

PAPER – 4 : CORPORATE AND ALLIED LAWS

PART – I: RELEVANT AMENDMENTS APPLICABLE FOR MAY 2019 EXAMINATION

(A) Applicability of Relevant Amendments/ Circulars/ Notifications/ Regulations etc.

For May 2019 examinations for Paper 4: Corporate and Allied Laws, the significant amendments made upto 31st October, 2018 are relevant.

Relevant publications: Students are advised to refer the following publications -

1	Study Material (Revised edition June 2018) containing Legislative amendments made upto 30 th April, 2018.
2	RTP of May 2019 examination containing a gist of all the significant legislative amendments of one year i.e. from 1 st May 2018 to 31 st October, 2018 along with the suggested sample questions and answers for understanding and practice.

Relevant amendments: Given here are the relevant amendments which shall be read in line with the principal Act. These amendments are arranged chapter wise as per the study material for the convenience of the students

SECTION A: COMPANY LAW

CHAPTER 2: ACCOUNTS AND AUDIT

1. Enforcement of the *Companies (Audit and Auditors) second Amendment Rules, 2018* vide Notification G.S.R. 432 (E) dated 7th May 2018

The Central Government makes the *Companies (Audit and Auditors) second Amendment Rules, 2018* to amend the *Companies (Audit and Auditors) Rules, 2014*.

In the *Companies (Audit and Auditors) Rules, 2014*,

- (i) In **rule 3** which deals with the **Manner and Procedure of selection and appointment of auditors**, following at the amendments:
 - (a) Explanation shall be omitted.
 - (b) proviso to sub-rule (7) shall be omitted.
- (ii) In the principal rules, **rule 9** which deals with the **Liability to devolve on concerned partners** only, shall be omitted.
- (iii) In the principal rules, in **rule 10A** i.e., related to **Internal Financial controls system**, for the words "adequate internal financial controls system", the words "internal financial controls with reference to financial statements" shall be substituted.
- (iv) In the principal rules, in **rule 14** which deals with **the remuneration of the cost auditor**, following are the changes-
 - (a) in clause (a), in sub-clause (i), for the words, "who is a cost accountant in practice", the words "who is a cost accountant" shall be substituted;

- (b) in clause (b) for the words "who is a cost accountant in practice", the words "who is a cost accountant" shall be substituted.

2. Enforcement of the *Companies (Accounts) Amendment Rules, 2018* vide Notification G.S.R. 725(E) dated 31st July, 2018

The Central Government makes the *Companies (Accounts) Amendment Rules, 2018* to amend the *Companies (Accounts) Rules, 2014*.

In the Companies (Accounts) Rules, 2014,

- (i) In sub-rule (5) of **Rule 8** which deals with the **Matters to be included in Board's report**, after clause (viii) the following clauses shall be inserted, namely:-
- “(ix) a disclosure, as to whether maintenance of cost records as specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013, is required by the Company and accordingly such accounts and records are made and maintained,
- (x) a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 [14 of 2013],”
- (ii) after sub-rule (5), the following **Sub Rule (6)**, rule shall be inserted, namely:-
- “(6) This rule shall not apply to One Person Company or Small Company”.
- (iii) after rule 8, the following **rule 8A** shall be inserted, namely:-
- “8A. Matters to be included in Board's Report for One Person Company and Small Company-
- (1) The Board's Report of One Person Company and Small Company shall be prepared based on the stand alone financial statement of the company, which shall be in abridged form and contain the following:-
- (a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;
- (b) number of meetings of the Board;
- (c) Directors' Responsibility Statement as referred to in sub-section (5) of section 134;
- (d) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;
- (e) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report;
- (f) the state of the company's affairs;

- (g) the financial summary or highlights;
 - (h) material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company;
 - (i) the details of directors who were appointed or have resigned during the year;
 - (j) the details or significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future.
- (2) The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2."

3. Enforcement of the *Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018* vide Notification G.S.R. 865 (E) dated 19th September, 2018

The Central Government makes *the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018* to amend the *Companies (Corporate Social Responsibility Policy) Rules, 2014*.

In *Companies (Corporate Social Responsibility Policy) Rules, 2014*,

- (i) in **rule 2** which deals with the **definitions**, -
 - (a) in sub-rule (1), in sub-clause (i) of clause (c) which defines "Corporate Social Responsibility (CSR)", after the words "relating to activities", the words " , areas or subjects" shall be inserted;
 - (b) in sub-rule (1), in sub-clause (ii) of clause (c), for the words "cover subjects enumerated", the words "include activities, areas or subjects specified" shall be substituted;
 - (c) in sub-rule (1), in clause (e) which defines "CSR Policy", for the words "company as", the words "company in areas or subjects" shall be substituted.
- (ii) in **rule 5** which deals with the "**CSR Committees**", in clause (i) of sub rule (1), for the words "an unlisted public company or a private company", the words "a company" shall be substituted.
- (iii) In **rule 6** which states of **CSR Policy**, following are the changes-
 - (a) in sub-rule (1), in clause (a), for the words "falling within the purview of" the words "areas or subjects specified in" shall be substituted;
 - (b) in sub-rule (1), in second proviso to clause (b), for the words, "activities included in Schedule VII" the words "areas or subjects specified in Schedule VII" shall be substituted.

- (iv) in **rule 7** i.e., “**CSR Expenditure**”, for the words, “purview of”, the words “areas or subjects, specified in” shall be substituted.

4. Constitution of NFRA

The Central Government vide Notification No. S.O. 5099(E) appoints the 1st October, 2018 as the date of constitution of National Financial Reporting Authority.

5. Enforcement of sub-sections (2), (4), (5), (10), (13), (14) and (15) of section 132 i.e., related “Constitution of National Financial Reporting Authority” of the Companies Act, 2013

The Central Government vide Notification S.O. 5385(E) appoints the 24th October, 2018 as the date on which the sub-sections (2), (4), (5), (10), (13), (14) and (15) of section 132 of the Companies Act, 2013 shall come into force.

6. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 129 (Financial statement)	In section 129 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:— "(3) Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2): Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries and associate company or companies in such form as may be prescribed: Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed."
Amendment of section 134 (Financial statement, Board's report, etc)	In section 134 of the principal Act,— (a) for sub-section (1), the following sub-section shall be substituted, namely:— "(1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on

	behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon."; (b) in sub-section (3),— (i) for clause (a), the following clause shall be substituted, namely:— "(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;" (ii) in clause (p), for the words "annual evaluation has been made by the Board of its own performance and that of its committees and individual directors", the words "annual evaluation of the performance of the Board, its Committees and of individual directors has been made" shall be substituted; (iii) after clause (q), the following provisos shall be inserted, namely:— "Provided that where disclosures referred to in this sub-section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report: Provided further that where the policy referred to in clause (e) or clause (o) is made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available."; (c) after sub-section (3), the following sub-section 3A shall be inserted, namely:— "(3A) The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by One Person Company or small company.".
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Amendment of section 135 (Corporate Social Responsibility)	In section 135 of the principal Act,— (i) in sub-section (1),— (a) for the words "any financial year", the words "the immediately preceding financial year" shall be substituted; (b) the following proviso shall be inserted, namely:— "Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors."; (ii) in sub-section (3), in clause (a), for the words and figures "as specified in Schedule VII", the words and figures "in areas or subject, specified in Schedule VII" shall be substituted; (iii) in sub-section (5), for the Explanation, the following Explanation shall be substituted, namely:— 'Explanation.—For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.'
Amendment of section 137 (Copy of financial statement* to be filed with Registrar).	In section 137 of the principal Act,— (i) in sub-section (1),— (a) the words and figures "within the time specified under section 403" shall be omitted; (b) in the second proviso, the words and figures "within the time specified under section 403" shall be omitted; (c) after the fourth proviso, the following proviso shall be inserted, namely:— 'Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.'

