CORPORATE AND ALLIED LAWS
SOLVED PAPER – CA FINAL – LAW – MAY 2018
CS. TEJPAL SHETH

Question 1(a)

M/s Growmore Plantations Limited, a listed company has unpaid/unclaimed dividend in respect of 1,50,000 equity shares for the past continuous 7 years. This period of 7 years ended on 30th June, 2017. Mr. Prasad the CFO of the company is of the opinion that these 1,50,000 equity shares should have been transferred to the DEMAT Account of the Investor Education & Protection Fund (IEPF) Authority within 30 day from the end of the 7 years period i.e. by 30th July, 2017 respectively. Is the opinion of the CFO correct as per the provisions of the Companies Act, 2013 read with rules framed there under? What would be your answer had this continuous period of 7 years expired on 30th November, 2017. Also state the condition under which these equity shares will not be transferred to the IEPF Authority by the company.

Answer

As per section 124 of Companies Act, 2013, the company shall transfer all shares in respect of which dividend have not been paid or claimed for consecutive 7 years to IEPF D'mat Account. At the time of transfer of shares, the company shall file a statement containing necessary details as may be prescribed. As per Rule 6 of Companies (Declaration & Payment of Dividend) Rules, 2014, the shares shall be credited to the D'mat Account within period of 30 days after expiry of 7 years.

However, company is not required to transfer shares to IEPF D'mat Account:

- If beneficial owner has encashed any dividend warrant during last 7 years; or
- If Court or authority has issue restraining order

Therefore, contention of Mr. Prasad, CFO of company is correct to transfer 1,50,000 equity shares to the D'mat account of IEPF by 30th July, 2017. In case, if continuous period of 7 years expired on 30th November 2017, then shares shall be transferred on or before 30th December, 2017.

Question 1(b)

ABC Limited, an unlisted company having a paid up share capital of Rs. 10 crores during the preceding financial year has appointed Shri X, a fellow member of the Institute of Chartered Accountant of India as Chief Financial Officer of the company who is appointed as Key Managerial Personnel under section 203 of the Companies Act, 2013. Shri X is also a Fellow member of the Institute of the Company Secretaries of India. The Company Secretary post has become vacant. In order to reduce the administrative expenses, the company proposes to appoint Shri X as company secretary in addition to Chief Financial Officer Post. Whether the proposal is legally valid under the provisions of the Companies Act, 2013?

Answer

As per Section 203 of Companies Act, 2013 read with Rule 8 provide that certain specified companies shall have the following whole time KMP:

- Managing director or CEO or manager and in their absence, whole time director;

- Company Secretary; and
- CFO

As per Section 2(19), CFO means a person appointed as CFO of company. No qualification of a CFO is prescribed under Companies Act. Section 203 provides following restrictions:

- Individual cannot be appointed as Chairman of company as well as MD or CEO in certain cases
- Whole time KPM shall not hold office in more than one company except in subsidiary company and as director in any other company with permission of Board.

Companies Act defines who can be MD, CS etc. Accordingly, there is no express bar on one-person holding two posts in one company. Hence, the proposal to appoint Shri X as Company Secretary of company in addition to CFO is legally valid. However, company shall take into consideration provisions of section 184 & 188, if any applicable.

Question 1(c)

M/s Systemtek India Private Limited (Appellant- Corporate Debtor) has challenged the order dated 3rd July, 2017 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Mumbai, in the National Company Law Appellate Tribunal (NCLAT).

NCLT had admitted the application preferred by appellant under section 10 of the Insolvency and Bankruptcy Code, 2016 and an order of Moratorium was passed and Insolvency Resolution Professional was ordered to be appointed by the Ld. Adjudicating Authority (NCLT).

The only grievance of the appellant in its challenge is that the movable and immovable property of Guarantor (promoter) has been attached pursuant to a Corporate Insolvency Resolution Process initiated under section 10 against the Appellant by the Ld. Adjudicating Authority (NCLT) which is violative of section 14(1)(c) of the Insolvency and Bankruptcy Code, 2016 though the Code prescribes a Moratorium for certain types of transactions. Decide.

