CA Final Law Nov 2023

NEW SM Questions Compilation

Note: It a compilation of ICAI NEW syllabus Study material questions. It has two sections-Section A– Test Your Knowledge and Section B- Descriptive Questions. Only those chapters have been given here which are relevant for old syllabus students. It will help to cover important questions before exam time.

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By CA Sanidhya Saraf

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MODULE 1

1. Appointment and Qualification of Directors

Section A- Test Your Knowledge

(1)Mr. Q, a Director of PQR Limited, is proceeding on a foreign tour covering entire Europe for four months. He proposes to appoint Mr. Y as an alternate Director to act on his behalf during his absence. The Articles of Association of PQR Limited provide for the appointment of alternate Directors. Mr. Q claims that he has a right to appoint alternate Director of his choice. Which of the following options is applicable in the given situation:

a) Claim made by Mr. Q to appoint Mr. Y as alternate Director is valid as the Articles of Association of PQR Limited provide for such appointment.

b) Claim made by Mr. Q to appoint Mr. Y as alternate Director is not valid as the authority to appoint alternate Director has been vested in the Board of Directors only and that too subject to empowerment by the Articles of Association.

c) Mr. Y cannot be appointed as an alternate Director in place of Mr. Q since Mr. Q is proceeding on a foreign tour covering entire Europe for four months only which is less than the required absence of minimum six months.

d) Mr. Y cannot be appointed as an alternate Director in place of Mr. Q since Mr. Q is proceeding on a foreign tour covering entire Europe for four months which is more than the required absence of maximum three months.

Ans 1: (b)

(2) In compliance with the Companies Act, 2013, at least one woman director shall be on the Board of the prescribed class or classes of companies. Ms. Riya is keen to seek the office of woman director in a company. Which of the following companies is mandatorily required to appoint a woman director where Ms. Riya can hold such office:

a) PQR Limited, an unlisted company, whose paid-up share capital is not exceeding ₹ 150 crore rupees as per the last date of latest audited financial statements is mandatorily required to appoint a woman director.

b) ABC Limited, a listed company, whose turnover is ₹ 250 crore rupees as per the last date of latest audited financial statements is mandatorily required to appoint a woman director.

c) XYZ Limited, an unlisted company, whose turnover is not more than ₹ 300 crore rupees as per the last date of latest audited financial statements is mandatorily required to appoint a woman director.

d) BCZ Limited, an unlisted company whose paid-up share capital is not exceeding ₹ 100 crore and turnover is less than ₹ 300 crore rupees as per the last date of latest audited financial statements is mandatorily required to appoint a woman director.

Ans 2: (b)

(3) Kutumb Agro Limited (KAL), a newly incorporated company, has not mentioned the names of the first Directors in its Articles of Association. There are eight subscribers to the Memorandum of Association

including Parivaar Agro Private Limited. From the following four options, choose the one which indicates as to who shall be deemed to be the first Directors of KAL when nothing is mentioned in the Articles?

a) All the eight subscribers to the Memorandum of Association of KAL shall bedeemed to be the first Directors.

b) Except Parivaar Agro Private Limited, all other subscribers to the Memorandum ofAssociation of KAL shall be deemed to be the first Directors.

c) The shareholders shall appoint the first Directors in the General Meeting of KAL.

d) Out of the eight subscribers to the Memorandum of Association, the first Directors being three individuals shall be nominated by Sriniwas, the Chartered accountant who has signed the Memorandum as witness and they shall be deemed to be thefirst Directors of KAL.

