A person Mr. X, was rendering valuation services to a Real Estate company, before the commencement of the provisions related to the registered valuers and its respective rules. State in the light of the Companies Act, 2013, whether Mr. X can continue to provide valuation service to Real Estate company, without certificate of registration after enforcement of the said provisions?.

Answer

Rule 11 of the *Companies (Registered Valuers and Valuation) Rules, 2017*, which deals with the transitional arrangements. It states that any person who may be rendering valuation services under the Act, on the date of commencement of these rules, may continue to render valuation services without a certificate of registration under these rules up to 31st March, 2018.

Provided that if a company has appointed any valuer before such date and the valuation or any part of it has not been completed before 31st March, 2018, the valuer shall complete such valuation or such part within three months thereafter.

Accordingly, Mr. X can continue with the providing of valuation services even without registration of certificate to Real Estate company uptil 31st March, 2018. If the valuation or any part of it is left incomplete, before 31st

March, 2018, then the valuer shall complete such valuation or such part within three months thereafter i.e., before 30th June, 2018.

Q32. (a) Winding up proceedings has been commended by the tribunal against DEF Limited, a government company (Central Government is a member). Even after completion of one year from the date of commencement of winding up proceedings, it has not possible to conclude the same. The liquidator is of the opinion that the statement shall be filled with tribunal and registrar only.

Validate the opinion made by the liquidator and penalty can be imposed on the liquidator for contravention of the provision as per Companies Act, 2013.
What will be your answer if the DEF Limited is a non-government company?

Answer

Section 348 of the Companies Act, 2013 states that, if the winding up of a company is not concluded within one year after its commencement then the Company Liquidator shall file a statement in such form containing such particulars as may be prescribed. Such statement shall be filled within two months of the expiry of such year and it shall be filled continuously thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals as may be prescribed. The statement shall be duly audited, by a person qualified to act as auditor of the company and position of with respect to the proceedings in the liquidation,

The statement shall be filled with the tribunal in the case of a winding up by the Tribunal. A copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.

Where a statement relates to a Government company in liquidation, the Company Liquidator shall forward a copy thereof,

- to the Central Government, if that Government is a member of the Government company;
- to any State Government, if that Government is a member of the Government company; or
- to the Central Government and any State Government, if both the Governments are members of the Government company.

DEF Limited is a Government Company

In the current scenario, we can understand that the DEF Limited is a government company in which Central Government is a member and hence statement is also required to file to the Central Government along with the Tribunal and Registrar. So, the opinion by the Company Liquidator is not tenable in the eyes of the law and he is liable for penal action under the Act.

The company liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.

DEF Limited is a Non-Government Company

In the current scenario, the DEF Limited is a non-government company hence statement is only required to file with the Tribunal and Registrar only. So, the opinion by the Company Liquidator is tenable in the eyes of the law and he is not liable for any penal action under the act.

Q33. .Mr. Amrit, an employee of the ABC Limited is under an investigation under the provisions of Companies Act, 2013. The company wants to terminate the employee during the pendency of investigation against him. The Company have filed an application to tribunal for approval of termination. Company has not received any reply from the tribunal within 30 days of filling an application. The company consider it as a deemed approval and terminated Mr. Amrit.

- Is the contention of company being valid in law?
- What is remedy available to Mr. Amrit?
- What is remedy available to Mr. Amrit, if reply of Tribunal has been received within 30 days of application?

Ans

The provision of Section 218 of the Companies Act, 2013 states that, the company shall require to take approval of the tribunal before taking action against the employee if there is any pendency of any proceedings against any person concerned in the conduct and management of the affairs of company

The company shall require approval in the following circumstances:

- ✓ discharge or suspension of an employee; or
- ✓ punishment to an employee by dismissal, removal, reduction in rank or otherwise; or
- ✓ change in the terms of employment to the disadvantage of employee(s); The Tribunal

shall notify its objection to the action proposed in writing.

In case, the company other body corporate or person concerned does not receive the approval of the Tribunal within 30 days of making the application, it may proceed to take the action proposed against the employee. That means it can be considered as a deemed approval by the tribunal.

Appeal to the Appellate Tribunal

If the company, other body corporate or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within a period of 30 days of the receipt of the notice of the objection, refer an appeal to the Appellate Tribunal in such manner and on payment of fees of Rupees 1,000 as per the schedule of Fees.

The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company, other body corporate or person concerned.

- Yes, the termination of Mr. Amrit made by the company is totally valid in law and company can do so by considering deemed approval of tribunal.
- In this scenario, Mr. Amrit has not any remedy available. As per the provision of the law appeal to the appellate tribunal can be made only if the person is dissatisfied with the objection raised by the tribunal. Hence, in this case the tribunal has not replied Mr. Amrit cannot refer an appeal to Appellate Tribunal.

In this case, Mr. Amrit can refer and appeal to appellate tribunal within 30 days of the receiving letter of objection raised by the tribunal and with payment of Fees on ` 1,000 as per schedule of Fees.

Q34. ABC Limited is a wholly owned subsidiary company of XYZ Limited. The Company wants to make application for merger of Holding and Subsidiary Companies under Section 232 of the Companies Act, 2013. The Company Secretary of the XYZ Limited is of the opinion that company cannot apply for merger as per section 232. The company shall have to apply for merger as per section 233 i.e. Fast Track Merger. Is the contention of Company Secretary being valid as per law?

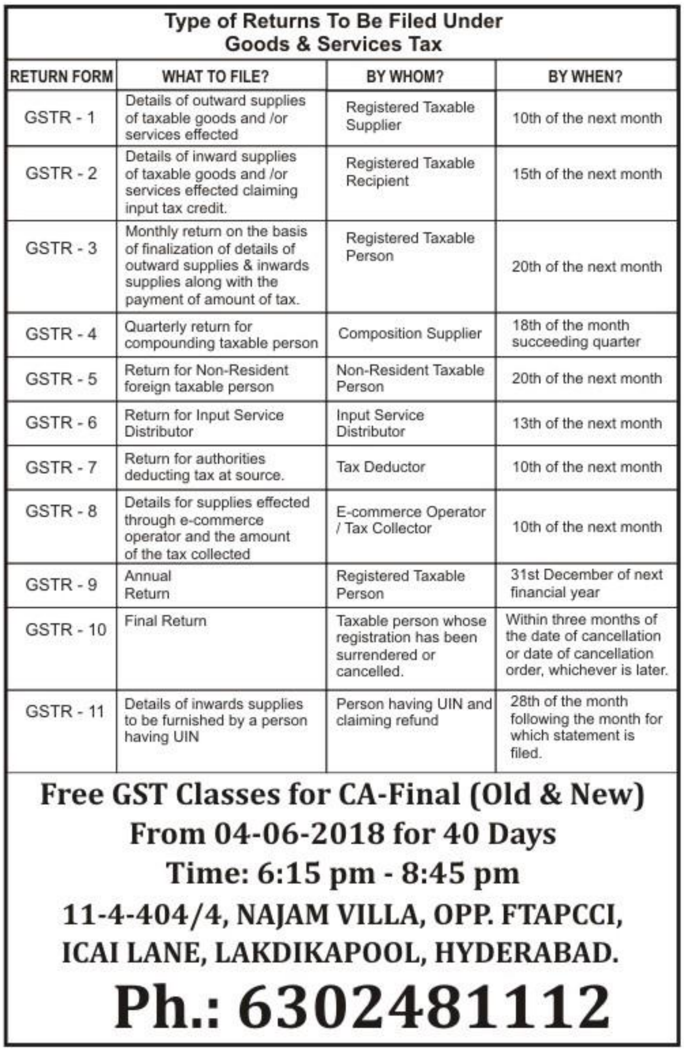
Ans

As per section 233 (1) of the Companies Act, 2013 notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered between,