Answer

Question is based on facts of case **Schweitzer Systemtek India Pvt. Ltd. Vs. Phoenix ARC Pvt. Ltd. & Ors.** In this case, NCLT-Mumbai Bench has admitted petition under section 10 of the Insolvency and Bankruptcy Code, 2016 and an order of Moratorium has been passed after appointment of Insolvency Resolution Professional. Movable and immovable property of Guarantor (promoter) has been attached pursuant to Corporate Resolution Process initiated under section 10 against the Corporate Debtor. It was challenged by preferring an appeal to NCLAT claiming that it is violate section 14(1)(c) of IBC, 2016.

Provision of section 14 suggests as to which properties can be attached. On careful reading, it is noticed that the term **'its'** is significant. The plain language of the section is that on the commencement of the Insolvency process the 'Moratorium' shall be declared for prohibiting any action to recover or enforce any security interest created by the Corporate Debtor in respect of "its" property. Doctrine of Nositur a Socis' is applicable here. According to this doctrine, the associated words take their meaning from one another so that common sense meaning coupled together in their cognate sense be interpreted. As a result, 'its' denotes the property owned by the Corporate Debtor. The property not owned by the Corporate Debtor does not fall within the ambits of the Moratorium. In view of above judgment, challenge by Guarantor (promoter) that movable and immovable property attached pursuant to CIRP under section 10 is in order.

Question 1(d)

The Promoters of M/s. Star Steels Limited, during the month of June, 2017, have raised money from public through issue of prospectus and still have 20% un-utilized amount out the total money so raised. The promoters in control of the company have passed resolution in the general meeting for

effecting change in the objects and/or variations in terms of a contract referred to in the prospectus for utilization of this un-utilized amount in respect of which around 15% of the shareholders have voted against the proposal. The company has decided to give these dissenting shareholder an exist offer as per the Securities Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009. The company seeks your advice regarding the conditions and eligibility under these regulations.

Answer

Refer paragraph no. 56 of Chapter 15 – SEBI Act, 1992 (Including SEBI Guidelines)

Question 1(e)

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

Answer

Amount in reserve fund (Rs. 100 Cr.) and share premium account (Rs. 75 cr.) is less than paid up capital (Rs. 200 cr.). Hence, the order of Central Government exempting the company is not justified. Refer paragraph no. 7 of Chapter 23 – Banking Regulation Act, 1949.

Question 2(a)

Referring to the provisions of the Competition Act, 2002, answer the following:

Mr. KUN was initially appointed as the Chairperson of the Competition Commission on 1st June, 2015, for a term of 3 years, when he exactly attained 58 years of age. The Central Government is considering re-appointing him after his term for the maximum period permissible under the provisions of the act. State the period till which he can be re-appointed as the Chairperson of the Commission.

What will happen to the place of office of the chairperson, in case vacancy arises due to resignation or death of the Chairperson during the tenure of his office?

What will happen to the place of office of the Chairperson, in case the Chairperson is unable to discharge his functions owing to illness?

Answer

The Chairperson and other member of commission shall hold office for a term of 5 years and shall be eligible for reappointment. The Chairperson or members shall not hold office after he has attained the age of 65 years. Therefore, Mr. KUN shall hold office for further 4 years after reappointment. Senior most member shall work in his absence as Chairperson. Refer paragraph no. 13 of Chapter 17 – Competition Act, 2002.

Question 2(b)

The promoters of M/s Frontile Limited a listed public company proposed to have the strength of the Board of directors as eleven. They also propose to make Managing Director and Whole Time Directors

as directors not liable to retire by rotation. Advice on the following matters as per the provisions of the Companies Act, 2013.

(i) Maximum number of persons, who can be appointed as directors not liable to retire by rotation.

(ii) How many of the remaining directors will have to retire by rotation every year at the Annual General Meeting?

(iii) For the purpose of increasing the strength, certain nominations were received to nominate candidates for contesting elections. One of the nominations was rejected by the directors as it was received after sending the notice of AGM and that too after the working hours of the last day on which nominations should have been received.

(iv) Can the Board of directors increase the strength of companies' directors to 18 from 11 by appointing additional directors through passing single resolution?

Answer

(i) & (ii) Refer answer to question no. 25 of Chapter 5 – Directors.