	(ii) in sub-section (2), the words and figures “within the time specified, under section 403” shall be omitted; (iii) in sub-section (3), for the words and figures “in section 403”, the word “therein” shall be substituted.
Amendment of section 139 (Appointment of auditors).	In section 139 of the principal Act, in sub-section (1) , the first proviso shall be omitted.

CHAPTER 3-APPOINTMENT AND QUALIFICATION OF DIRECTORS

1. Enforcement of the *Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2018* vide Notification G.S.R. 431(E) dated 7th May 2018

The Central Government makes the *Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014*.

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*,

- (a) **rule 5** which deals with the Qualifications of Independent director, shall be numbered as sub-rule (1) thereof, and after sub-rule (1) as so numbered, the following sub-rule shall be inserted, namely:-

“(2) None of the relatives of an independent director, for the purposes of sub-clauses (ii) and (iii) of clause (d) of sub-section (6) of section 149,-

- (i) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors; or
- (ii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for an amount of fifty lakhs rupees, at any time during the two immediately preceding financial years or during the current financial year.”

- (b) In the principal rules, in **rule 16** which deals with the **copy of resignation of director to be forwarded by him**, for the word “shall”, the word “may” shall be substituted.

2. Enforcement of the *Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2018* vide Notification G.S.R. 558 (E) dated 12th June 2018

The Central Government makes the *Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014*.

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*, in the annexure, for form DIR-3 which deals with the Application for allotment of Director Identification Number, a new form shall be substituted.

3. Enforcement of the Companies (Appointment and Qualification of Directors) fourth Amendment Rules, 2018 vide Notification G.S.R. 615(E) w.e.f. 10th July, 2018

The Central Government makes the *Companies (Appointment and Qualification of Directors) Fourth Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014*.

In *Companies (Appointment and Qualification of Directors) Rules, 2014*,

- (i) The **rule 11** (related to cancellation or surrender or deactivation of DIN) shall be renumbered as sub-rule (1) thereof and after sub-rule (1) as so renumbered, the following sub-rules shall be inserted, namely:-

"(2) The Central Government or Regional Director (Northern Region), or any officer authorised by the Central Government or Regional Director (Northern Region) shall, deactivate the Director Identification Number (DIN), of an individual who does not intimate his particulars in e-form DIR-3-KYC within stipulated time in accordance with Rule 12A.

(3) The de-activated DIN shall be re-activated only after e-form DIR-3-KYC is filed along with fee as prescribed under Companies (Registration Offices and Fees) Rules, 2014.

- (ii) after rule 12, the following **rule 12A** shall be inserted, namely:-

"12A Directors KYC:- Every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall, submit e-form DIR-3-KYC to the Central Government on or before 30th April of immediate next financial year.

Provided that every individual who has already been allotted a Director Identification Number (DIN) as at 31st March, 2018, shall submit e-form DIR-3 KYC on or before 31st August, 2018.";

- (iii) In the Annexure after Form DIR-3 the Form DIR-3-KYC shall be inserted.

4. Enforcement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2018 vide Notification G.S.R. 798 (E) dated 21st August 2018

The Central Government makes the *Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014*.

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*,

- (i) in the proviso to **rule 12A** i.e., Directors KYC, for the words and numbers "DIR-3 KYC on or before 31st August, 2018, the words and numbers "DIR-3 KYC on or before 15th September, 2018" shall be substituted.
- (ii) in the Annexure, for Form No.DIR-3 KYC, a new Form shall be substituted.

5. Enforcement of the Companies (Appointment and Qualification of Directors) Sixth Amendment Rules, 2018 vide Notification G.S.R. 904(E) dated 20th September 2018

The Central Government makes the *Companies (Appointment and Qualification of Directors) Sixth Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014*.

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*, in the proviso to **rule 12A**, for the words and figures "before 15th September, 2018," the words and figures "**before 5th October, 2018**" shall be substituted.

6. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 149 of the Companies Act, 2013 (Company to have board of directors)	In section 149 of the principal Act,— (i) for sub-section (3), the following sub-section shall be substituted, namely:— "(3) Every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year: Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated."; (ii) in sub-section (6),— (a) in clause (c), for the words "pecuniary relationship", the words "pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed," shall be substituted; (b) for clause (d), the following clause shall be substituted, namely:— "(d) none of whose relatives— (i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year: Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding,

	subsidiary or associate company or such higher sum as may be prescribed; (ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or (iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);" (c) in clause (e), in sub-clause (i), the following proviso shall be inserted, namely:— "Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years."
Amendment of Section 157 (Company to inform DIN to registrar)	In section 157 of the principal Act,— (i) in sub-section (1), the words and figures, "within the time specified under section 403" shall be omitted; (ii) in sub-section (2), the words and figures, "before the expiry of the period specified under section 403 with additional fee", shall be omitted.
Amendment of section 164 (Disqualifications for appointment of director)	In section 164 of the principal Act,— (i) in sub-section (2), the following proviso shall be inserted, namely:— "Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.";

	(ii) in sub-section (3), for the proviso, the following proviso shall be substituted, namely:— "Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification."
Amendment of section 167(Vacations of office of director).	In section 167 of the principal Act, in sub-section (1),— (i) in clause (a), the following proviso shall be inserted, namely:— "Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section."; (ii) in clause (f), for the proviso the following proviso shall be substituted, namely,— "Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)— (i) for thirty days from the date of conviction or order of disqualification; (ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or (iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of."
Amendment of Section 168(Resignation of Director)	In section 168 of the principal Act, in sub-section (1), in the proviso, for the words, "director shall also forward", the words "director may also forward" shall be substituted.

CHAPTER 4: APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

1. Enforcement of the *Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018* vide Notification G.S.R 875(E) dated 12th September 2018

The Central Government makes the *Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018* to amend the *Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014*. This amendment has omitted the requirement of approval of the Central Government for making payment of

remuneration to the Managerial personnel (in case of inadequacy of profit) and accordingly e-form MR-2 has also been amended.

In *Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014*,

- (i) in **rule 6** which deals with the Parameters for consideration of remuneration, following are the amendments:
 - (a) for the heading 'application to the Central Government' the heading 'Parameters for consideration of remuneration' shall be substituted.
 - (b) the words 'Central Government' shall be omitted.
- (ii) in **rule 7** i.e., related to Fees, sub-rule (2) shall be omitted
- (iii) for form no.MR-2, a new form MR-2 shall be substituted.

2. Amendment in Schedule V to the Companies Act, 2013

The Central Government vide Notification No. S.O. 4822(E) dated 12th September 2018 has amended the Schedule V to the Companies Act, 2013.