Ans 3: (b)

(4) The turnover of XYZ Components Limited as on the last date of latest audited financial statements is 400 crore rupees. An intermittent vacancy of a woman Director arose on June 15, 2021 due to the resignation of Ms. Swati. The immediate Board Meeting after the resignation of Ms. Swati was held on October 10, 2021. From the following options, choose the one which indicates the date by which the vacancy of the woman Director must be filled by XYZ Components Limited.

a) July 14, 2021
b) August 14, 2021
c) September 14, 2021
d) October 10, 2021

Ans 4: (d)

(5) Mr. Nagarjuna, one of the directors of MGT Mechanics Limited, due to his own business interests, decided to resign as director and accordingly, sent his resignation letter dated 12th June, 2021 to the company stating that he intends to resign w.e.f. 15th June, 2021. Since no communication in relation to his resignation was received from MGT Mechanics Limited, he sent an e-mail on 17th June, 2021 enquiring about the receipt of his resignation letter by the company but there was no response. However, MGT Mechanics Limited received his resignation letter on 18th June, 2021. Out of the following four options, choose the one which indicates the correct date from which his resignation will be effective:

a) 12th June, 2021
b) 15th June, 2021
c) 17th June, 2021
d) 18th June, 2021

Ans 5: (d)

(6) Mr. Z is proposed to be appointed as the Director in RLP Mechanics Limited. It is noteworthy that Mr. Z already holds directorship in one dormant company, two Section 8 companies, eight public limited companies and nine private limited companies. However, out of nine private limited companies, two are subsidiaries of public limited companies. In the given circumstances, is it possible for Mr. Z to accept another directorship in RLP Mechanics Limited without attracting any invalidity:

a) It is not possible for Mr. Z to accept another directorship in RLP Mechanics Limited since he is already holding directorships in twenty companies.

b) It is not possible for Mr. Z to accept another directorship in RLP Mechanics Limited since he is already holding directorships in eight public limited companies and two such private limited companies which are subsidiaries of public limited companies.

c) It is possible for Mr. Z to accept another directorship in RLP Mechanics Limited since Section 8 companies and dormant companies are excluded while calculating the limit of twenty companies.

d) It is possible for Mr. Z to accept another directorship in RLP Mechanics Limited since there is no limit on holding any number of directorships.

Ans 6: (b)

Section B- Descriptive Questions

(1)The Articles of Association of Rajasthan Toys Private Limited provide that the maximum number of Directors in the company shall not exceed 10. Presently, the company has 8 directors. Its Board of Directors desires to increase the number of directors from 8 to 16. Advise whether under the provisions of the Companies Act, 2013, the Board can do so?

Ans 1: Under Section 149(1) of the Companies Act, 2013 every company shall have a Board of Directors consisting of individuals as directors and shall have a minimum number of 3 directors in the case of a public company, 2 directors in the case of a private company, and one director in the case of a One Person Company. The maximum number of directors shall be 15.

The First Proviso to Section 149(1) states that a company may appoint more than 15 directors after passing a special resolution.

From the provisions of section 149 (1) as above, though the minimum number of directors may vary depending on whether the company is a public, private or a one person company, the maximum number of directors is same for all types of companies *i.e.* 15 directors.

In the given case since the number of directors is proposed to be increased from 8 to 16, the company will be required to comply with the following provisions:

Alter its Articles of Association as per the provisions of Section 14 of the Act by passinga special resolution, so as to increase the number of directors in the Articles from 10 to 16;

Also take approval for increasing the maximum number of directors from 8 to 16 bymeans of a special resolution passed by the members at a duly convened general meeting.

(2) ADJ Limited has 10 directors on its Board. Two of the directors have retired by rotation at an Annual General Meeting. The place of retiring directors is not so filled up and the meeting has also not expressly resolved 'not to fill the vacancy'. Since the AGM could not complete its business, it is adjourned till the same day in the next week, at the same time and place. At this adjourned meeting also the place of retiring directors could not be filled up, and the meeting has also not expressly resolved 'not to fill the vacancy'.

Referring to the provisions of the Companies Act, 2013, decide:

(i)Whether in such a situation the retiring directors shall be deemed to have been re- appointed at the adjourned meeting?

(ii)What will be your answer in case at the adjourned meeting, the resolutions for re-appointment of these directors were lost?

(iii)Whether such directors can continue in case the directors do not call the AnnualGeneral Meeting?