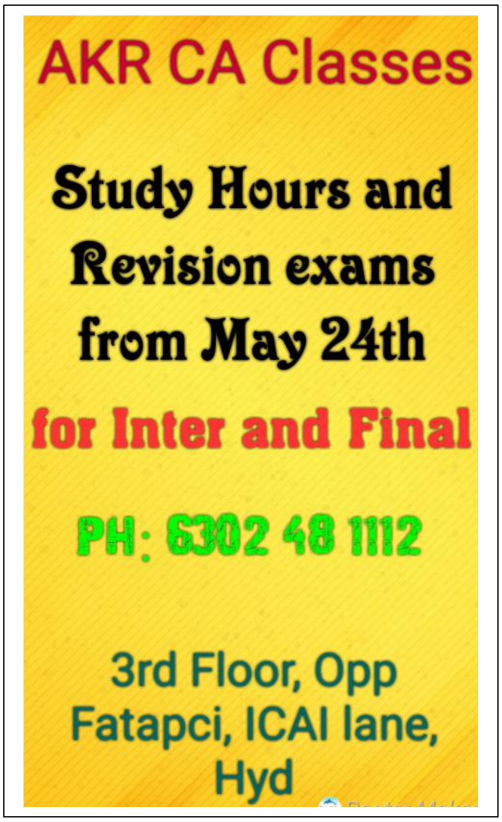
- ✓ 2 or more small companies
- ✓ a holding company and its wholly-owned subsidiary company. If 100% of its share capital is held by the holding company, except the shares held by the nominee or nominees to ensure that the number of members of subsidiary company is not reduced below the statutory limit as provided in section 187.
- ✓ such other class or classes of companies as may be prescribed.

The provisions given for fast track merger in the section 233 are in the optional nature and not a compulsion to the company. If a company wants to make application for merger as per section 232, it can do so.

Hence, here the Company Secretary of the XYZ limited has erred in the law and his contention is not valid as per law. The company shall have an option to choose between normal process of merger and fast track merger.


Type of Returns To Be Filed Under Goods & Services Tax

RETURN FORM	WHAT TO FILE?	BY WHOM?	BY WHEN?
GSTR - 1	Details of outward supplies of taxable goods and /or services effected	Registered Taxable Supplier	10th of the next month
GSTR - 2	Details of inward supplies of taxable goods and /or services effected claiming input tax credit.	Registered Taxable Recipient	15th of the next month
GSTR - 3	Monthly return on the basis of finalization of details of outward supplies & inwards supplies along with the payment of amount of tax.	Registered Taxable Person	20th of the next month
GSTR - 4	Quarterly return for compounding taxable person	Composition Supplier	18th of the month succeeding quarter
GSTR - 5	Return for Non-Resident foreign taxable person	Non-Resident Taxable Person	20th of the next month
GSTR - 6	Return for Input Service Distributor	Input Service Distributor	13th of the next month
GSTR - 7	Return for authorities deducting tax at source.	Tax Deductor	10th of the next month
GSTR - 8	Details for supplies effected through e-commerce operator and the amount of the tax collected	E-commerce Operator / Tax Collector	10th of the next month
GSTR - 9	Annual Return	Registered Taxable Person	31st December of next financial year
GSTR - 10	Final Return	Taxable person whose registration has been surrendered or cancelled.	Within three months of the date of cancellation or date of cancellation order, whichever is later.
GSTR - 11	Details of inwards supplies to be furnished by a person having UIN	Person having UIN and claiming refund	28th of the month following the month for which statement is filed.



Q.35 A meeting of members of DEF Limited was convened under the orders of the Court for the purpose of considering a scheme of compromise and arrangement. The meeting was attended by 300 members holding 9,00,000 shares. 120 members holding 7,00,000 shares in the aggregate voted for the scheme. 140 members holding 2,00,000 shares in aggregate voted against the scheme. 40 members holding 1,00,000 shares abstained from voting. Examine with reference to the relevant provisions of the Companies Act, 2013 whether the scheme was approved by the requisite majority?

Ans

As per section 230 (6), of the Companies Act, 2013 where majority of persons at a meeting held **representing 3/4th in value,** voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order. The majority of person representing 3/4th Value shall be counted of the following:

- ✓ the creditors, or
- ✓ class of creditors or
- ✓ members or
- ✓ class of members, as the case may be

The majority is dual, in number and in value. A simple majority of those voting is sufficient. Whereas the 'three-fourths' requirement relates to value. The three-fourths value is to be computed with reference to paid-up capital held by members present and voting at the meeting.

In this case 300 members attended the meeting, but only 260 members voted at the meeting. As 120 members voted in favor of the scheme the requirement relating to majority in number (i.e. 131) is not satisfied.

260 members who participated in the meeting held 9,00,000 shares, three-fourth of which works out to 6,75,000 while 120 members who voted for the scheme held 7,00,000 shares. The majority representing three-fourths in value is satisfied.

Thus, in the instant case, the scheme of compromise and arrangement of DEF Limited is not approved as though the value of shares voting in favor is significantly more, the number of members voting in favor do not exceed the number of members voting against.

Q36. Which offences are deemed to be Non- cognizable under the Companies Act, 2013? Enumerate the relevant provisions

Ans

Offences to be non-cognizable: Section 439 of the Companies Act, 2013 provides for offences to be non-cognizable. According to this section:

(i) Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub-section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.

(ii) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorised by the Central Government in that behalf.

Whereas in case of a government companies, court shall take cognizance of an offence under this Act which is alleged to have been committed by any company or any officer thereof on the complaint in writing of a person authorized by the Central Government in that behalf.

(iii) The court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India.

(iv) Nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

(v) Where the complainant is the Registrar or a person authorised by the Central Government, the presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.

(vi) The above provisions shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX or in any other provision of this Act relating to winding up of companies.

(vii) The liquidator of a company shall not be deemed to be an officer of the company.

Q37 Honest Limited by a special resolution passed a motion of removal of name of the company from Register of Companies due to failure of its commencement of its business from one year of its incorporation. The company filed an application to the registrar for removing the name of company from Register of Companies. One of the member of the company filed a complaint to the Registrar that company had filed a fraudulent application for removal of its name to deceive the creditors and to defraud the other persons.

Discuss in the light of the above situations the consequences of filing of fraudulent application for removal of name of the company as per the Companies Act, 2013

Ans

Fraudulent Application for Removal of Name [Section 251]

Where it is found that an application for removal of Name by a company has been made with the-

- object of evading the liabilities of the company, or
- with the intention to deceive the creditors, or
- to defraud any other persons,

the persons in charge of the management of the company shall, notwithstanding that the company has been notified as dissolved—

(a) be **jointly and severally liable** to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved; and

(b) be **punishable for fraud** in the manner as provided in section 447.

Recommendation for prosecution: The Registrar may also recommend prosecution of the persons responsible for the filing of an application

Appeal to Tribunal: Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies.

Provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar to, the company and all the persons concerned

Q38. (i) Wisdom Ltd. commits a default against the debts taken from the financial creditors. Mr. F, a financial creditor initiated the corporate insolvency resolution process against the Wisdom Ltd. Mr. X, another financial creditor, thereof files an application for initiating corporate insolvency resolution process with an Adjudicating Authority. State the validity as to the filing of an application by Mr. X for initiation of corporate insolvency resolution process?

(ii) Standard International Ltd. who is a foreign trade creditor having its office in Hong Kong wanted to file a petition under insolvency and bankruptcy code 2016 on default of the debtor in India. It moved a petition under section 9 of the code seeking commencement of insolvency process. The foreign company was not having any office or bank account in India. Because of this, it couldn't submit a "certificate from financial institution" as required under the code. Whether the petition is permissible under the Insolvency & Bankruptcy Code, 2016? Decide.