3. Amendments through the Companies (Amendment) Act, 2017

Relevant Sections	Amendment
Amendment of section 196 (Appointment of MD, WTD, Manager)	In section 196 of the principal Act,— (a) in sub-section (3), in clause (a), after the proviso, the following proviso shall be inserted, namely:— "Provided further that where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made."; (b) in sub-section (4), for the words "specified in that Schedule", the words "specified in Part I of that Schedule" shall be substituted.
Amendment of Section 197 (Overall maximum managerial remuneration and managerial remuneration in case of absence or	In section 197 of the principal Act,— (a) in sub-section (1),— (i) in the first proviso, the words "with the approval of the Central Government," shall be omitted; (ii) in the second proviso, after the words "general meeting," the words "by a special resolution," shall be inserted; (iii) after the second proviso, the following proviso shall be inserted, namely:—

inadequacy of profits)	"Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting."; (b) in sub-section (3), the words "and if it is not able to comply with such provisions, with the previous approval of the Central Government" shall be omitted; (c) for sub-section (9), the following sub-section shall be substituted, namely:— "(9) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company."; (d) in sub-section (10),— (i) for the words "permitted by the Central Government", the words "approved by the company by special resolution within two years from the date the sum becomes refundable" shall be substituted; (ii) the following proviso shall be inserted, namely:— "Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver."; (e) in sub-section (11), the words "and if such conditions are not being complied, the approval of the Central Government had been obtained" shall be omitted; (f) after sub-section (15), the following sub-sections shall be inserted, namely:—
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	"(16) The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed. (17) On and from the commencement of the Companies (Amendment) Act, 2017, any application made to the Central Government under the provisions of this section [as it stood before such commencement], which is pending with that Government shall abate, and the company shall, within one year of such commencement, obtain the approval in accordance with the provisions of this section, as so amended."
Amendment of Section 198 (Calculations of Profits)	In section 198 of the principal Act,— (i) in sub-section (3),— (a) in clause (a), after the words "sold by the company", the words, letter, brackets and figures "unless the company is an investment company as referred to in clause (a) of the Explanation to section 186" shall be inserted; (b) after clause (e), the following clause (f) shall be inserted, namely:— "(f) any amount representing unrealised gains, notional gains or revaluation of assets."; (ii) in sub-section (4), in clause (l), the words "which begins at or after the commencement of this Act" shall be omitted.
Amendment of section 200 (Central Government or company to fix limit with regard to remuneration).	In section 200 of the principal Act, the words "the Central Government or" appearing at both the places shall be omitted.
Amendment of section 201 (Forms of, and procedure in relation to, certain applications).	In section 201 of the principal Act,— (a) in sub-section (1), for the words "this Chapter", the word and figures "section 196" shall be substituted; (b) in sub-section (2), in clause (a), for the words "any of the sections aforesaid", the word and figures "section 196" shall be substituted.

CHAPTER 5 : MEETING OF BOARD AND ITS POWERS**1. Enforcement of the *Companies (Meetings of Board and its Powers) Amendment Rules, 2018* vide Notification G.S.R. 429 (E) dated 7th May, 2018**

The Central Government makes the *Companies (Meetings of Board and its Powers) Amendment Rules, 2018* to amend the *Companies (Meetings of Board and its Powers) Rules, 2014*.

In *Companies (Meetings of Board and its Powers) Rules, 2014*,

- (i) in **rule 4** i.e., **related the matters not to be dealt with in a meeting through video conferencing or other audio visual means**, the following proviso shall be inserted, namely:-

“Provided that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means.”

- (ii) In the principal rules, in **rule 6** related to the **Committees to the Board**, for the words “every listed company”, the words “every listed public company” shall be substituted.

- (iii) In the principal rules, for **rule 13** i.e. related to the **Special Resolution**, the following rule shall be substituted, namely:-

“13. Special Resolution- A resolution passed at a general meeting in terms of sub-section (3) of section 186 to give any loan or guarantee or investment or providing any security or the acquisition under sub-section (2) of section 186 shall specify the total amount up to which the Board of Directors are authorised to give such loan or guarantee, to provide such security or make such acquisition:

Provided that the company shall disclose to the members in the financial statement the full particulars in accordance with the provisions of sub-section (4) of section 186.”

2. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 173 (Meetings of Board)	In section 173 of the principal Act, in sub-section (2) , after the first proviso, the following proviso shall be inserted, namely:— "Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso."
Amendment of section 177 (Audit Committee).	In section 177 of the principal Act,—

	(i) in sub-section (1), for the words "every listed company", the words "every listed public company" shall be substituted; (ii) in sub-section (4), in clause (iv), after the proviso, the following provisos shall be inserted, namely:— "Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board: Provided also that in case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it: Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company."
Amendment of Section 178 (Nomination and Remuneration Committee and stake holders Relationship committee)	In section 178 of the principal Act,— (i) in sub-section (1), for the words "every listed company", the words "every listed public company" shall be substituted; (ii) in sub-section (2), for the words "shall carry out evaluation of every director's performance", the words "shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance" shall be substituted; (iii) in sub-section (4), in clause (c), for the proviso, the following proviso shall be substituted, namely:—

	"Provided that such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report."; (iv) in sub-section (8), in the proviso, for the words "non-consideration of resolution of any grievance", the words "inability to resolve or consider any grievance" shall be substituted.
Substitution of new section for section 185. (Loan to Directors)	For section 185 of the principal Act, the following section shall be substituted, namely:— '185. (1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,— (a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or (b) any firm in which any such director or relative is a partner. (2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that— (a) a special resolution is passed by the company in general meeting: Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and (b) the loans are utilised by the borrowing company for its principal business activities. <i>Explanation.</i>—For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means—

	(a) any private company of which any such director is a director or member; (b) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or (c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company. (3) Nothing contained in sub-sections (1) and (2) shall apply to— (a) the giving of any loan to a managing or whole-time director— - as a part of the conditions of service extended by the company to all its employees; or - pursuant to any scheme approved by the members by a special resolution; or (b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or (c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or (d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company: Provided that the loans made under clauses (c) and (d) are utilized by the subsidiary company for its principal business activities.
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	(4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,— (i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; (ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and (iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.'
Amendment of section 186 (Loan and investment by company).	In section 186 of the principal Act,— (i) in sub-section (2), the following Explanation shall be inserted, namely:— <i>'Explanation.—For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company.'</i> (ii) for sub-section (3), the following sub-section shall be substituted, namely:— '(3) Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under sub-section (2), no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting: Provided that where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary

	company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply: Provided further that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (4).". (iii) for sub-section (11), the following sub-section shall be substituted, namely:— "(11) Nothing contained in this section, except sub-section (1), shall apply— (a) to any loan made, any guarantee given or any security provided or any investment made by a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities; (b) to any investment— (i) made by an investment company; (ii) made in shares allotted in pursuance of clause (a) of sub-section (1) of section 62 or in shares allotted in pursuance of rights issues made by a body corporate; (iii) made, in respect of investment or lending activities, by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities."; (iv) in the Explanation, in clause (a), after the words "other securities" the following shall be inserted, namely:— "and a company will be deemed to be principally engaged in the business of acquisition of shares,
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	debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent. of its total assets, or if its income derived from investment business constitutes not less than fifty per cent. as a proportion of its gross income."
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CHAPTER 15: NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL**Amendments through the Companies (Amendment) Act, 2017**

Relevant sections	Amendment
Amendment of section 410 (Constitution of Appellate Tribunal)	In section 410 of the principal Act, for the words "orders of the Tribunal", the words "orders of the Tribunal or of the National Financial Reporting Authority" shall be substituted.

CHAPTER 16: SPECIAL COURTS**Amendments through the Companies (Amendment) Act, 2017**

Relevant sections	Amendment
Amendment of section 435. (Establishment of Special Courts)	For section 435 of the principal Act, the following shall be substituted, namely:— 435. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary. (2) A Special Court shall consist of— (a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and (b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences, 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."
Amendment of section 438 (Application of Code to proceedings before Special court)	In section 438 of the principal Act, for the words "deemed to be a Court of Session", the words "deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be," shall be substituted.