(iii) As per section 160, any member of company or person proposing himself for candidature of director should give notice of 14 days to company before general meeting. It shall be signed and deposited at registered office. In the case of **Oriental Benefit and Deposit Society Ltd. vs. Bharat Kumar K. Shah**, it was held by the Court that section 160 does not prescribe any hour as time limit on a particular date. According to the section, the nomination should be filed not less than 14 days before the meeting. Apart from that, the section does not say that such tender of nomination should be before a particular time on the last day. Therefore, directors of company cannot reject nomination received for reason that it is received after office hours of company.

(iv) Company shall alter its Articles of Association as per section 14 and increase maximum number of directors in Articles from 11 to 18. As per section 149, company can appoint more than 15 directors by passing special resolution. Accordingly, company shall call general meeting and pass special resolution. Company cannot appoint more than one director by single resolution unless meeting first agreed that appointment shall be made by single resolution and no vote has been casted against such agreement.

Question 2(c)

M/s Dreamworks limited (an unlisted company) without any public deposit as per the audited financial statements of the company as at 31st March 2018 gives you the following information:

Paid up share capital	***Rs. 20 crores***
Gross Turnover	***Rs. 500 crores***
Bank Borrowing	***Rs. 40 crores (from a Nationalized Bank)***
Other Borrowing	***Rs. 40 crores (from a Public Financial Institution)***

Mr. Gupta, a Chartered Accountant employed in the finance and audit department of the company wants to form a vigil mechanism for directors and employees of the company.

(i) Advise whether it is mandatory for M/s Dreamworks Limited to formulate a vigil mechanism under the provisions of the Companies Act, 2013 and rules framed there under.

(ii) Are there any penalties that could be imposed on that company for not formulating the vigil mechanism?

Answer

As per section 177 read along with Rule 7 of Companies (Meetings of Board and its Powers) Rules, 2014 following companies shall establish vigil mechanism for their directors and employees to report their genuine concerns or grievances:

- Listed companies
- Companies which accept deposits from public

- Companies that have borrowed moneys from Banks and PFI in excess of Rs. 50 crore

(i) It is mandatory for Dreamworks Ltd. to establish vigil mechanism as borrowing from bank and PFI is more than Rs. 50 crore (Rs. 40 Cr. + Rs. 40 Cr.)

(ii) On default in complying with the provisions related to vigil mechanism:

- Company shall be punishable with fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 5 lakh; and
- Every officer in default shall be punishable with imprisonment for a term, which may extend to 1 year or with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1 lakh or with both

Question 2(d)

Mr. PRTJ was appointed as a member of the National Company Law Appellate Tribunal. During the month of April 2018, he was adjudged as an insolvent by a competent authority. The Central Government after consultation with the Chief Justice of India removed Mr. PRTJ from the membership of the National Company Law Appellate Tribunal. Being aggrieved by the decision of the Central Government, Mr. PRTJ approached you to confirm himself whether the decision of the Central Government was appropriate since, he was not given a reasonable opportunity of being heard as a matter of principle of natural justice. Advise him.

Also, state the circumstances in which the Central Government after consultation with the Chief Justice of India can remove any person from the office of President, Chairperson or any member of the National Company Law Appellate Tribunal. Your answer should refer to the relevant provisions of the Companies Act, 2013.

Answer

The Central Government may remove the President, Chairperson or any Member of Tribunal, who has been adjudged an insolvent. Central Government shall consult Chief Justice of India before removing him. There is no need to give opportunity of being heard in case where person is declared as insolvent. Decision of Central Government is appropriate.

Question 3(a)

Moonlight Limited, held its Board meeting through video conferencing. Due to technical problems, the video recording which was done could not be retrieved. The company seeks your advice on preparation and recording of the minutes of the Board meeting in the above situation, under the provisions of the Companies Act, 2013 and Rules made thereunder.

Answer

Refer paragraph no. 25 of Chapter 4 – Board Meeting & Power of Board.

Question 3(b)

There is a prohibition on importation of 'arms, ammunition or gunpowder or any other goods' under a particular statute. How would you interpret the words 'any other goods' applying the rules of interpretation of statues? Also, state when this particular rule will not be applicable citing an example.

Answer

Refer paragraph no. 13 of Chapter 18 – Interpretation of Statutes

Question 3(c)

ZYX Producer Company Limited has been incorporated recently during the month of April, 2018. The company wants to issue bonus shares immediately due to the fact that the company has earned huge profits during the month of incorporation itself. A Board meeting is proposed to be held to approve this bonus issue. Referring to the provisions of section 581S of the Companies Act, 1956, advise the Board of Director of the company.