Answer

(i) In the given problem, on commission of default by the Wisdom Ltd., Mr. F filed an application for initiating corporate insolvency resolution process before adjudicating authority. Further, Mr. X another financial creditor moved an application for initiation of insolvency resolution process against the Wisdom Ltd.

According to the section 6 of the Code, where any corporate debtor commits a default, a financial creditor, Operational creditor or the Corporate debtor itself may initiate insolvency resolution process against such corporate debtor.

But as per Section 13 of the Code, once an application is admitted by the Adjudicating authority, it shall by an order declare a moratorium for the purposes referred to in section 14. Then causes a public announcement of the initiation of CIRP by IRP and call for the submission of claims under section 15 and appoint an IRP in the manner as laid down in section 16 of the Code. Public announcement lays down all the relevant information related to the CIRP. So that the all creditors entitled under the law can raise their claim in this case.

So, no further application for initiation of CIRP against the same debtor (i.e, Wisdom Ltd.) can be initiated. So, Mr. X, cannot file an application on initiation of CIRP, however, is entitled under the law to raise his claim in this case against the Wisdom Ltd.

(ii) Section 1 of the Insolvency and Bankruptcy Code, 2016 specifies of the extent, commencement and applicability of the Code. According to this, it extends to the whole of India and shall apply for insolvency, liquidation, voluntary liquidation or bankruptcy of any company incorporated under the Companies Act, 2013 or under any previous law.

In view of this, the IBC Code, 2016 applies to the corporate debtor incorporated under the Companies Act, 2013 or under any previous laws.

As per the definition of the Creditor given in section 3(10) of the Insolvency and Bankruptcy Code, 2016, it means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor, and a decree holder. So, Standard International Ltd. is a creditor under the purview of the Code.

As per the facts given in question, Standard International Ltd., is a foreign trade creditor. He wanted to file a petition under the under Section 9 of the Insolvency and Bankruptcy Code, 2016 for commencement of Insolvency process against the defaulter in India. Standard International Ltd. was not having any office or bank account in India.

As per the requirement of section 9 of the Code, along with application certain documents were needed to be furnished by the creditor to the Adjudicating authority.

Being a foreign trade creditor, Standard International Ltd was also required to provide a copy of certificate from the financial institutions maintaining accounts of the creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor. Since, Standard International Ltd. was not having any office or bank account in India, it cannot furnish certificate from financial institution as defined under the section 3(14) of the code. So, Petition under section 9 of the Code is not permissible

Q39. Eminence Ltd. after passing special resolution filed an application to the registrar for removal of the name of company from the register of companies. On the complaint of certain members, Registrar came to know that already an application is pending before the Tribunal for the sanctioning of a compromise or arrangement proposal. The application was filed by the Eminence Ltd. two months before the filing of this application to the Registrar.

Determine the given situations in the lights of the given facts as per the Companies Act, 2013:

(i) Legality of filing an application by Eminence Ltd. before the registrar.

(ii) Consequences if Eminence Ltd. files an application in the above given situation.

(iii) In case registrar notifies eminence Ltd as dissolved under section 248 in compliances to the required provisions, what remedy will be available to the aggrieved party?

Ans

According to the Section 248(2) of the Companies Act, 2013, a company may, after extinguishing all its liabilities, by a special resolution, or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub- section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner.

Further Section 249 provides restrictions on making application under section 248 .

An application under section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company—

(a) has changed its name or shifted its registered office from one State to another;

(b) has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;

(c) has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;

(d) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or

(e) is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.

Violation of above conditions on filing of application: If a company files an application in violation of restriction given above, it shall be punishable with fine which may extend to one lakh rupees.

Rights of registrar on non-compliance of conditions by the company: An application filed under above circumstances, shall be withdrawn by the company or rejected by the Registrar as soon as conditions are brought to his notice.

Aggrieved person to file an appeal against the order of registrar: As per section 252(1),any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies. However, a reasonable opportunity is given to the company and all the persons concerned.

According to the above provisions, following are the answers:

(i) As per the restrictions marked in the Section 249(d) stating that an application under section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded.

As per the facts application to the registrar for removal of the name of company from the register of companies, was filed by the Eminence Ltd. within three months to the filin g of an application to the Tribunal for approval of compromise or arrangement proposal. Therefore, filing of such an application by Eminence Ltd is not valid.

(ii) If a company files an application in above situation, it shall be punishable with fine which may extend to one lakh rupees. An application so filed, shall be withdrawn by the company or rejected by the Registrar as soon as conditions are brought to his notice.

(iii) According to the provision given in section 252(1),a person aggrieved by an order of the Registrar, notifying Eminence Ltd. as dissolved under section 248, may:

- file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar, and
- if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the Eminence Ltd. in the register of companies.
- A reasonable opportunity is given to the Eminence Ltd. and all the persons concerned.

Q40. ***XYZ Producer Company Limited was incorporated on 1st April, 2003. At present it has got 200 members and its board consists of 10 Directors. The Board of directors of the company seeks your advice on the following proposals:***

(i) Appointment of one expert Director and one Additional Director by the Board for a period of four years.

(ii) Loan of ` 10,000 to Mr. X, a Director of the company repayable within a period of six months.

(iii) Donation of `10,000 to a Political Party.

Advise the Board of directors explaining the relevant provisions of the Companies Act, 1956.

Answer

Producer Company

(i) Appointment of expert director or additional director: Section 581P(6) of the Companies Act, 1956 empowers the Board of directors of a producer company to co-opt one or more expert directors or an additional director not exceeding one fifth of the total number of directors for such period as the Board may deem fit. But the maximum period shall not exceed the period specified in the Articles of the company (Second Proviso to section 581P(6).

The number of directors proposed to be co-opted is only 2 and it does not exceed one- fifth of the total number of directors. They can hold office for the period specified by the Board provided it does not exceed the period specified in the Articles (Section 161(1) of the Companies Act, 2013 stipulating that the additional director can hold office only upto the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier, is not applicable to a producer company). Hence the proposed appointment of one expert director and one additional director is in order.

(ii) Loan to a director: Section 581ZK empowers the Board of directors to provide financial assistance to the members of the producer company subject to the provisions made in articles and also subject to certain conditions laid down in 581ZK(b). But any loan or advance to any director or his relative shall be granted only after the approval by the members in general meeting. (Proviso to Section 581ZK).

In view of the above, the directors must convene the general meeting and get the approval of the members before granting the proposed loan of `10,000 to X, a director of the company (According to Section 581C(5)a producer company is a private limited company and there is no limit to the number of its members).

(iii) Donation to a Political Party: Producer company shall not make directly or indirectly to any political party or for any political purpose to any person any contribution or subscription or make available any facilities including personnel or material (Second proviso to Section 581ZH). As the donation to a political party is prohibited, the company cannot donate `10,000 to a political party.

Q41. ***The Executive Committee of an Inter-state Co-operative society decides to convert the society into a 'Producer Company' under the provisions of the Companies Act, 1956. You being a practicing Chartered Accountant are approached by the society for advice. Advise the society on the following matters:***

(i) The steps to be taken for conversion of the society into a 'Producer Company'.

(ii) Manner in which voting rights of members of Producer company after conversion may be exercised.

Ans

Conversion of inter state cooperative society into producer company: As a practicing Chartered Accountant the following advise can be given to the inter-state society which wants to get converted into a 'Producer company' under the provisions of Companies (Amendment) Act, 2002.

(i) Steps to be taken for conversion (Section 58IJ):

Any inter-state cooperative society having objects for multiplicity for states may make an application to the Registrar for registration as producercompany. Such application should be accompanied by –

(a) A copy of the special resolution, of not less than 2/3rd of total member of Inter-State Cooperative Society, for its incorporation as a producer company.