Amendment of section 439 (Offences to be non cogizable).	In section 439 of the principal Act, in sub-section (2) , after the words "a shareholder", the words "or a member" shall be inserted.
Amendment of section 440(Transitional provisions).	In section 440 of the principal Act, for the words "Court of Session", at both the places, the words "Court of Session or the Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be" shall be substituted.

CHAPTER 17: MISCELLANEOUS PROVISIONS

1. Enforcement of the *Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018* vide Notification G.S.R. 559(E) dated 13th June, 2018

The Central Government makes the *Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018* to amend the *Companies (Registered Valuers and Valuation) Rules, 2017*.

In *Companies (Registered Valuers and Valuation) Rules, 2017*, in **rule 19** which relates to Committee to advise on valuation matters, in sub-rule 2, after clause (g), the following clause shall be inserted, namely:-

"(h) Presidents of, the Institute of Chartered Accountants of India, the Institute of Company Secretaries of India, the Institute of Cost Accountants of India as ex-officio members."

2. Enforcement of the *Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018* vide Notification G.S.R. 925(E) dated 25th September, 2018

The Central Government makes the *Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018* to amend the *Companies (Registered Valuers and Valuation) Rules, 2017*.

In the *Companies (Registered Valuers and Valuation) Rules, 2017*,

- (i) in **rule 11** i.e., related to **Transitional Arrangement**, for the figures, letters and word "30th September, 2018" occurring at both the places, the figures, letters and word "31st January, 2019" shall be substituted.
- (ii) In the said **rules**, in **rule 14** i.e., related to **Conditions of Recognition**, in clause (f), for the words "one year", the words "two years" shall be substituted.

3. Amendments through the *Companies (Amendment) Act, 2017*

Relevant sections	Amendment
Amendment of section 403	In section 403 of the principal Act,— (i) in sub-section (1) , for the first and second provisos, the following provisos shall be substituted, namely:—

(Fee for filing, etc.)	“Provided that where any document, fact or information required to be submitted, filed, registered or recorded, as the case may be, under section 92 or 137 is not submitted, filed, registered or recorded, as the case may be, within the period provided in those sections, without prejudice to any other legal action or liability under this Act, it may be submitted, filed, registered or recorded, as the case may be, after expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed, which shall not be less than one hundred rupees per day and different amounts may be prescribed for different classes of companies: (ii) for sub-section (2), the following sub-section shall be substituted, namely:— “(2) Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (1) before the expiry of the period specified in the relevant section, the company and the officers of the company who are in default, shall, without prejudice to the liability for the payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.”
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CHAPTER 19: INSOLVENCY AND BANKRUPTCY CODE, 2016

(1) The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018

Vide Notification dated 17th August, 2018, Ministry of Law and Justice hereby amended the Insolvency and Bankruptcy Code, 2016 through the enforcement of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018. With the enforcement of this Amendment Act, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 have been repealed. This amendment Act is effective from **6th June, 2018**.

Following are the relevant amendments:

- (1) In **section 3(12)**, in the Insolvency and Bankruptcy Code, 2016 (Principal Act), for the word "repaid", the word "paid" shall be substituted.
- (2) In **section 5** of the principal Act,
 - (i) after clause (5) i.e., after the definition of Corporate applicant, the following **clause 5A** shall be inserted, namely:—

'(5A) "corporate guarantor" means a corporate person who is the surety in a contract of guarantee to a corporate debtor;'
 - (ii) in **clause (8)** prescribing the term "**Financial Debt**" in the Code, in sub-clause (f), the following Explanation shall be inserted, namely:—

'Explanation.—For the purposes of this sub-clause,—

- (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and
- (ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;
- (iii) in **clause (12)** i.e., as to the "**Insolvency commencement date**", the following proviso shall be inserted, namely:—

"Provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or section 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority;"

- (iv) **after clause (24)**, the following clause shall be inserted, namely:—

'(24A) "related party", in relation to an individual, means—

- (a) a person who is a relative of the individual or a relative of the spouse of the individual;
- (b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;
- (c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;
- (d) a private company in which the individual is a director and holds along with his relatives, more than two per cent. of its share capital;
- (e) a public company in which the individual is a director and holds along with relatives, more than two per cent. of its paid-up share capital;
- (f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;
- (g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;
- (h) a person on whose advice, directions or instructions, the individual is accustomed to act;
- (i) a company, where the individual or the individual along with its related party, own more than fifty per cent. of the share capital of the company or controls the appointment of the board of directors of the company.

Explanation.—For the purposes of this clause,—

- (a) "relative", with reference to any person, means anyone who is related to another, in the following manner, namely:—
 - (i) members of a Hindu Undivided Family,
 - (ii) husband,
 - (iii) wife,
 - (iv) father,
 - (v) mother,
 - (vi) son,
 - (vii) daughter,
 - (viii) son's daughter and son,
 - (ix) daughter's daughter and son,
 - (x) grandson's daughter and son,
 - (xi) granddaughter's daughter and son,
 - (xii) brother,
 - (xiii) sister,
 - (xiv) brother's son and daughter,
 - (xv) sister's son and daughter,
 - (xvi) father's father and mother,
 - (xvii) mother's father and mother,
 - (xviii) father's brother and sister,
 - (xix) mother's brother and sister, and
 - (b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included;'
- (3) In **section 7(1)** of the principal Act which deals with the initiation of CIRP by financial creditor, for the words "other financial creditors", the words "other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government," shall be substituted.
 - (4) In **section 8(2)** of the principal Act which deals with the Insolvency resolution by operational creditor, following are the amendments—
 - (i) in **clause (a)**, for the words "if any, and", the words "if any, or" shall be substituted;
 - (ii) in **clause (b)**, for the word "repayment", the word "payment" shall be substituted;

In the Explanation, for the word "repayment", the word "payment" shall be substituted.

- (5) In **section 9(3)** of the principal Act, which states of the provision related to the filing of an application for initiation of corporate insolvency resolution process by operational creditor—
- (i) in **clause (c)**, for the words "by the corporate debtor; and", the words "by the corporate debtor, if available;" shall be substituted;
 - (ii) for **clause (d)**, the following clauses shall be substituted, namely:—
 - "(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and
 - (e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.";
- (6) in **section 9(5)** of the principle Code which deals with the provision related to the filing of an application for initiation of corporate insolvency resolution process by operational creditor —
- (a) in **clause (i), in sub-clause (b)**, for the word "repayment", the word "payment" shall be substituted;
 - (b) in **clause (ii), in sub-clause (b)**, for the word "repayment", the word "payment" shall be substituted.
- (7) **Section 10 (3)** of the principal Act, deals with the initiation of corporate insolvency resolution process by corporate applicant, shall be substituted with the following-
- "(3) The corporate applicant shall, along with the application, furnish—
- (a) the information relating to its books of account and such other documents for such period as may be specified;
 - (b) the information relating to the resolution professional proposed to be appointed as an interim resolution professional; and
 - (c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.";
- (8) In **Section 10 (4)** related to the initiation of corporate insolvency resolution process by corporate applicant, following amendments have been made—
- (i) in **clause (a)**, after the words "if it is complete", the words "and no disciplinary proceeding is pending against the proposed resolution professional" shall be inserted;