Answer

Producer Company on recommendation of Board and after passing special resolution at general meeting issue bonus shares. It is ordinary business at AGM. It shall be issued by capitalization of amount from general reserves. It shall be issued to members in proportion to their patronage on date of such issue. If company has created general reserve (not logical for company, which was incorporated few months back), it can issue bonus shares.

Question 3(d)

M/s EVA Optical Networking India Private Limited having its registered office situated in the city of Gurugram, Haryana state, falling within the jurisdiction of Registrar of Companies, NCT, Delhi & Haryana has filed a petition before the Honorable National Company Law Tribunal, New Delhi Bench (NCLT) under the Companies Act, 2013 seeking an exemption be granted to the petitioner company to change the financial year of the company from 1st April to 31st March presently adopted by following the financial year in below manner:-

(i) <u>For the next financial year</u>:- From 1st April, 2018 to 31st December, 2018 both days inclusive.

(ii) <u>For the subsequent financial year</u>:- Be changed to a period of one calendar year beginning 1st January of one year and concluding on 31st December of the same year.

The Petitioner company in its petition avers that it is a part of EVA Optical Networking Singapore Pvt. Ltd., a company incorporated in Singapore (being the parent company) holding 99% of the Equity share capital of the petitioner and the remaining 1% of the Equity share capital is held by EVA Optical Networking SE, a company incorporated in Germany, which is represented to be the ultimate holding company follows their financial year as 1st January to 31st December of the same year for the purpose of consolidation of accounts and hence in order to streamline the preparation of the consolidated financials of the parent company, the petitioner company is required to align with it. Advise whether the petition will stand before the Honorable NCLT as per the provisions of the Companies Act, 2013. What would be your answer if M/s EVA Optical Networking India Private Limited was registered as a specified International Financial services Centre (IFSC) Private Company?

Answer

A company or body corporate, which is a holding company or subsidiary company or associate company of company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the NCLT may allow any period of its financial year, whether or not that period is year. In the given case, EVA Optical Networking India Private Ltd is subsidiary of foreign company. Its holding company is required to follow different financial year. Hence, if petition for change or modification of financial year is made to NCLT, it will be successful.

Specified IFSC public and IFSC private company, if it is subsidiary or foreign company, financial year of subsidiary may be same as financial year of its holding company and approval of NCLT is not required to be taken for change in financial year.

Question 4(a)

(i) LMN & Company, Chartered Accounts a Limited Liability Partnership firm with CA.L, CA.M, and CA.N as partners, is the statutory auditor of a listed company M/s Bright Limited for past 6 years as on 1.4.2014.

CA.M is also a partner in other Chartered Accountant firm M/s DMC & Company, Chartered Accountants. Advise under the provisions of the companies Act, 2013:

- ***a) Up to how many years can LMN & company continue as statutory auditor of M/s Bright Limited?***
- ***b) What shall be the cooling-off period for M/s LMN & company with respect to M/s Bright Limited?***
- ***c) Can M/s DMC & company; be appointed as statutory auditor of M/s Bright Limited and it's another listed subsidiary M/s Dar Limited during such cooling- off period?***
- ***d) Can M/s LMN & Company be appointed as internal auditor of M/s Bright Limited and it's another listed subsidiary M/s Dark Limited, during such cooling-off period?***

(ii) ABC and company, Chartered Accountant a partnership firm; is the statutory auditor of Wood Works (P) Ltd. Since last 6 financial years as on 1.4.2014. The company has a loan outstanding towards Dena Bank Limited for Rs. 25 crores and the paid-up share capital is Rs. 25 crores, as per the audited balance sheet for the year ended on 31.3.2014 respectively. Advise the audit firm up to the year up to which they can continue as statutory auditor of M/s wood work (P) Limited as per the provisions of the Companies Act, 2013.