(b) A Statement showing : (i) names and address or the occupation of the directors and Chief Executive, if any, by whatever name called, of such inter-state cooperative society; and (ii) list of members of such inter-state cooperative society.

(c) A statement indicating that the inter-state cooperative society is engaged in any one or more of the objects specified in section 581B.

(d) A declaration by two or more directors of the inter-state cooperative society certifying that particulars given in clauses (a) to (c) given above are correct.

The word "Producer Company Ltd." should form part of its name to show its identity. On compliance with the requirements of the Act, the Registrar shall, within a period of 30 days of the receipt of application, certify under his hand that the society applying for registration is registered and thereby incorporated as a producer company.

Upon registration as a producer company, the Registrar of Companies who registers the company is required to intimate the Registrar with whom the erstwhile inter-State cooperative society was earlier registered for appropriate deletion of the society from its register.

(ii) Manner in which voting rights of members can be exercised (Section 581Z):

Section 581Z of the Companies Act, 1956 states that subject to the provisions of sub- sections (1) and (3) of Section 581D, every member shall have one vote and in the case of equality of votes, the chairman or the person presiding shall have a casting vote except in the case of election of the chairman. As regards the voting rights it may be noted that:

1. Where individual is a member of the producer company, he has one vote irrespective of the size of his holding.
2. Where both individuals and producer institutions are members – single vote for every member.
3. Where membership is confined to producer institutions only, in the first year of registration of the company, the voting rights shall be based on the size of the shareholding of the member institution and in the following years it will be based on participation by the respective institutions in the business of the producer company in the previous year (as may be specified in the Articles),
4. A producer company, may, if authorized by the Articles, restrict the voting rights to active members of the producer company, and
5. Casting vote can be cast by the presiding member (Chairman) in case of equality of votes on any resolution (except for election of the Chairman).

Q42. ***Some changes in the particulars of a Director, who has already obtained a Director Identification Number have taken place. Now the Director wants to incorporate the changes in his DIN in the database maintained by the Central Government in this regard. Describe the procedure to be followed by the Director.***

Answer

Intimation of changes in particulars specified in DIN application: The Companies (Appointment and Qualification of Directors) Rules, 2014 provides for the procedure for intimation of changes in particulars specified in the DIN application. According to which every individual who has been allotted a DIN under these rules shall, in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the Central Government within a period of thirty days of such change(s) in Form DIR-6 in the following manner, namely :-

A. the applicant shall download Form DIR-6 from the portal and fill in the relevant changes, attach copy of the proof of the changed particulars and verification in the Form DIR-7 all of which shall be scanned and submitted electronically;
B. the form shall be digitally signed by a chartered accountant in practice or a company secretary in practice or a cost accountant in practice; the applicant shall submit the Form DIR-6.

Q42 ***Joel Ltd. was incorporated in London with a paid up capital of 10 million pounds. Mr. Y an Indian citizen holds 25% of the paid up capital. X Ltd. a company registered in India holds 30% of the paid up capital of Joel Ltd. Joel Ltd. has recently established a share transfer office at New Delhi.***

(1) The company seeks your advice as to what formalities it should observe as a foreign company under Companies Act, 2013.

(2) State briefly the requirements relating to filing of accounts with the Registrar of Companies by the foreign company in respect of its global business as well as Indian business.

Answer

In terms of the definition of a foreign company under section 2 (42) of the Companies Act, 2013 a “foreign company” means any company or body corporate incorporated outside India which:

a. Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

b. Conducts any business activity in India in any other manner.

According section 386 of the Companies Act, 2013, for the puproses of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), "Place of business" includes a share transfer or registration office.

Further, section 379 states that where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

In the case given in the question, the following facts are given:

a. Joel Ltd. was incorporated in London and has a place of business (share transfer office) in India, hence, it is a foreign company.
b. Its shareholding comprises of 25% held by Y who is a citizen of India and 30% by X Ltd. which is a company registered in India. Together the two Indian shareholders hold 55% of the share capital of Joel Ltd

Therefore, although Joel Ltd. is a foreign company, due to the holding of more than 50% of its share capital by two Indian entities, it will be covered under section 379 and will be treated as a company incorporated in India or as an Indian Company.

However, it may be noted that under section 379, the application of the Companies Act, 2013 on Joel Ltd. will be only in respect of business carried by it in India and not in relation to its business anywhere outside India.

The Companies Act, 2013 under Chapter XXII does not require a foreign company to file any documents in relation to its global business.

(1) Under section 380 of the Act, a foreign company is required to file for registration within 30 days of the establishment of a place of business in India the following documents with the Registrar:
   (a) 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;
   (b) the full address of the registered or principal office of the company;
   (c) a list of the directors and secretary of the company containing such particulars as may be prescribed;
   In relation to the nature of particulars to be provided as above, the *Companies (Registration of Foreign Companies) Rules, 2014*, provide that the list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely:
      (1) personal name and surname in full;
      (2) any former name or names and surname or surnames in full;
      (3) father's name or mother's name and spouse's name;
      (4) date of birth;
      (5) residential address;
      (6) nationality;
      (7) if the present nationality is not the nationality of origin, his nationality of origin;
      (8) passport Number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)
      (9) income-tax permanent account number (PAN), if applicable;
      (10) occupation, if any;
      (11) whether directorship in any other Indian company, (Director Identification Number(DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);
      (12) other directorship or directorships held by him;
      (13) Membership Number (for Secretary only); and
      (14) e-mail ID.
   (d) the name and address or the names and addresses of one or more persons resident inIndia authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
   (e) the full address of the office of the company in India which is deemed to be its principal place of business in India;
   (f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;
   (g) declaration that none of the directors of the company or the authorize drepresentative in India has

ever been convicted or debarred from formation of companiesand management in India or abroad; and

(h) any other information as may be prescribed.

(2) According to section 381 of the Companies Act, 2013:

(i) Every foreign company shall, in every calendar year,—

(a) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having attached or annexed thereto such documents as may be prescribed under Rules 4 & 5 of the Companies(Registration of Foreign Companies)Rules, 2014, and

(b) deliver a copy of those documents to the Registrar.

Q43. ***Robertson Ltd. is a company registered in Thailand. Although, it has no place of business established in India, yet it is doing online business through telemarketing in India. Whether it will be treated as a Foreign Company under the Companies Act, 2013? Explain.***

Answer

According to section 2(42) of the Companies Act, 2013, "foreign company" means any company or body corporate incorporated outside India which –

(a) *has a place of business in India whether by itself or through an agent, physically or through electronic mode; and*

(b) *conducts any business activity in India in any other manner.*

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

(a) *business to business and business to consumer transactions, data interchange and other digital supply transactions;*

(b) *offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities in India or from citizens of India;*

(c) *financial settlements, web based marketing, advisory and transactional services, data base services and products, supply chain management;*

(d) *online services such as telemarketing, telecommuting, telemedicine, education and information research; and*

(e) *all related data communication services whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.*

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

Q44

(i) *Mr. ZPM was appointed as a Member of the Competition Commission of India by Central Government. He has a professional experience in international business for a period of 12 years, which is not a proper qualification for appointment of a person as member. Pointing out this defect in the Constitution of Commission, Mr. YKJ, against whom the commission gave a decision, wants to invalidate the proceedings of the commission. Examine with reference to the provisions of the Competition Act, 2002 whether Mr. YKJ will succeed.*

(ii) *ABC Ltd. made an initial public offer of certain number of equity shares. Examine whether these shares can be considered as 'Goods' under the Competition Act, 2002 before allotment.*

Answer

(i) As per section 15 of Competition Act 2002 any act or proceeding of the Commission shall not be invalidated merely on the ground of:

(a) any vacancy in, or any defect in the constitution of the Commission; or

(b) any defect in the appointment of a person acting as a Chairperson or as a member; or

(c) any irregularity in the procedure of the Commission not affecting the merits of the case.