- (ii) in **clause (b)**, after the words "if it is incomplete", the words "or any disciplinary proceeding is pending against the proposed resolution professional" shall be inserted.
- (9) In **section 12(2)** of the principal Act, related to the time limit for completion of corporate insolvency resolution process, for the word "seventy-five", the word "sixty-six" shall be substituted.
- (10) **After section 12** of the principal Act, the section 12A shall be inserted-
"**12A. Withdrawal of application admitted under section 7, 9, or 10:** The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified."
- (11) **Section 14(3)** of the principal Act which deals with the moratorium, shall be substituted, with the following—
"(3) The provisions of **sub-section (1)** shall not apply to—
 - (a) such transaction as may be notified by the Central Government in consultation with any financial regulator;
 - (b) a surety in a contract of guarantee to a corporate debtor."
- (12) In **section 15(1)(c)** of the principal Act which deals with the provisions related to the public announcement, for the word "claims", the words "claims, as may be specified" shall be substituted.
- (13) In **section 16(5)** of the principal Act which is related to the appointment and tenure of interim resolution professional, for the words "shall not exceed thirty days from date of his appointment", the words and figures "shall continue till the date of appointment of the resolution professional under section 22" shall be substituted.
- (14) In **section 17(2)(d)** of the principal Act which deals with the management of affairs of corporate debtor by IRP, for the words "may be specified.", the words "may be specified; and" shall be substituted;
- (15) **After section 17(2)(d)** which deals with the management of affairs of corporate debtor by IRP, the following **section 17(2)(e)**, shall be inserted,
"(e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor."
- (16) In **section 21** of the principal Act, which deals with the committee of creditors, following are the relevant amendments —
 - (i) in **sub-section (2), — in the proviso**, for the words "related party to whom a corporate debtor owes a financial debt", the words, brackets, figures and letter "financial creditor or the authorised representative of the financial creditor referred

to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor," shall be substituted;

- (ii) after this proviso under sub-section (2), the following **proviso is inserted**-

"Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.";

- (iii) **Insertion of new sub-section 6(A) & 6(B)** after sub-section (6)-

"(6A) Where a financial debt—

- (a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;
 - (b) is owed to a class of creditors exceeding the number as maybe specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;
 - (c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors,
- and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

(6B) The remuneration payable to the authorised representative—

- (i) under clauses (a) and (c) of sub-section (6A), if any, shall be as per the terms of the financial debt or the relevant documentation; and
 - (ii) under clause (b) of sub-section (6A) shall be as specified which shall form part of the insolvency resolution process costs.";
- (iv) for **sub-sections (7) and (8)**, the following sub-sections shall be substituted, namely:—
- "(7) The Board may specify the manner of voting and the determining of the voting share in respect of financial debts covered under sub-sections (6) and (6A).
- (8) Save as otherwise provided in this Code, all decisions of the committee of creditors shall be taken by a vote of not less than fifty-one per cent. of voting

share of the financial creditors:

Provided that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and shall comprise of such persons to exercise such functions in such manner as may be specified."

- (17) In **section 22(2)** of the principal Act, for the word, "seventy-five", the word "sixty-six" shall be substituted;
- (18) In **section 23(1)** of the principal Act, the following proviso shall be inserted-
 "Provided that the resolution professional shall, if the resolution plan under sub-section (6) of section 30 has been submitted, continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period until an order is passed by the Adjudicating Authority under section 31."
- (19) In **section 24(3)** of the principal Act, in clause (a), for the words "Committee of creditors", the words, brackets, figures and letter "committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5)" shall be substituted;
- (20) **Insertion of new section 25A** which deals with the Rights and duties of authorised representative of financial creditors.

'25A. (1) Right to participate and Vote on behalf of FC: The authorised representative(AR) under section 21(6) & 21(6A) or section 24(5) shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor(FC) he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.

Duty of AR to circulate agenda & minutes to FC: It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.

AR to act on instruction of FC: The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:

Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.

(2) **To ensure recording of instruction by IRP/RP:** The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance

therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.

- (21) **Amendment in section 27(2)** of the principal Act which deals with the Replacement of Resolution Professional (RP) by Committee of creditors (CoC): This sub-section is substituted with the following provision-

"The committee of creditors may, at a meeting, by a vote of sixty-six per cent. of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form."

- (22) Amendment in **section 28(3)** of the principal Act which deals with the approval of committee of creditors for certain actions, for the word, "seventy-five", the word "sixty-six" shall be substituted.

- (23) **Amendment in Section 29 A**, dealt with the persons not eligible to be resolution applicant came into enforcement on 23rd day of November 2017 through the enforcement of Insolvency and Bankruptcy Code (Amendment) Act, 2018 vide notification dated 19th January, 2018.

(i) **in clause (c),—**

- (a) for the words "has an account," the words "at the time of submission of the resolution plan has an account," shall be substituted;
- (b) after the words and figures "the Banking Regulation Act, 1949", the words "or the guidelines of a financial sector regulator issued under any other law for the time being in force," shall be inserted;
- (c) after the proviso, the following shall be inserted, namely:—"Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

The expression "**related party**" here shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;"

(ii) for clause (d), the following clause shall be substituted, namely:—

"(d) has been convicted for any offence punishable with imprisonment—

- (i) for two years or more under any Act specified under the Twelfth Schedule; or
- (ii) for seven years or more under any other law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;"

(iii) in clause (e), the following proviso shall be inserted, namely:—

"Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;"

(iv) in clause (g), the following proviso shall be inserted, namely:—

"Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;"

(v) in clause (h), —

- (a) for the words "an enforceable guarantee", the words "a guarantee" shall be substituted;
- (b) after the words "under this Code", the words "and such guarantee has been invoked by the creditor and remains unpaid in full or part" shall be inserted;

(vi) in clause (i), for the words "has been", the word "is" shall be substituted;**(vii) the Explanation occurring after clause (j) shall be numbered as Explanation I, and in Explanation I as so numbered, for the proviso, the following provisos shall be substituted, namely:—**

'Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;"

(viii) after **Explanation I** as so numbered, the following Explanation shall be inserted, namely:—

'Explanation II—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely:—

- (a) a scheduled bank;
- (b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;
- (c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999.
- (d) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (e) an Alternate Investment Fund registered with the Securities and Exchange Board of India;
- (f) such categories of persons as may be notified by the Central Government.'

(24) **Amendment in section 30:** The said section deals with the submission of resolution plan. Following are the amendments-

- (i) in **sub-section (1)**, after the words "resolution plan", the words, figures and letter "along with an affidavit stating that he is eligible under section 29A" shall be inserted;
- (ii) in **sub-section (2)**,—
 - (a) in clauses (a) and (b), for the word "repayment" at both the places where it occurs, the word "payment" shall be substituted;
 - (b) after clause (f), the following *Explanation* shall be inserted, namely:—

"*Explanation.*—For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.";

- (iii) in **sub-section (4)**,—
 - (a) for the word "seventy-five", the word "sixty-six" shall be substituted;
 - (b) after the third proviso, the following proviso shall be inserted, namely:—
 "Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018."
- 25. **Amendment in section 31** of the principal Act, which deals with the approval of resolution plan—
 - (a) in **sub-section (1)**, the following proviso shall be inserted, namely:—
 "Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation."
 - (b) after **sub-section (3)**, the following sub-section shall be inserted namely:—
 "(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:
 Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors."
- 26. Amendment made in **section 33(2)** of the principal Act. This section deals with the initiation of liquidation process. Amendments made is that after the words "decision of the committee of creditors", the words "approved by not less than sixty-six per cent. of the voting share" shall be inserted.
- 27. In **section 34** of the principal Act, which states of appointment of liquidator and fee to be paid, following amendments are made—
 - a. in **sub-section (1)**, for the words and figures "Chapter II shall", the words and figures "Chapter II shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form," shall be substituted;
 - b. in **sub-section (4)**,—

- i. in clause (b), for the words "in writing", the words "in writing; or" shall be substituted;
 - ii. after clause (b), the following clause shall be inserted, namely:—
"(c) the resolution professional fails to submit written consent under sub-section (1).";
 - c. in **sub-section (5)**, for the word, brackets and letter "clause (a)", the words, brackets and letters "clauses (a) and (c)" shall be substituted;
 - d. in **sub-section (6)**, after the words "another insolvency professional", the words "along with written consent from the insolvency professional in the specified form," shall be inserted.
28. In **section 42** of the principal Act, which deals with the provisions related to the appeal against the decision of liquidator, after the words "of the liquidator", the words "accepting or" shall be inserted.
29. In **section 45(1)** of the principal Act, which deals with the Avoidance of undervalued transactions, the words and figures "of section 43" shall be omitted.