Answer

(i) Listed companies are compulsorily required to follow rotation of auditors. – Section 139 This provision is made effective and applicable from 1-4-2014. Transition period of 3 years are given to comply with mandatory rotation of auditor provision. Individual auditor can be appointed for one term of 5 consecutive years. Whereas audit firm and LLP can be appointed as auditor of company for not more than 2 terms of 5 consecutive years of each.

a) LMN & Co. can continue for further 4 years. To calculate term of 5/10 years period for which Auditor (whether individual or firm) has held office as auditor prior to commencement of act is included for calculating period of 5/10 consecutive years. LMN & Co. has already held office for 6 years before commencement of Act.

b) If auditor has completed tenure of 5/10 years as case may be, he is subject to cooling off period for 5 years.

c) DMC & Co. cannot be appointed as auditor of Bright Ltd. or its subsidiary company, Dar Ltd. During cooling off period of 5 years, even an audit firm having one or more common partners with another audit firm being rotated is not eligible to be appointed as auditor of same company.

d) During cooling off period, audit firm cannot be associated with company including internal auditor in same company. However, he can be appointed as internal auditor of any other company.

(ii) Following companies are compulsory required to follow rotation of auditor:

- Listed companies
- All unlisted public companies having paid up capital of Rs. 10 cr. or more
- All private companies having paid up share capital of Rs. 50 cr. or more
- All unlisted companies and private companies not covered under above limit but having public borrowing from financial institution, banks and public deposit of Rs. 50 cr. or more

In the given question, ABC & Co., CA firm can be appointed as statutory auditor of Wood Works P. Ltd. for any period (up to 5 years at time) as approved by annual general meeting as company is not attracting any threshold limit for compulsory rotation of auditor.

Question 4(b)

(i) Explain the meaning of the term 'property' under the Prevention of Money Laundering Act, 2002.

(ii) Mr. Raja was arrested for Counterfeiting Two Thousand Rupees Notes. State the maximum punishment that can be awarded to him under Prevention of Money Laundering Act, 2002.

Answer

(i) Refer paragraph 4 of Chapter 22 – Prevention of Money Laundering Act, 2002

(ii) Any person who commits the offence of money laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine. For offence covered under paragraph 2 of Part A, imprisonment may extend to 10 years. In the given question, offence related to counterfeiting currency note is covered under paragraph 1 of Part A. Raja is liable for imprisonment from 3-7 years and fine.

Question 4(c)

Chang Limited, a company incorporated in Singapore proposes to issue prospectus offering its securities in India. The company has no established place of business in India.

The officer in charge of issue of the prospectus In India seeks you opinion regarding the provisions relating to registration of the prospectus under the Companies Act, 2013. List out the documents required to be enclosed with the prospectus.

Answer

Refer paragraph no. 7 of Chapter 11 – Foreign Co., Government Co., Punishment & Misc. Provisions.

Question 5(a)

XYZ Limited is a listed company. The Board of directors of the company at their meeting held on 1st November, 2017 approved the proposal to issue bonus shares in the ratio of 1:1. Such bonus issue is authorized by its Articles of Association for issue of bonus shares and capitalization of reserves. The company implemented the bonus issue on 15th November, 2017. Whether the company has contravened the provisions of Securities Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulation 2009? What is the time limit in case there is no provision in the Articles for capitalization of reserve?

Answer

An issuer shall implement bonus issue within 15 days from passing of board resolution for bonus issue provided it does not require shareholders' approval in this regard. In the given case, company has passed board resolution on 1st November, 2017 and implement bonus issue on 15th November, 2017. Therefore, it has not contravened provisions of SEBI (ICDR) Regulations, 2009.

Issuer company shall implement bonus issue within 2 months if it requires shareholders' approval for capitalisation of profits or reserves for making the bonus issue.

Question 5(b)

(i) The e-forms rolled out by the Ministry of Corporate Affairs (MCA) under the provisions of the Companies Act, 2013 and rules framed thereunder are mandatorily numbered alphanumeric. Explain this concept. What is the chapter wise nomenclature of e-forms provided by MCA in respect of – 1. Acceptance of deposits by companies & 2. Management and Administration?

(ii) Mrs. Geeta, wife of CA. 'Deepak' the statutory auditor of M/s Avon Builders Limited, acquired shares in the company for a face value of Rs. 75000/- on 15th March, 2018. Examine the validity of this

transaction under the Companies Act, 2013. Would your answer be different if face value of the shares have been Rs. 150000/- (market value Rs.95000/-)?

Answer

(i) Forms under new Act are mandatorily numbered in alphanumeric style. Initial of forms is to be started with alphabet of two or three letters based on the subject of chapter, followed by serial number of form. This will define the nature of forms and would be easy to recognize. Forms for subject matter of acceptance of deposits start with letters 'DPT' and 'MGT' in case of Management and Administration.