Ans 2*:* Retiring director – When to be deemed director?

In accordance with the provision of the Companies Act, 2013, as contained in section 152(7)(a) which provides that if at the annual general meeting at which a director retires and the vacancy is not so filled up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned to same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

Section 152(7)(b) further provides that if at the adjourned meeting also, the place of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless at the adjourned meeting or at the previous meeting a resolution for the re- appointment of such director was put and lost or he has given a notice in writing addressed to the company or the Board of Directors expressing his desire not to be re-elected or he is disqualified.

Therefore, in the given circumstances answers to the asked questions shall be as under:

i. In the first case, applying the above provisions, the retiring directors shall be deemed to have been re-appointed.

ii. In the second case, where the resolutions for the reappointment of the retiring directors were lost, the retiring directors shall not be deemed to have been re-appointed.

iii. Section 152(6)(c) states that 1/3rd of the rotational directors shall retire at every AGM. Accordingly, the directors will retire as soon as the AGM is held on its due date. Further, as per Section 96 (dealing with Annual General Meeting), every company other than a One Person Company is required to hold an Annual General Meeting in each year. Hence, it is necessary for the company to hold the AGM, where the directors liable to retire by rotation shall retire. In case AGM is not held till the last date on which it should have been held, the term of retiring directors ends on this last date and it can not be extended till the new date when the AGM shall be held. As the calling of the AGM is the duty and responsibility of the directors, they by omitting to call the AGM on its due date cannot take advantage of their own fault and by that means cannot extend their own continuance in the office for any period of their choice and as long as the holding of the next AGM does not take place.

(3) Prince Ltd. desires to appoint an additional director on its Board of directors. The Articles of the company confer upon the Board to exercise the power to appoint such a director. As such M is appointed as an additional director. In the light of the provisions of the Companies Act, 2013, examine:

(i) Whether M can continue as director if the annual general meeting of the company is not held within the stipulated period and is adjourned to a later date?

(ii) Can the power of appointing additional director be exercised at the Annual General Meeting by the members?

(iii) As the Company Secretary of the company what checks would you make after M is appointed as an additional director?

Ans 3: 161(1) of the Companies Act, 2013 provides that the articles of association of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director at the general meeting, as an additional director at any time and such director will hold office upto the date of the next annual general meeting or the last date on which such annual general meeting should have been held, whichever is earlier.

(i) M cannot continue as director till the adjourned annual general meeting, since he can hold the office of directorship only up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier. Such an additional director shall vacate his office latest on the date on which the annual general meeting should have been held under Section 96 of the Companies Act, 2013. He cannot continue in the office on the ground that the meeting was not held or it could not be called within the time prescribed.

(ii) The power to appoint additional directors vests with the Board of Directors and not with the members of the company. The only condition is that the Board must be conferred such power by the articles of the company.

(iii) As a Company Secretary, I would put the following checks in place in respect of M's appointment as an additional director:

a) He must have got the Directors Identification Number (DIN).
b) He must furnish the DIN and a declaration that he is not disqualified to become a director under the Companies Act, 2013.
c) He must give his written consent in Form DIR-2 on or before his appointment as director and such consent stands filed with the Registrar within 30 days ofhis appointment.
d) His appointment is made by the Board of Directors.
e) His name is entered in the statutory records as required under the Companies Act, 2013.

(4) The Board of Directors of XYZ Ltd. filled up a casual vacancy caused by the death of Mr. P by appointing Mr. C as a director on 3rd April, 2019 which was subsequently approved by the members in the immediate next general meeting. Unfortunately, Mr. C expired on 15th May, 2019 after working about 40 days as a director. The Board now wishes to fill up the casual vacancy by appointing Mrs. C in the forthcoming meeting of the Board. Advise the Board in this regard keeping in view the provisions of the Companies Act, 2013.

Ans 4: Section 161(4) of the Companies Act, 2013 provides that if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in

default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board which shall be subsequently approved by members in the immediate next general meeting.