(B) Non-Applicability of the following chapter of the Study material

Chapter 9 of the study material (June 18 edition) covering provisions relating to Revival and Rehabilitation of Sick-Industrial Companies, is omitted by the Ministry of Corporate Affairs.

PART – II : QUESTIONS AND ANSWERS

QUESTIONS

Multiple Choice Questions

1. The Board of Directors of XYZ Ltd. decided for the voluntary revision of accounts of the previous financial year 2017-2018 for making necessary correction in the financial statement in terms of section 129. Approval for the revision was given by the Tribunal. In compliance to the Companies Act, 2013, XYZ Ltd. prepared revised financial statement of the said financial year. So accordingly, revised Financial statement were filed with the ROC. Later Directors of company felt that there was non-compliance of section 134, so again applied before the tribunal for revision of accounts of the same financial year.

State the correct statement in the light of the given facts-

- (a) XYZ Ltd. can apply for the revision of the revised financial statement with the approval of the Tribunal.

- (b) XYZ Ltd. can apply for the revision of the revised financial statement on the notice of the tribunal to the Central Government & Income Tax Authorities and consideration of their representations.
 - (c) XYZ Ltd. can apply for the revision of the revised financial statements in respect of any three preceding financial years.
 - (d) XYZ Ltd. cannot apply for the revision of revised financial statement.
2. Mr. Roop was appointed as an Additional Director of XYZ Limited in July, 2018. Immediately after his appointment, on behalf of the Company he entered into an agreement with NY Private Limited for supplies of raw material. In the ensuing meeting, he was regularized as a Director. He signed Contract with Laxmi vendors. At the end of the December 2018, management came to know that his appointment was not valid as he was disqualified to act as a Director of any Company. He signed one more agreement in January 2019 with Saraswati vendors. In such scenario, what will be the status of contract/agreements he signed on behalf of XYZ Limited?
- (a) All agreement/ contracts will become invalid;
 - (b) All agreement/ contracts will be valid;
 - (c) All agreement/ contracts before December 2018 will be valid;
 - (d) All agreement/ contracts before December 2018 will be invalid;
3. Mr. Nagar decided to resign from MGT Private Limited due to preoccupation. He sent his resignation letter dated 12th June, 2017 to the Company stating that he will resign w.e.f. 15th June, 2017. Due to non receipt of any communication from the Company he dropped a mail on 17th June, 2017, to confirm whether Company has received his letter. Finally Company received his letter on 25th June, 2017. In this case, from which date his resignation will be effective?
- (a) 12th June, 2017
 - (b) 15th June, 2017
 - (c) 17th June, 2017
 - (d) 25th June, 2017
4. If committee of creditors of corporate debtors was constituted on 17.3.2018. Time limit, within which the first meeting of committee of creditors should be held, is -----.
- (a) 20.3.2018
 - (b) 22.3.2018
 - (c) 24.3.2018
 - (d) 31.3.2018

5. Under the IBC, the resolution plan shall be approved by the Committee of Creditors by a vote of not less than-----percent of voting share of the financial creditors.
- (a) 51%
 - (b) 66%
 - (c) 75%
 - (d) 95%
6. Who is empowered to designate court of session as special courts for trial of offence of money laundering?
- (a) Central government in consultation with the chief justice of supreme court
 - (b) High court in consultation with the chief justice of Supreme Court
 - (c) Central government in consultation with the chief justice of session court
 - (d) Central government in consultation with the chief justice of High court

Descriptive Questions

Part I: Corporate Laws

7. RST Ltd. declared dividend at the rate of 20% for the financial year 2017-2018 in the AGM scheduled on 15th June 2018. RST Ltd. left with certain unpaid and unclaimed dividend. It transferred amount of unpaid and unclaimed dividend to UDA (unpaid dividend account). After remaining unpaid and unclaimed for more than 2 years in the UDA, some of the entitled shareholders made liable RST Ltd. for noncompliance of section 124, and claimed for their unpaid dividend amount. The RST Ltd. denies saying that there were certain legal issues on the entitlement of the dividend amount to the respective shareholders.
- State in the light of the given facts, whether the allegation marked by shareholders and claim for the divided amount, against RST Ltd. is justifiable ?
8. Examine the following situations in the light of the Companies Act, 2013
- (i) Mr. Ayush, a Chartered accountant has been appointed as an auditor of X Ltd. in the Annual General Meeting of the company held in September, 2018, in which he accepted the assignment. Subsequently, in January, 2019 he joined B, another Chartered Accountant, who is the Finance executive of X Ltd., as partner. State the legal position as to the holding of Mr. Ayush as an auditor in X Ltd.
 - (ii) "Mr. Abhi", a practicing Chartered Accountant, is holding securities of "Abhiman Ltd." having face value of ` 1000/-. Whether Mr. Abhi is qualified for appointment as an Auditor of Abhiman Ltd.?"
9. Rudraksh Ltd. was incorporated for supply of solar panels for the emerging project of government for construction of highways. However, the said project did not turn up for two years due to some legal implications. During the said period, no any significant accounting

transaction was made and so the company did not file financial statements and annual returns during the last two financial years. In the meantime, the Board proposed for Mr. Ram & Mr. Rahim to be appointed as an Independent Directors for their independent and expertise knowledge and experience for better working and improvement of financial position of the company.

Evaluate in the light of the given facts, the following legal position:

- (i) Accountability for non- filing of financial statements and annual returns for last two financial years, of the Rudraksh Ltd.
 - (ii) Nature of the proposal for an appointment of Mr. Ram & Mr. Rahim in the Rudraksh Ltd. for improvement of financial position of the company.
10. The Board of Directors of ABC Consultants Limited, registered in Maharashtra, proposes to hold the next board meeting in the month of May, 2018. They seek, your advice in respect of the following matters:
- (i) Can the board meeting be held in Delhi through video conferencing, when all the directors of the company reside at Maharashtra.
 - (ii) Is it necessary that the notice of the board meeting should specify the nature of business to be transacted?
11. PBX Pvt. Ltd. is a company in which there are 6 shareholders. Mr. S, who is a director and also the legal representative of a deceased shareholder holding less than one tenth of the share capital of the company made a petition to the tribunal for relief against oppression and mismanagement. Examine under the provisions of the Companies Act, 2013 whether the petition made by Mr. S is valid and Maintainable?
12. Decide the liability of the person for commission of the act during the course of inspection, inquiry or investigation under the Companies Act, 2013:
- (i) A person who is required to make statement during the course of investigation pending against its company, is a party to the manipulation of documents related to the transfer of securities and naming of holders in the register of members by the company.
 - (ii) An employee of the company publicized among his social networking of sound financial position of his organization in order to incite the public to purchase the shares of its company. In actuality, the company was running in loss.
13. Board of Directors of the ABC, a listed company, in their meeting passed the resolution for an appointment of company secretary and the compliance officer for the guidance to the Board with regards to their duties, responsibilities and powers and the conduct of the affairs of the company. Draft the Resolution for an appointment of Mr. Nirman as Company Secretary and compliance officer of the company.