Here in this case Mr. ZPM should have professional qualification of not less than 15 years as per section 8 of the Act but this disqualification will not invalidate the proceeding of the Commission.

(ii) Section 2(i) of Competition Act, 2002 defines 'goods' as follows:

'Goods' means goods as defined the Sale of Goods Act, 1930 and includes –

(a) products manufactured, processed or mined;

(b) debentures, stock and shares after allotment

(c) in relation to goods supplied, distributed or controlled in India, goods imported into India.

Hence, debentures and shares can be considered as 'goods' within the meaning of section 2(i) of Competition Act, 2002 only after allotment and not before allotment.

Q45 ***Bombay Textiles Limited and Gujarat Textiles Limited marketing their products in India propose to be amalgamated. The enterprise created as a result of the said amalgamation will have assets of value of ` 1000 crore and turnover of ` 3000 crore. Examine whether the proposed amalgamation attracts the provisions of the Competition Act, 2002?***

Answer

Section 5 deals with combination of enterprises and persons. The amalgamation of enterprises shall be a combination of such enterprises if the enterprise created as a result of the amalgamation, as the case may be, have either in India, the assets of the value of more than `1,000 crores or turnover more than `3000 crores.

Vide Notification No. S.O. 480(E), dated 4th March, 2011, the Central governmemt enhanced the value of assets and value of turnover by fifty percent.

However, pursuant to Notification No. S.O. 675 (E) dated March 4, 2016 the value of assets and the value of turnover has been enhanced by the Central Government by 100% for the purposes of Section 5 of the Act.

So, the revised value of assets and turnover is presently more than ` 2000 crore and ` 6000 Crore.

Hence, in the present case, the proposed amalgamation of Bombay Textiles Limited and Gujarat Textiles Limited will not attract the provisions of the Competition Act, 2002 as they have assets of value of ` 1000 crore and turnover of ` 3000 crore which are less than specified under the provisions.

Q46. ***Mr. G., an Indian national desires to obtain Foreign Exchange on current account transactions for the following purposes:***

(i) Payment of commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian Company.

(ii) Remittance of hiring charges of transponder by TV channels

Advise G whether he can obtain Foreign Exchange and, if so, under what conditions?

Answer

Under Section 5 of Foreign Exchange Management Act, 1999, certain rules have been framed for drawal of foreign exchange on current account. According to the said rules, drawal of foreign exchange for certain transactions are prohibited. In respect of certain transactions drawal of foreign exchange is permissible with the prior approval of Central Government. In respect of some of the transaction, prior permission of RBI is sufficient for drawal of foreign exchange.

(i) In respect of item No.1 i.e. Payment of Commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian company is prohibited.

(ii) Drawal of foreign exchange for remittance of hiring charges of transponder by TV Channels, can be made with the prior approval of the Central Government.

In the case of (ii) above, approval of concerned authority is not required if the payment is made out of funds held in Resident Foreign Currency (RFC) Account or Exchange Earner's Foreign Currency (EEFC) Account of the remitter. Further foreign Exchange can be drawn only from an authorised person.

Q47

(a) Examine whether the following branches can be considered as a 'Person resident in India' under Foreign Exchange Management Act, 1999:

(i) ABC Limited, a company incorporated in India established a branch at London on 1st January, 2003.

(ii) M/s XYZ, a foreign company, established a branch at New Delhi on 1st January, 2003. The branch at New Delhi controls a branch at Colombo.

(b) Mr. Ramesh is an exporter of goods and services. Explain briefly his duties under Foreign Exchange Management Act, 1999 with regard to the following:

(i) Furnishing of information relating to such exports.

(ii) Realisation and repatriation of foreign exchange on such exports.

Ans

(a) Person resident in India (Foreign Exchange Management Act, 1999):

(i) Any person or body corporate registered or incorporated in India is a resident in India [section 2(v)(ii)]. 'Person' includes a company [section 2(u)]. An office, branches or agency outside India owned or controlled by a person resident in India is a person resident in India. [Section 2(v)(iv)].

In view of the above provisions in FEMA, 1999 London branch established by ABC Ltd, a company incorporated in India, is a 'person resident in India' under the Act from the date of establishment i.e. 1st January, 2003.

(ii) According to Section 2(v)(iii) of FEMA, 1999 an office, branch or agency in India owned or controlled by a person resident outside India is a person resident in India'. Only a body corporate registered or incorporated in India is a 'person resident in India'. According to section 2(w), 'person resident outside India' means a person who is not resident in India. Hence M/s XYZ, foreign company is a 'resident outside India. But the branch at New Delhi owned by M/s XYZ is a 'resident in India' within the meaning of section 2(v) (iii) from the date of establishment i.e. 1st January, 2003. The branch at Colombo controlled by the branch at New Delhi referred to in the question is a person 'resident in India' within the meaning of section 2(v)(iii) read with section 2(v)(iv).

(b) Duty of every exporter of goods and services under FEMA, 1999:

(i) *Furnishing of Information:-* Every exporter of goods is required to furnish to RBI or other prescribed authority, a declaration containing true and correct material particulars, including the amount representing full export value. If full exportable value is not ascertainable at the time of export due to prevailing market conditions, the exporter shall indicate the amount he expects to receive on sale of goods in a market outside India. The exporter of goods shall also furnish to RBI such other information as may be required by RBI for the purpose of ensuring realization of export proceeds by such exporter [section 7(i)].

RBI can direct any exporter to comply with prescribed requirements to ensure that full export value of the goods or such reduced value of the goods as RBI determines, is received without delay [section 7(2)]. Every exporter of services shall furnish to RBI or other prescribed authority a declaration containing true and correct material particulars in relation to payment of such services [section 7(3)].

(ii) *Realisation and repatriation of foreign exchange:* Where any amount of foreign exchange is due or has accrued to any resident in India, such person shall take all reasonable steps to realize and repatriate to India the foreign exchange within such period and in such manner as may be specified by RBI (section 8). Mr. Ramesh as an exporter of goods and services must comply with the requirements of section 7 and 8 of the FEMA, 1999 and also with the requirements under Foreign Exchange Management (Export of Goods and Services) Regulations, 2015

Q48. ***Briefly explain the meaning and application of the rule of "Harmonious Construction" in the interpretation of statutes.***

Ans

Meaning of rule Harmonious Construction: When there is doubt about the meaning of the words of a statute, these should be understood in the sense in which they harmonise with the subject of the enactment and the object which the legislature had in view. Where there are in an enactment two or more provisions which cannot be reconciled with each other, they should be so interpreted, wherever possible, as to give effect to all of them. This is what is known as the Rule of Harmonious Construction.

It must always be borne in mind that a statute is passed as a whole and not in sections and it may well be assumed to be animated by one general purpose and intent. The Court's duty is to give effect to all the parts of a statute, if possible. But this general principle is meant to guide the courts in furthering the intent of the legislature, not overriding it.

Application of the Rule: The Rule of Harmonious Construction is applicable only when there is a real and not merely apparent conflict between the provisions of an Act, and one of them has not been made subject to the other. When after having construed their context the words are capable of only a single meaning, the rule of harmonious construction disappears and is replaced by the rule of literal construction.