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

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

However, Mr. C expired on 15thMay, 2018 and again a vacancy has arisen in the office of director owing to death of Mr. C who was appointed by the board and approved by members to fill up the casual vacancy resulting from P's demise. Vacancy arising on the Board due to vacation of office by the director appointed to fill a casual vacancy in the first place, does not create another casual vacancy as section 161 (4) clearly mentions that such vacancy is created by the vacation of office by any director appointed by the company in general meeting. Hence, the Board cannot fill the vacancy arising from the death of Mr. C who was appointed to fill a casual vacancy.

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

(5) Mr. John is a director of MNC Ltd., which had accepted deposits from public. The financial position of MNC Ltd. took a southward turn and became bad to worse and ultimately, it failed to repay the deposits which fell due for payment on 10thApril, 2018 and such repayment has not been made till 5th May, 2019. Another company JKL Ltd. wants to appoint the said Mr. John as its director at its annual general meeting to be held on 6thMay, 2019. You are requiredto state with reference to the provisions of the Companies Act, 2013 whether Mr. John can be appointed as a director of JKL Ltd.

Ans 5: Section 164 (2) (b) of the Companies Act, 2013 states that where a person is or has been a director of a company which has failed to repay its deposit on due date and such failure continues for one year or more, then such person shall not be eligible to be appointed as a director of any other company for a period of five years from the date on which such company,in which he is a director, failed to repay its deposits.

In the instant case, MNC Ltd., has failed to repay its deposit on due dates and the default continues for more than one year. Hence, Mr. John will not be eligible to be appointed as a director of JKL Ltd.

(6) XYZ Limited is an unlisted public company having a paid-up share capital of twenty crore rupees as on 31st March, 2019 and a turnover of one hundred fifty crore rupees during theyear ended 31st March, 2019. The total number of directors is thirteen.

Referring to the provisions of the Companies Act, 2013 answer the following:

(i)State the minimum number of independent directors that the company should appoint.

(ii)How many independent directors are to be appointed in case XYZ Limited is a listed company?

Ans 6: **(i)** According to Rule 4(1) of the Companies (Appointment and Qualifications of Directors) Rules, 2014, the following class or classes of companies shall have at least 2 directors as independent directors:

1) the Public Companies having paid up share capital of 10 crore rupees or more; or
2) the Public Companies having turnover of 100 crore rupees or more; or
3) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees.

In the present case, XYZ Limited is an unlisted public company having a paid-up capital of 20 crore as on 31st March, 2019 and a turnover of 150 crore during the year ended 31st March, 2019. Accordingly, as per stated Rules it must have at least 2 directors as independent directors.

(ii) According to Section 149(4) of the Companies Act, 2013, every listed public company shall have at least one-third of the total number of directors as independent directors. The Explanation to Section 149(4) specifies that any fraction contained in such one- third numbers shall be rounded off as one.

In the present case, XYZ Limited is a listed company and the total number of directors is 13. Hence, in this case, XYZ Limited must have atleast 5 directors (1/3 of 13 is 4.33 rounded as 5) as independent directors.

Explanation to Rule 4 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 clarifies that for the purpose of this Rule the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account.

In the present case, it is mentioned that paid up capital of XYZ Limited is 20 crore as on 31st March, 2019 and turnover is 150 crore during the year ended 31st March, 2019. It is, therefore, assumed that 31st March, 2019 is the last date of latest audited financial statements.

(7) Bright Motors (P) Limited at the Annual General Meeting (AGM) held on 30.09.2016 appointed Mr. Anmol as a Non-Executive Director on the Board of the company for a period of three years. On 2nd October, 2017, Mr. Anmol suffered a severe heart failure and expired. The Board of Directors of the company on 16th October, 2017 appointed Mr. Prateek to fill the casual vacancy so created. The appointment of Mr. Prateek was made for a term of three years by the Board. Subsequently at the AGM held on 29-09-2018, Mr. Prateek's appointment was not proposed or approved as the Board was of the view that it is not required. But the CFO of the company is of the opinion that the Board of Directors have contravened the provisions of the Companies Act, 2013 in respect of non-approval of the appointment of Mr. Prateek and his office tenure. Decide.