14. The financial creditor, Mr Raman, was an investor and a debenture holder of 'Optionally Convertible Debenture Bond (OPDB)' payable on maturity, was issued by the M/s Asset Ltd. (corporate debtor). The zero interest OCD bonds amounted to 2 crore, matured in 2016. The liability to redeem the debentures on maturity along with a redemption premium lay on the debtor, which was not made. Mr. Raman filed the Corporate Insolvency resolution process before the NCLT. Advise in the light of the given facts, the following situations:
- (i) State whether Mr. Raman is eligible for filing of application for initiation of CIRP?
 - (ii) Do the redemption of debenture payable on the maturity date amounts to debt?
15. Mr. Ram, an operational creditor filed an application for corporate insolvency resolution process. He does not proposed for appointment of an interim resolution professional in the application. State the provisions given by the Code in the given situation. State the term of such appointed IRP.
16. Mr. X in lieu of jewellery of his wife, as a security, taken a loan of amount ₹ 5 lakhs from Mr. Y, who runs a business of providing loan. Mr. X, after a year, made the payment of amount and said to return his jewellery (worth ₹ 10 Lakh). During the period, Mr. Y became Insolvent due to loss in business and was declared liquidated. The liquidator was appointed and formed the liquidation estate for recovery of debts to the creditors. Mr. X came to know of the Situation of Mr. Y. Advise, the rights available with Mr. X against Mr. Y on his declaration as liquidated.

Part II: Allied Laws

17. Comment on the following situations with reference to the provisions of the FEMA, 1999-
- (i) Mr. Bharat, a person resident in India can remit amount to his son Arjun residing in USA, to buy immovable property there.
 - (ii) Mr. Raghav, a resident of India went to Australia for a business deal. He realised foreign exchange for bearing expenses while staying there for the business purpose. After the maturing the deal, he returned back to India. Mr. Raghav was left with certain unused foreign exchange. He retained the foreign exchange with him for future use.
18. (i) Mr. Kartik was into the insurance business and was director in the ABZ insurance company. State the legal position of Mr. Kartik as to conduct of insurance business being a director to the Insurance Company.
- (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.
19. Mr. Ramesh was partner in the Firm, Rajkumar & sons. The said firm was established by Mr. Raj kumar, who is director of the Subh Labh Pvt. Limited which is a one person company. Subh Labh Pvt. Ltd. have foreign income from the clientele being of outside India. Companies generation of foreign income was invested by the Mr. Rajkumar in its

firm without being disclosed in its financial records. Mr. Ramesh was not aware of the such undisclosed flow of fund in the Firm. Give the following answer considering the given facts-

- (i) Liability of Mr. Ramesh being a partner of a firm which is involved in use of income of Subh Labh Pvt. Ltd. obtained from their foreign clientele.
 - (ii) Liability of Mr. Rajkumar being a director of the Subh Labh Pvt. Ltd.
20. (i) Many a time a proviso is added to a Section of the enactment. Explain the function of such a proviso while carrying out the interpretation?
- (ii) Explain the powers, which can be exercised by the Securities and Exchange Board of India under the Securities Contracts (Regulation) Act, 1956, while approving the schemes for corporatisation and demutualization submitted by recognized stock exchanges, so that there is segregation of ownership and management from the trading rights of members of such stock exchanges.

SUGGESTED ANSWERS/HINTS

Multiple Choice Questions Answers

- (1) (d)
- (2) (c)
- (3) (d)
- (4) (c)
- (5) (b)
- (6) (d)

Descriptive questions Answers

7. As per section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid/claimed to/by shareholder within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid/unclaimed to the Unpaid Dividend Account.

The company shall, within a period of 90 days of making any transfer of an amount, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the web-site of the company, if any, and also on any other web-site approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.

Accordingly in the given situation, RST Ltd. failed to give statement of Unpaid/unclaimed dividend and so liable for the said noncompliance of section 124 of the Companies Act, 2013. Any person claiming to be entitled to any money transferred under section 124(1) to

the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed. Since RST Ltd. failed to comply with the requirements of this section as to the preparing of a statement of unpaid dividend, so shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to 5 lakh rupees.

8. (i) **Provisions and Explanation** : Section 141(3) (c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, he shall be deemed to have vacated his office as an auditor.

Conclusion : In the present case, Ayush, an auditor of X Ltd., joined as partner with B, who is Finance executive of X Ltd., has attracted clause (3) (c) of Section 141 and, therefore, he shall be deemed to have vacated office of the auditor of X Limited.

- (ii) As per section 141 (3)(d) (i) 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:

In the present case, Mr. Abhi. is holding security of ` 1000 in the Abhiman Ltd, therefore he is not eligible for appointment as an Auditor of "Abhiman Ltd Ltd".

9. (i) As per the stated facts, Ruraksh Ltd. is an inactive company as per the provision given under the Companies Act, 2013. According to the section 455 of the Companies Act, 2013, where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company (which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;) may make an application to the Registrar for obtaining the status of a dormant company. Since in the given case, neither Rudraksh Ltd. filed an application to the Registrar for obtaining the status nor has filed the financial statements or annual returns for 2 financial years consecutively, therefore, the Registrar shall issue a notice to the company and enter the name of the company in the register maintained for dormant companies.
- (ii) As per section 149(6) read with Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the public companies of prescribed class shall require to appoint minimum 2 Independent directors. However, vide Notification number G.S.R. 839(E) dated 5th July, 2017 an amendment was issued through the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017. It provided that an unlisted public company which is a joint venture, a wholly owned

subsidiary or a dormant company will not be required to appoint Independent Directors. So, the proposal for appointment of Independent Director (Mr. Ram & Mr Rahim) is not required.

10. (i) There is no provision in the Companies Act, 2013 under which the board meetings must be held at any particular place. Therefore, there is no difficulty in holding the board meeting at Delhi even if all the directors of the company reside at Maharashtra and the registered office is situated at Maharashtra provided that the requirements regarding the holding of a valid board meeting and the other provisions relating to the signing of register of contracts, taking roll calls, etc. are complied with.
- (ii) Section 173 (3) of the Companies Act, 2013 provides for the giving of notice of every board meeting of not less than seven days to every director of the company. There is no provision in the Act laying down the contents of the notice. Hence, it may be construed that notice may be interpreted as intimation of the meeting and does not necessarily include the sending of the Agenda of the meeting. However, considering the importance of Board Meetings and the responsibilities placed on the directors for decisions taken at the meetings, it is inevitable for them to be properly prepared and informed about the items to be discussed at the Board Meetings.

The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda shall be given to the Directors at least seven days before the date of the Meeting, unless the Articles prescribe a longer period as a matter of good secretarial practice.

The articles of association of the company may make it mandatory to do so in almost all cases.

11. 1. According to section 244 of the Companies Act, 2013, in the case of a company having share capital, the following member(s) have the right to apply to the Tribunal under section 241:
 - (a) Not less than 100 members of the company or not less than one-tenth of the total number of members, whichever is less; or
 - (b) Any member or members holding not less than one-tenth of the issued share capital of the company provided the applicant(s) have paid all the calls and other sums due on the shares.
2. Legal heir of the deceased shareholder with minority status is entitled to file the petition.