(ii) Person is not eligible for appointment as an auditor of a company, if he himself or his relative or partner is holding any security of or interest in the company or its subsidiary company, or of its holding company, or associate company or a subsidiary of such holding company. However, relative may hold security or interest in the company of face value not exceeding Rs. 1 lac. CA. Deepak is not disqualified to be statutory auditor of Avon Builders Limited. Wife is relative. She can hold securities up to value of Rs. 1 Lac. Answer would be different and negative if face value of securities acquired by her wife is Rs. 150000 lac. In the event of acquisition of any security or interest by relative in excess of Rs. 1 lac, corrective action to maintain limit (i.e. Rs. 1 lac) can be taken by auditor within 60 days of acquisition. If corrective action is taken, auditor will not be disqualified.

Question 5(c)

Mr. Amit is the Managing Director of ANJ Limited, which is a non-government public company. The director of CHH Limited decided to appoint Mr. Amit as the Managing Director of the company, even though Mr. Amit decided not to vacate place of office of Managing Director of ANJ Limited. A notice for a Board meeting specifying a resolution containing the proposal of appointment of Mr. Amit was served to all the eligible directors of CHH Limited. Out of eight directors of the company, six directors attended the meeting and out of them four directors gave consent to the resolution, one director voted against the said appointment and another director abstained from voting. The Board of Directors seeks your opinion whether Mr. Amit can be appointed as the Managing Director of the company in this situation. Referring to the applicable provisions of the Companies Act, 2013, advice them.

Answer

A person who is Managing Director of one company may be appointed as Managing Director of one more company, if following conditions are satisfied:

- An appointment is approved by unanimous resolution of Board of another company with consent of all directors present at meeting
- Specific notice is given to all directors in India
- Specific notice should state that such resolution shall be moved at the board meeting

Accordingly, board resolution shall be passed with consent of all directors present at meeting of CHH Ltd. Here, one director voted against resolution. Mr. Amit cannot be appointed as Managing Director of CHH Ltd.

Question 5(d)

ASK Housing Finance Company Limited is prepared to give housing loans to the employees of M/s NEWS Pharmacy Limited subject to the condition that the loans are guaranteed by M/s NEWS Pharmacy Limited. M/s NEWS Pharmacy Limited is not a listed company and the company will be exceeding the limits prescribed under the Companies Act, 2013 by providing the guarantees. Advise the company about this legal requirement under the Companies Act, 2013 to give effect to the above

proposal. What would be your advice if the company were required to provide security instead of guarantee?

Answer

Refer answer to question no. 11 of Chapter 8 – Loan and Investment by Company.

Question 6(a)

In public interest, HEM Stock Exchange Limited was issued an order by the Stock Exchange Board of India to produce certain information and explanation relating to its operation in writing. The management of the Stock Exchange was reluctant to part with such information with SEBI and approached you to seek your advice in the following matters:

(i) Duty of HEM Stock Exchange Limited to furnish periodic returns to SEBI;

(ii) Power of SEBI to ask for the information asked as stated above, over and above the periodic returns;

(iii) Period for which the Stock Exchange is required to maintain the books of accounts, which may be inspected by SEBI;

(iv) Duty of the Stock Exchange and the persons dealing with the stock exchange with regard to the information sought for by SEBI.

Advise them referring to the relevant provisions of the Securities Contracts (Regulation) Act, 1956.

Answer

Refer paragraph no. 8 of Chapter 14 – Securities Contracts (Regulation) Act, 1956.

Question 6(b)

Some creditors of NTY Limited approached you to guide them to apply to the Tribunal for seeking an order for conducting an investigation into the affairs of the company due to the fact that the business of the company is being conducted with intention to defraud its creditors. Referring to the provisions of the Companies Act, 2013, guide them regarding the circumstances under which and how a person, not being a member of the company can apply to the Tribunal to seek an order for conducting an investigation into the affairs of a company.

Answer

Refer paragraph no. 9A of Chapter 3 – Inspection and Investigation

Question 6(c)

BDLK Limited decided to go for voluntary winding up and accordingly the Board of Directors at a meeting of the Board are about to take the necessary steps to initiate the winding up proceedings. The Boards of Directors of the company approached you for guidance in this regard. Please List out the steps required under the Insolvency & Bankruptcy Code 2016 before approval of such liquidation proposal with specific reference to meetings and actions of relevant stakeholders.