Q49. ***Explain the provision relation to Reserve Fund under the Banking Regulation Act, 1949.***

Ans

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

- when the amounts in the reserve fund and the share premium account are equal to the paid-up capital of the banking company
- when the Central Govt. feel that its paid-up capital and reserves are adequate to safe guard the interest of the depositors

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

Q50. ***Mr. Gopal is a director in a Bank. The Reserve Bank of India terminates him on the ground that his conduct is detrimental to the interest of the depositors. Decide, whether the Reserve Bank of India can do so under the Banking Regulation Act, 1949. Can the Reserve Bank of India appoint additional Director in a Bank under the said Act?***

Ans

Power of RBI to remove director: Under section 36AA of the Banking Regulation Act, 1949, RBI can terminate any Chairman, Director, Chief Executive, other officials or any employee of the bank where it considers desirable to do so particularly when RBI is of the opinion that conduct of such persons is detrimental to the interest of the depositors or for securing proper management of the banking company. Before such termination concerned person should be given opportunity to be heard of. Such terminated officials can make appeal to the Central Govt. within 30 days from the date of communication of such termination order. The decision of the Central Government cannot be called into question. In case an order is issued pursuant to this section the concerned person shall cease to hold his office for a period of not exceeding 5 years as may be specified in the order. Contravention of the above provision shall be punishable with a fine, which may extent to ` 250 per day.

Any such order shall be valid for a period not exceeding three years or such further periods of not exceeding three years at a time as RBI may specify.

Under section 36AB: RBI is empowered to appoint additional Directors for the banking company with effect from the date to be specified in the order, in the interest of the bank or that of depositors. Such additional directors shall hold office for a period not exceeding three years or such further periods not exceeding three years at a time.

Q51. ***X, a newly established insurance company started the business of health insurance. It decided to get itself registered with the paid up equity capital of ` 99 crore excluding the preliminary expenses incurred during formation and registration. Examine in the light of the Insurance Act, 1938, whether X can be registered and conduct the insurance business.***

Ans

Requirements as to Capital: As per the Insurance Laws (Amendment) Act, 2015, section 6 of the Insurance Act, 1938, has been amended. According to which the requirements as to capital for registration of the insurer has been modified. No insurer (not being an insurer as defined in sub-clause (d) of clause (9) of section 2) carrying on the business of life insurance, general insurance, health insurance or re-insurance in India or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has minimum paid up equity capital as prescribed below-

Type of Insurance Business	Minimum Paid-up equity capital required (with a provision for further enhancement & Paid-up equity excludes preliminary expenses incurred during formation and
Life insurance or general insurance	₹ 100 crore
Health insurance (exclusively)	₹ 100 crore

Re-insurer (exclusively)	₹ 200 crore (besides re-insurer shall not be registered unless he has net owned funds of not less than ₹ 5,000 crore)

In the given case, X an insurance company is an insurer carrying business of health insurance. For registration as per the above provision, minimum paid-up equity capital required for conduct of business of health insurance is ` 100 crore. Since paid up equity capital of X insurance company is less than 100 crore, so it cannot be registered for carrying of the insurance business.

Q52. ***What are financial assets?***

Ans

"financial asset" means debt or receivables and includes-

(i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or
(ii) any debt or receivables secured by, mortgage of, or charge on, immovable property; or
(iii) a mortgage, charge, hypothecation or pledge of movable property; or
(iv) any right or interest in the security, whether full or part underlying such debt or receivables; or
(v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or
(va) any beneficial right, title or interest in any tangible asset given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire such tangible asset; or
(vb) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain licence of the intangible asset; or;
(vi) any financial assistance [Section 2(l)]

The use of the word 'future' in clause (v) of section 2(l) means that the term financial asset includes a future debt also. In case of a future debt, what exists today is an agreement to transfer and it will be possible to transfer the future debt when it actually arises, for example sales that will occur in future. In case of conditional receivable, the receivable is transformed into a financial asset after the fulfillment of the relevant conditions.

Q53. ***Under Section 31 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, certain situations have been specified in which the provisions of this Act are not applicable. You are required to mention any four of such situations.***

Answer

Under Section 31 of the SARFAESI Act, 2002, the situations in which the provisions of this Act do not apply are as follows:

(i) *a lien on any goods, money or security given by or under the Indian Contract Act, 1872 or the Sale of Goods Act, 1930 or any other law for the time being in force ;*
(ii) *a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872;*
(iii) *Creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934;*
(iv) *Creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958;*
(v) *Omitted*
(vi) *any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930*
(vii) *any properties not liable to attachment (excluding the properties specifically charged with the debt recoverable under this Act or sale under the first proviso to sub section (1) section 60 of the Code of Civil Procedure, 1908;*
(viii) *any security interest for securing repayment of any financial asset not exceeding one lakh rupees;*
(ix) *any security interest created in agricultural land;*
(x) *any case in which the amount due is less than twenty percent of the principal amount and interest thereon.*

Q54 ***Enumerate the obligations of banking companies under the Prevention of Money Laundering Act, 2002.***

Answer

Section 12 provides for the obligation of Banking Companies, Financial Institutions and Intermediaries or a person carrying on a designated business or profession. According to sub- section (1), every banking company, financial institution and intermediary or a person carrying on a designated business or profession shall –

(a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;
(b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;
(c) verify the identity of its clients in such manner and subject to such conditions, as may be prescribed;
(d) identify the beneficial owner, if any, of such of its clients, as may be prescribed;
(e) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force shall be kept confidential.

The records referred to in clause (a) of sub-section (I) shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.

The records referred to in clause (e) of sub-section (I) shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this chapter.

Q55. ***Explain the term "Offence of Money Laundering" within the meaning of the Prevention of Money Laundering Act, 2002. State the punishment for the offence of money laundering.***

Answer

Offence of Money Laundering: Section 2 of the Prevention of Money Laundering Act, 2002 defines the term "scheduled offence", which accordingly means –

(i) the offences specified under Part A of the Schedule; or
(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more.
(iii) The offences specified under Part C of the Schedule . These Schedule to the Act gives a list of all the above offences.

Punishment for the Offence of Money Laundering

Section 4 of the said act provides for the punishment for Money-Laundering. Whoever commits the offence of money-laundering shall be punishable with:

(i) Rigorous imprisonment for a term which shall not be less than three years, but may be extended to seven years, and
(ii) Shall also be liable to fine.

But, where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to ten years instead of seven years.

Q56. ***Describe the provisions of the Securities Contracts (Regulation) Act, 1956 regarding the powers of the Central Government to supersede the Governing Body of a recognized Stock Exchange and the consequences of such supersession.***

Answer

According to the provisions of section 11 of the Securities Contracts (Regulation) Act, 1956, where the Central Government is of opinion that the governing body of any recognized stock exchange should be superseded, then notwithstanding any thing contained in any other law for the time being in force, the Central Government may serve on the governing body a written notice that the Central Government is considering the supersession of the governing body for the reasons specified in the notice. After giving an opportunity to the governing body of such Stock Exchange to be heard in the matter, the Central Government may, by notification in the Official Gazette, declare the governing body of such Stock Exchange to be superseded.

The Central Government may appoint any person or persons to exercise and perform all the powers and duties of the governing body. If more than one person is so appointed, one of them may be the Chairman and another as the Vice-Chairman. Such person or persons shall hold office for such period as may be specified in the Notification and the Central Government may vary such period by way of another Notification.

On the publication of the notification in the Official Gazette, following are the consequences:

(i) The members of the governing body of such Stock Exchange cease to hold office as such members on and from the date of notification.
(ii) The person or persons appointed by the Central Government may exercise and perform all the powers and duties of the governing body which has been so superseded.
The property of the Stock Exchange as deemed necessary and so specified in writing by such person or persons to carry on the business of the Stock Exchange shall vest in such person or persons.

Q57. ***The governing body of Jaipur Stock Exchange desires to establish an additional trading floor at Bikaner. Advise, whether additional trading floor can be established by the said stock exchange under the provisions of the Securities Contracts (Regulation) Act, 1956.***

Answer

Additional Trading Floor: According to Section 13A of the Securities Contracts (Regulation) Act, 1956 a stock exchange may establish additional trading floor with the prior approval of the Securities Exchange Board of India (SEBI) with the terms and conditions stipulated by the said Board.
Additional Trading Floor means a trading facility offered by a recognized stock exchange outside its area of operation to enable the investors to buy and sell securities through such trading floor under the regulatory frame work of that stock exchange.
In view of the above, Jaipur Stock Exchange may establish an additional trading floor at Bikaner with prior approval of the SEBI.