In the given case, there are six shareholders. As per the condition (a) above, 10% of 6 i.e. 1 (round off 0.6) satisfies the condition. Therefore, in the light of the provisions of the Act, a single member (even the legal representative of a deceased shareholder) can present a petition to the Tribunal, regardless of the fact that he holds less than one-tenth of the company's share capital.

Thus, the petition made by Mr. S is valid and maintainable.

12. Section 229 of the Companies Act, 2013 states that where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation,—

- (a) destroys, mutilates or falsifies, or conceals or tampers or unauthorisedly removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal of, documents relating to the property, assets or affairs of the company or the body corporate;
- (b) makes, or is a party to the making of, a false entry in any document concerning the company or body corporate; or
- (c) provides an explanation which is false or which he knows to be false,

-he shall be punishable for fraud in the manner as provided in section 447.

As per the above provision:

- (i) With respect to this part of the question, the person shall be liable for fraud. Since, in the given case, he is a party in the manipulation of documents relating to the transfer of securities and in the register of members of the company which is under investigation.
- (ii) Employee shall not be liable here, as the said company in which he is an employee, is not undergoing investigation. Secondly, the person purchasing the shares can act with due diligence before purchasing shares rather fully relying on the publicity made on social networking.

13. **To consider the appointment of Mr. Nirman as company secretary and compliance officer of ABC Ltd.:**

“RESOLVED THAT pursuant to the provisions of section 203 of the Companies Act, 2013 read with Rule 8 of the companies (Appointment and Remuneration) Rules, 2014, approval of the Board be and is hereby given to appoint Mr. Nirman as Whole Time Company Secretary of ABC listed company, with effect from 11/01/2019, to perform the duties which shall be performed by a secretary under the Companies Act, 2013 and other duties as assigned to him by the Board from time to time.

“RESOLVED FURTHER THAT Mr. Nirman be and is hereby appointed as compliance officer of the company with effect from 11/01/2019.

14. As per the Section 5(7) of the Insolvency and Bankruptcy Code, 2016, financial creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

Whereas the term Financial debt defined under Section 5(8) means a debt along with interest, if any, which is disbursed against the consideration for the time value of money

and includes any amount raised pursuant to the issue of bonds, notes, debentures, loan stock or any similar instrument.

As per the facts, Mr. Raman, was an investor and a debenture holder of 'Optionally Convertible Debenture Bond (OPDB)' issued by the M/s Asset Ltd. With the debenture payable, as on the maturity date with interest, it was disbursed against consideration for the time value of the money. Thus, it can be said that debentures on maturity will come under that purview of Section 5(8)(c). Since Mr. Raman is a person to whom a financial debt is owed, he will come within the definition of Financial creditor. Being a debenture-holder and shareholder of the company he, being a creditor is entitled to claim debt amount. Therefore as per section 7, Mr. Raman is entitled to file an application to initiate CIRP against the M/s Asset Ltd.

15. **Appointment of IRP:** As per Section 16 of the Code where the application for corporate insolvency resolution process is made by an operational creditor and no proposal for an interim resolution professional is made in the said application. The Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional.

The Board shall recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending, within ten days of the receipt of a reference from the Adjudicating Authority.

Period of appointment of IRP: The term of Interim Resolution Professional shall continue till the date of appointment of the resolution professional under section 22 of the Code.

16. According to section 36 of the Insolvency and Bankruptcy Code, for the purposes of liquidation, the liquidator shall form an estate of the assets, which will be called the liquidation estate in relation to the corporate debtor.

The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors. There are certain exceptions to the assets from inclusion in the liquidation estate assets. Accordingly, where an assets owned by a third party which are in possession of the corporate debtor, including the bailment contracts, it shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation.

Here in the given instance lending of jewelry as a security in lieu of loan, is considered as an bailment contracts. Therefore, the jewellery of wife of Mr. X which is in possession of Mr. Y shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation. Besides, bailment contracts has come to an end with the payment of amount. Further, Mr. X's interest shall be protected and his position shall be restored by the Adjudicating authority under section 49 of the Code.

17. (i) According to Regulations on Acquisition and Transfer of Immovable Property outside India, a person resident in India may acquire immovable property outside India, jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India.

In the instant case, Mr. Bharat wants to remit money to buy the immovable property in USA under joint ownership with his son Arjun. Hence, as per the regulations, Mr. Bharat cannot remit amount to buy immovable property in USA.

- (ii) Period for surrender of received/ realised/ unspent/ unused foreign exchange by Resident individuals [Regulation 5 of *Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2000*]: A Person being an individual resident in India shall surrender the received/realised/unspent/ unused foreign exchange whether in the form of currency notes, coins and travellers cheques, etc. to an authorised person within a period of 180 days from the date of such receipt/realisation/purchase/acquisition or date of his return to India, as the case may be. Retention of unused foreign exchange by Mr. Raghav is against the Law.
18. (i) As per section 48A of the Insurance Act, 1938, no insurance agent or intermediary or insurance intermediary shall be eligible to be or remain a director in insurance company. The Authority (IRDA) may permit an agent or intermediary or insurance intermediary to be on the Board of an insurance company subject to such conditions or restrictions as it may impose to protect the interest of policyholders or to avoid conflict of interest. Accordingly, in the given instance, Mr. Kartik, cannot become or remain a director of any insurer i.e. of ABZ Insurance company; however with the permission of IRDA, he can be on the Board of the Insurance company.
- (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.

19. Section 70 of the PMLA, 2002 states of the offences by companies. According to the provision where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

Where above contravention has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

As per the explanation to the section term “Company” means any body corporate and includes a firm or other association of individuals; and the term “Director”, in relation to a firm, means a partner in the firm.

Accordingly, following are the answers:

- (i) Though Mr. Ramesh was a partner of a firm, he was not aware of proceeds of crimes. He shall not be liable for the punishment for an offence committed by Rajkumar & sons for using of undisclosed foreign income of Subh Labh Pvt Ltd. However, the firm is liable for commission of the scheduled offence.
 - (ii) Both Mr. Rajkumar, the director and Subh-Labh Pvt. Ltd., the company, are liable for the commission of the scheduled offence as per the above provision.
20. (i) The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment ordinarily a proviso is not interpreted as it stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the provision to which it has been enacted as a proviso and not to the other.

- (ii) Corporatisation and Demutalisation – Power of SEBI under SCRA, 1956

SEBI has been empowered under sub-section (2) of section 4B of Securities Contracts (Regulation) Act, 1956 to approve the scheme of corporatisation and demutalisation with or without modification. SEBI can reject the proposed scheme if it is satisfied that it would not be in the interest of the trade and also in the public interest to approve the scheme. Besides these general powers, SEBI has got certain specific powers under section 4B (6). SEBI, while approving the scheme, may, by an order in writing restrict

- (a) the voting rights of the shareholders who are also stock-brokers of the recognized stock exchange.

- (b) the right of shareholders or a stockbroker of the recognized stock exchange to appoint the representatives on the governing board of the stock exchange.
- (c) the maximum number of representatives of the stock-brokers of the recognized stock exchange to be appointed on the governing board of the stock exchange shall not exceed one-fourth of the total strength of the governing body.

On receipt of approval of scheme, stock exchange will issue shares to public within 12 months so that at least 51% equity shares are with public other than shareholders having trading rights. SEBI can extend the period upto another 12 months [Section 4B(8)].