Answer

Refer paragraph no. 24 of Chapter 12 – Winding up of Company

Question 6(d)

M/s Sunshine Oils Limited, listed company as at 31st March, 2018 as per the audited financial statement is having 200 depositors with Rs. 50 crores of deposit in the company. Out of the total 200 depositors, 20 depositors of the company have formed a group and have appointed Mr. Ram (a practicing advocate who is not one of the depositor) as their representative to file an application in the National Company Law Tribunal (NCLT) to bring a Class Action suit against the management of the

company as they are of the opinion that the conducted in a manner which is prejudicial to the interest of the admitted by the Honorable Tribunal. Discuss with reference to the provisions of the Companies Act, 2013?

Answer

Following depositors are eligible to apply class action suit to NCLT:

- 100 depositors; or
- Such percentage of total number of depositors as may be prescribed; or
- Any depositor to whom the company owes such percentage of issued share capital

If requisite number of depositor makes application, it can be accepted by NCLT. If class action is allowed by NCLT, depositors shall be allowed to choose the lead applicant. If they are unable to come to consensus, the NCLT shall appoint lead applicant.

Question 7 - Answer any four of the following:

(a) M/s Sagar Retail Mega Mart Ltd. applied for winding up on 1st April, 2018 before the Honorable Tribunal by passing a special resolution as per provision of section 271(1)(a) of the Companies Act, 2013 on account of fall in business and continued losses but not due to inability to pay debts. The company was in the business of ordinary retail trade of multiple branded goods. A few shareholders of the company have alleged before the Honorable Tribunal that the company had failed to maintain proper books of accounts for over a period of more than three years immediately prior to the date of winding up application and he sole reason cited by them in support of their allegation is that no proper statements of all goods sold and purchased by the company have been kept as such every officer in default must be punished as per the provisions of the Companies Act, 2013. Mr. Ravi the CFO and officer in default do not refute the allegation of non – maintenance but is of the opinion that this act as per the provisions of Companies Act, 2013 is not punishable. Decide whether the opinion of the CFO is correct. Would your answer be different had the business of the company be wholesale trade instead of ordinary retail trade?

Answer

If during winding up of company it is shown that proper books of account are not maintained throughout period of 2 years immediately preceding the commencement of winding up, it is offence. Every officer of company who is in default is liable for punishment. Books of account are deemed to be maintained improperly:

- If such books of account do not exhibit and explain the transactions and financial position of the business of the company, including books containing entries made from day-to-day in sufficient detail of all cash received and all cash paid, have not been kept; and
- Where the business of the company has involved dealings in goods, statements of the annual stock takings and, except in the case of goods sold by way of ordinary retail trade, of all goods sold and purchased, showing the goods and the buyers and the sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified, have not been kept

(b) M/s TAS Constructions Private Limited, an operational creditor on 2nd April, 2018 being the default date issued a demand notice through speed post to M/s Dheeraj Constructions Private Limited, an unpaid operational/corporate debtor demanding payment of its invoice dated 19th March, 2018 for Rs. 5,60,000 (15 days payment terms) towards supply of certain works contract services as per the provisions of section 8(1) of the Insolvency and Bankruptcy Code, 2016 and rules framed there under.
Dheeraj Constructions Private Limited on receipt of the demand notice informed the operational creditor, that vide their e-mail dated 30th March, 2018, addressed to the company and all its directors,

they have disputed the invoice on the quality of the services rendered and were withholding payment till the dispute is settled but without initiating any legal proceedings under any law for the time being in force. The operational creditor on expiry of the period of 10 days from the date of delivery of the demand notice and non-payment of its dues approached the adjudicating Authority for the initiation of the corporate insolvency resolution process under section 9(1) of the Insolvency and Bankruptcy Code, 2016. Will the application of the operational creditor filed under section 9(1) read with section 8(2)(a) of the Insolvency and Bankruptcy Code, 2016 be permitted?