Q58. ***Central Government has received complaints regarding improper functioning of a stock exchange. Explain the powers of the Central Government under the Securities Contracts (Regulation) Act, 1956 to suspend the business of the stock exchange.***

Answer

Powers of the Central Government to suspend business of the Stock Exchange (Section 12 of the Securities Contracts (Regulation) Act, 1956):

According to the provisions of the Securities Contracts (Regulations) Act, 1956, if in the opinion of the Central Government an emergency has arisen and for the purpose of meeting of the emergency the Central Government considers it expedient so to do, it may, by Notification in the Official Gazette, for reasons to be set out therein, direct a recognized stock exchange to suspend such of its business for such period not exceeding 7 days and subject to such conditions as may be specified in the notification, and if in the opinion of the Central Government the interest of the trade or the public interest requires that the period should be extended, may, by like notification extend the said period from time to time.

Provided that where the period of suspension is to be extended beyond the first period, no notification extending the period of suspension shall be issued unless the Governing Body of the recognized Stock Exchange has been given an opportunity of being heard in the matter.

Q59. a. *SEBI received complaints from some investors alleging that ABC Ltd. and some brokers are indulging in price manipulation in the shares of ABC Ltd. Explain the powers that can be exercised by SEBI under the Securities and Exchange Board of India Act, 1992 in case the allegations are found to be correct.*

b.As per SEBI (ICDR) Regulations, 2009, what are the conditions for-
(i) Offering specified securities at differential prices,
(ii) Preferential issue of specified securities by a listed issuer.

Answer

a. Price manipulation in the shares of ABC Ltd. can be considered as fraudulent and unfair trade practices relating to securities market. In this case SEBI may exercise the following powers under section 11(4) of securities and Exchange Board of India Act, 1992.
   (i) Suspend the trading of any security (in this case the securities of ABC Ltd.) in a recognized stock exchange.
   (ii) Restrain persons (in this case ABC Ltd.) from accessing the securities market. It can also prohibit any person associated with securities market (i.e. brokers who have indulged in price manipulation) to buy, sell or deal in securities market.

SEBI may issue the above orders for reasons to be recorded in writing. SEBI shall, either before or after passing such orders give an opportunity of hearing to company and brokers concerned (proviso 2 to Section 11(4)) SEBI may also appoint an adjudicating officer who may levy penalty under section 15 HA after holding an enquiry in the prescribed manner. According to section 15HA if any person indulges in fraudulent and unfair trade practices relating to securities, he shall be leviable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Prohibition on manipulation and deceptive practices: Further according to section 12A, no person shall directly or indirectly indulge in following (i.e.) (a) using in manipulative or deceptive device in connection with purchase, sale or securities listed (b) Employ any scheme or device to defraud in connection with dealing in securities which are listed (c) engage in an act which would operate as fraud or deceit upon any person in connection with dealing in securities which are listed. SEBI may impose penalty which shall not be less than one lakh rupees but which may extend to one crore rupees. (Section 15 HB).

b. (i) Differential pricing: According to Regulation 29 of the SEBI (ICDR) Regulations, 2009, an issuer may offer specified securities at different prices, subject to the following:

(a) retail individual investors or retail individual shareholders or employees entitled for reservation made under regulation 42 making an application for specified securities of value not more than two lakhs rupees, may be offered specified securities at a price lower than the price at which net offer is made to other categories of applicants:

Provided that such difference shall not be more than ten per cent of the price at which specified securities are offered to other categories of applicants;

(b) in case of a book built issue, the price of the specified securities offered to an anchor investor shall not be lower than the price offered to other applicants;

(c) in case of a composite issue, the price of the specified securities offered in the public issue may be different from the price offered in rights issue and justification for such price difference shall be given in the offer document.

(d) In case the issuer opts for the alternate method of book building in terms of Part D of Schedule XI, the issuer may offer specified securities to its employees at a price lower than the floor price:

Provided that the difference between the floor price and the price at which specified securities are offered to employees shall not be more than ten per cent of the floor price.

(ii) Conditions for preferential issue: According to Regulation 72 of the SEBI (ICDR) Regulations, 2009,

(1) A listed issuer may make a preferential issue of specified securities, if:

(a) a special resolution has been passed by its shareholders;

(b) all the equity shares, if any, held by the proposed allottees in the issuer are in dematerialised form;

(c) the issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the recognised stock exchange where the equity shares of the issuer are listed;

(d) the issuer has obtained the Permanent Account Number of the proposed allottees.

(2) The issuer shall not make preferential issue of specified securities to any person who has sold any equity shares of the issuer during the six months preceding the relevant date:

Provided that in respect of the preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, the Board may grant relaxation from the requirements of this sub-regulation, if the Board has granted relaxation in terms of regulation 29A of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 to such preferential allotment.

Explanation: Where any person belonging to promoter(s) or the promoter group has sold his equity shares in the issuer during the six months preceding the relevant date, the promoter(s) and promoter group shall be ineligible for allotment of specified securities on preferential basis.

(3) Where any person belonging to promoter(s) or the promoter group has previously subscribed to warrants of an issuer but failed to exercise the warrants, the promoter(s) and promoter group shall be ineligible for issue of specified securities of such issuer on preferential basis for a period of one year from:

(a) the date of expiry of the tenure of the warrants due to non exercise of the option to convert; or

(b) the date of cancellation of the warrants as the case may be.

Q60. ***XYZ Ltd. wants to make an initial offer of its securities. Advise the company on the following issues under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009:-***

(1) Extent of promoters contribution;
(2) Lock in period of securities held by promoters;
(3) Lock in period of securities held by persons other than promoters;
(4) Lock in period of securities allotted to employees of the company under Employee stock option.

Answer

(1) Extent of promoters contribution- As per the regulation 32 of the SEBI (ICDR) Regulations, 2009, the promoters of the issuer shall contribute in the case of an initial public offer, not less than twenty per cent of the post issue capital:
Provided that in case the post issue shareholding of the promoters is less than twenty per cent, alternative investment funds may contribute for the purpose of meeting the shortfall in minimum contribution as specified for promoters, subject to a maximum of ten per cent of the post issue capital.

(2) Lock-in period of specified securities held by promoters- As per the regulation 36 of the SEBI (ICDR) Regulations, 2009, in an initial public offer, the specified securities held by promoters shall be locked-in for the period as stipulated hereunder:

(a) minimum promoters' contribution including contribution made by alternative investment funds shall be locked-in for a period of three years from the date of commencement of commercial production or date of allotment in the public issue, whichever is later;

(b) promoters' holding in excess of minimum promoters' contribution shall be locked-in for a period of one year:
The expression "date of commencement of commercial production" means the last date of the month in which commercial production in a manufacturing company is expected to commence as stated in the offer document.

(3) Lock-in period of specified securities held by persons other than promoters- As per the regulation 37 of the SEBI (ICDR) Regulations, 2009, in case of an initial public offer, the entire pre-issue capital held by persons other than promoters shall be locked-in for a period of one year.

(4) Lock in period of securities allotted to employees of the company under employees stock option- As per the regulation 37 of the SEBI (ICDR) Regulations, 2009, in case of an initial public offer, the entire pre-issue capital held by persons other than promoters shall be locked-in for a period of one year:
Provided that nothing contained in this regulation shall apply to equity shares allotted to employees under an employee stock option or employee stock purchase scheme of the issuer prior to the initial public offer, if the issuer has made full disclosures with respect to such options or scheme in accordance with Part A of Schedule VIII.