Answer

Process of insolvency resolution can be initiated by operational creditor on the occurrence of default, by delivering demand notice or copy of an invoice demanding payment of the amount involved in default to the corporate debtor. It is issued to corporate debtor in prescribed form. It shall be sent to corporate debtor by post, by hand or by email as specified under Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Copy of demand notice or invoice shall be forwarded to information utility. Corporate debtor is required to reply within 10 days of receipt of copy of invoice. If there is existence of dispute, it shall be informed to authority.

As per section 5(6) IBC, 2016, 'Dispute' includes suit or arbitration proceedings relating to:

- Existence of amount of debt; or
- Quality of goods or services; or
- The breach of representation or warranty

In the case of **Mobilox Innovations vs. Kirusa Software (2017)**, honorable Supreme Court had held that since word used in definition of 'dispute' is 'includes', the dispute can be on ground. It is not necessary that suit or arbitration proceeding should be pending. Definition of dispute is inclusive. Adjudicating Authority (NCLT/NCLAT) only has to see whether there is plausible contention of dispute, which requires further investigation. If dispute is informed or breach of contract is communicated, it could be treated as existence of dispute. If there is dispute about claim of debt between parties prior to issue of notice by operational creditor, application cannot be admitted by the Tribunal.

Based on the above discussion and judgment, it can be suggested that application filed by TAS Constructions Private Limited, operational creditor is not maintainable.

(c) M/s Kasha Mutual Benefits Nidhi Ltd. is incorporated as a Nidhi Company under the Companies Act, 2013. The Board of Directors of the company seeks your advice on the following issues as per the provisions of the Companies Act, 2013 read with rules. Advice.

(i) The Board of Directors is planning to issue preference shares.

(ii) The Board of Directors has decided to provide locker facilities on rent to its member and have estimated that rental income from such letting will be around 30% of the gross income of the company.

(iii) The Board of Directors of the company is planning to declare dividend for the current year at 45%.

(iv) The Board of Directors of the company has decided to appoint Mr. Prince (a minor) as a member of the company.

Answer

Section 406 of Companies Act, 2013 read with Nidhi Rules, 2014 suggest that:

(i) Nidhi Company cannot issue any preference shares.

(ii) Nidhi Company shall not carry on any business other than the business of borrowing or lending in its own name. But, Nidhi Company which has adhered to all the provisions of these rules may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding

20% of its the gross income at any point of time during a financial year. Here, the rental income exceeds 20%. It is violation of provisions of Act.
(iii) Nidhi Company shall not declare dividend exceeding 25%.
(iv) A minor shall not be appointed as director member of Nidhi Company.

(d) M/s Star Life Insurance Company Limited issued a life insurance policy on favour of Mr. Raj, which came into force on 1st March, 2014. In February 2017, the insurer came to know that there was a mis-statement involving material fact (without any fraud involved) and repudiated the policy. The insurer till the date of reputation had collected Rs. 3,00,000/-- as premiums under the policy. Mr. Raj did not contest the repudiation but requested the insurer for return of the premiums paid till the date of repudiation to which refund cannot be made. Advise Mr. Raj whether the insurer is valid in refusing the refund of the premiums collected as per the provisions of the Insurance Act, 1938.

Answer

As per section 45 of Insurance Act, 1938 life insurance policy cannot be called in question on any ground whatsoever after expiry of 3 years from date of policy. Here, policy is issued by insurance company on 1st March, 2014. It can be called into question within period of 3 years (i.e., on or before 28th February, 2017). Question does not reflect exact date on policy was issued. We are assuming that it is well within stipulated time. Insurance company shall communicate repudiation in writing and state grounds for repudiation.
When policy is repudiated on the ground of mis-statement or suppression of a material fact, and not on the ground of fraud, the premiums collected on the policy till the date of repudiation shall be paid to the insured within a period of 90 days from the date of such repudiation. Accordingly, contention of Raj is correct. Insurance company shall refund premium collected.

(e) In terms of the provisions of Foreign Exchange Management Act, 1999, Mr. SAM is person of Indian origin resident outside India. He wants to acquire some immovable properties in India not being agricultural property, plantation or farmhouse.
Referring to the provisions of the Foreign Exchange Management Act, 1999, state the permitted sources, means and restrictions imposed in this regard. Also, state the provisions where the acquisition will be in the form of gift or inheritance by Mr. SAM.

Answer

Refer answer to question no. 40 of Chapter 16 – Foreign Exchange Management Act, 1999