Q.61

a. A resolution applicant submits a resolution plan to the resolution professional. After examination of resolution plan, the resolution professional without convening a meeting of the committee of creditors, submitted the resolution plan to the Adjudicating Authority. State the validity of the act of the resolution professional under the Insolvency and Bankruptcy Code, 2016.
b. When will the provisions of insolvency and liquidation of corporate persons be applicable on a corporate person?

Ans

a. According to the Insolvency & Bankruptcy Code, 2016, the resolution professional shall convene a meeting of the committee of creditors and seek the vote of the creditors prior to taking any of the actions.

No action shall be approved by the committee of creditors unless approved by a vote of seventy five per cent. of the voting shares. Where any action is taken by the resolution professional without seeking the approval of the committee of creditors in the manner as required in this section, such action shall be void.

The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.

Since in the given case, resolution professional without convening a meeting of the committee of creditors, submitted the resolution plan to the Adjudicating Authority, so the act of the resolution professional is not in compliance with the Code, so his act is not valid

b. As per the provision given in Section 4 of the Insolvency & Bankruptcy Code, 2016 the matter related to the insolvency and liquidation of corporate debtors shall be applicable only when the amount of the default is one lakh rupees or more. However, the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.

Q62. Insolvency and Bankruptcy Code, 2016

1. State the manner of initiation of corporate insolvency resolution process by financial creditor under the Insolvency and Bankruptcy Code, 2016.
2. State the circumstances when persons are not entitled to make an application to initiate corporate insolvency resolution process.
   Suppose a corporate debtor has committed a default and is undergoing a corporate insolvency resolution process. A corporate applicant Mr. X thereof files an application for initiating corporate insolvency resolution process with an Adjudicating Authority. State whether he (Mr. X) is entitled to make an application to initiate corporate insolvency resolution process?
3. What is the effect of order of moratorium in the Insolvency and Bankruptcy Code, 2016?

Ans

1. **Initiation of corporate insolvency resolution process by financial creditor.**

   Section 7 of the Insolvency and Bankruptcy Code, 2016 state the manner of initiation of corporate insolvency resolution process by financial creditor. According to the provision, a financial creditor either by itself or jointly with other financial creditors may file an application against a corporate debtor before the Adjudicating Authority (Tribunal) when a default has occurred.

   The financial creditor shall, along with the application furnish the following informations—
   (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; and
   (c) **any other information** as may be specified by the Board.

   The Adjudicating Authority shall, within fourteen 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. Adjudicating Authority if, satisfied that a default has occurred and complying with other requirements of the section, it may, by order, admit such application; or if, default has not occurred, it may, by order, reject such application.

   Commencement of corporate insolvency resolution process: The corporate insolvency resolution process shall commence from the date of admission of the application. The Adjudicating Authority shall communicate— the order to the financial creditor within seven days of admission or rejection of such application and to the corporate debtor.

2. **Persons not entitled to make application.**
   The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process -
   (a) a corporate debtor undergoing a corporate insolvency resolution process; or
   (b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or
   (c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or
   (d) a corporate debtor in respect of whom a liquidation order has been made.

   In this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor. **[Section 11]**

As per the facts corporate applicant Mr. X seems to be a separate individual and not a corporate applicant in respect of such corporate debtor who is undergoing a corporate insolvency resolution process. So he shall be entitled to make an application to initiate corporate insolvency resolution process.

3. Moratorium has been explained in Section 14 of the Code, during the moratorium period the following acts shall be prohibited:
   a. The institution of suits or continuation of any pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
   b. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

c. Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the SARFAESI Act, 2002

The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Q63 Mr. Naman was a resolution professional for the Corporate Insolvency Resolution process initiated against the corporate debtor, PQR Pvt. Ltd. However, attempt to resolve the insolvency of PQR Pvt. Ltd. failed. An order for liquidation of PQR Pvt. Ltd., was passed by the NCLT. Mr. Naman acted as liquidator. The resolution plan submitted by Mr. Naman was rejected for failure to meet the requirements. Board recommended for the replacement of Mr. Naman.

What steps may be taken for the appointment of another liquidator under the Insolvency and Bankruptcy Code. What are the other aspects related to the charge of fees for the conduct of liquidation proceeding.

Ans

According to section 34 of the Insolvency and Bankruptcy Code, 2016, where the Adjudicating Authority passes an order for liquidation of the corporate debtor, the resolution professional appointed for the corporate insolvency resolution process, shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority.

The Adjudicating Authority shall by order replace the resolution professional, if—

(a) the resolution plan submitted by the resolution professional **was rejected for failure to meet the requirements**; or

(b) the **Board recommends the replacement of a resolution professional** to the Adjudicating Authority for reasons to be recorded in writing.

On rejection of resolution plan due to failure to meet the requirements, the Adjudicating Authority may direct the Board to propose the name of another insolvency professional to be appointed as a liquidator.

The Board shall propose the name of another insolvency professional within ten days of the direction issued by the Adjudicating Authority.

The Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, by an order appoint such insolvency professional as the liquidator.

Charge of fees for conduct of liquidation proceedings: An insolvency professional proposed to be appointed as a liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the Board.

Payment of fees: The fees for the conduct of the liquidation proceedings shall be paid to the liquidator from the proceeds of the liquidation estate.

Q64 How will you interpret the definitions in a statute, if the following words are used in a statute?

(i) Means, (ii) Includes

Give one illustration for each of the above from statutes you are familiar with.

Ans

Interpretation of the words "Means" and "Includes" in the definitions- The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to 'mean' such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to 'include' such and such, the definition is 'prima facie' extensive, here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Example-

Definition of Director [section 2(34) of the Companies Act, 2013]- Director means a director appointed to the board of a company. The word "means" suggests exhaustive definition.

Definition of Whole time director [Section 2(94) of the Companies Act, 2013]- Whole time director includes a director in the whole time employment of the company. The word "includes" suggests extensive definition. Other directors may be included in the category of the whole time director.

Q65 Various complaints have been made against the activities of a Co-operative Banking Company to the effect that if unchecked, the shareholders, depositors and others will suffer heavily and the complainants requested for the appointment of directors by Reserve Bank of India. Discuss whether the Reserve bank has any powers to inspect the records of the Co-operative Bank to ascertain the truth or otherwise in the complaints and to appoint directors in the Co-operative Bank under the Banking Regulation Act, 1949.

Ans

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

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

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

Type of Returns To Be Filed Under Goods & Services Tax

RETURN FORM	WHAT TO FILE?	BY WHOM?	BY WHEN?
GSTR - 1	Details of outward supplies of taxable goods and /or services effected	Registered Taxable Supplier	10th of the next month
GSTR - 2	Details of inward supplies of taxable goods and /or services effected claiming input tax credit.	Registered Taxable Recipient	15th of the next month
GSTR - 3	Monthly return on the basis of finalization of details of outward supplies & inwards supplies along with the payment of amount of tax.	Registered Taxable Person	20th of the next month
GSTR - 4	Quarterly return for compounding taxable person	Composition Supplier	18th of the month succeeding quarter
GSTR - 5	Return for Non-Resident foreign taxable person	Non-Resident Taxable Person	20th of the next month
GSTR - 6	Return for Input Service Distributor	Input Service Distributor	13th of the next month
GSTR - 7	Return for authorities deducting tax at source.	Tax Deductor	10th of the next month
GSTR - 8	Details for supplies effected through e-commerce operator and the amount of the tax collected	E-commerce Operator / Tax Collector	10th of the next month
GSTR - 9	Annual Return	Registered Taxable Person	31st December of next financial year
GSTR - 10	Final Return	Taxable person whose registration has been surrendered or cancelled.	Within three months of the date of cancellation or date of cancellation order, whichever is later.
GSTR - 11	Details of inwards supplies to be furnished by a person having UIN	Person having UIN and claiming refund	28th of the month following the month for which statement is filed.