Ans 7: According to section 161(4) of the Companies Act, 2013, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board which shall be subsequently approved by members in the immediate next general meeting.

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

In the given question, the casual vacancy caused due to death of Mr. Anmol (who was appointed by the company in AGM held on 30.9.2016, for a period of 3 years) is filled by the Board of Directors by appointing Mr. Prateek for a period of three years. However, the appointment of Mr. Prateek for a period of three years is in contravention of above

stated provisions as he can hold office only up to the date up to which Mr. Anmol would have held office if it had not been vacated.

Further, as per the provisions of the Act, the appointment of Mr. Prateek ought to be approved by members in the immediate next general meeting. However, the appointment of Mr. Prateek was not even proposed or approved in the AGM held on 29.9.2018. Hence, the appointment of Mr. Prateek is in contravention of the provisions of the Companies Act, 2013.Therefore, the opinion of CFO is correct.

(8) Mr. Dhruv is a Director of LT Limited and XT Limited respectively. LT Limited did not file its financial statements for the year ended 31st March, 2016, 2017 & 2018 respectively with the Registrar of Companies (ROC) as mandated under the Companies Act, 2013. LT Limited also did not pay interest on loans taken from a Public Financial Institution from 1st April, 2017 and also failed to repay matured deposits taken from public on due dates from 1st April, 2017 onwards.

Answer the legality of the following in the light of the relevant provision of the Companies Act, 2013:

(i) Whether Mr.Dhruv is disqualified under Companies Act, 2013 and if so, whether he can continue as a Director in LT Limited? Further can he also seek reappointment when he retires by rotation at the AGM of XT Limited scheduled to be held inSeptember, 2019?

(ii) Mr.Dhruv is proposed to be appointed as an Additional Director of MN Limited in June 2019. Is he eligible to be appointed as an Additional Director in MN Limited? Decide.

Ans 8: According to section 164(2) of the Companies Act, 2013, no person who is or has been a director of a company which has not filed financial statements or annual returns for any continuous period of three financial years; or has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for oneyear or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

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.

Also, according to section 167(1)(a), the office of a director shall become vacant in case he incurs any of the disqualifications specified in section164;

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.

Thus, in the light of the said provisions of the Act and the facts of the question:

(i) Yes, Mr. Dhruv is disqualified under the Companies Act, 2013, as LT Limited did not file financial statements for a period of three years. Also, the LT Limited has defaulted in the repayment of matured deposits taken from public since 1stApril, 2017 (i.e. the default has continued for more than oneyear).

Mr. Dhruv can continue as a director in LT Limited as proviso to section 167(1)(a) provides that where the director incurs disqualification under section 164(2), the office of the director shall become vacant in all the companies, other than the company which is in default. Whereas he has to vacate the office of director in XT Limited.

Mr. Dhruv cannot be reappointed (in the AGM to be held in September 2019) as director in XT Limited.

(ii) Mr. Dhruv cannot be appointed as an Additional Director (in the AGM to be held in June 2019) of MN Limited because as per section 164(2), he is not eligible to be appointed in other company for a period of five years from the date of such default.

(9) You are the CFO and in-charge of legal compliances of large multi-national company in India. The Board of Directors of the Company comprises of directors who are Indian as well as Foreign Nationals. Mr. "X", who is a Director (Business Development) on the Board is very often on business tour abroad. He approached you and wants to know from you the regulatory provisions of the Companies Act, 2013 relating to appointment of Alternate Directors.

Analyse the following situations and advise suitably. Mr. X referring to the provisions of the Companies Act, 2013.

(a)To how many directors can a person be appointed as an alternate director and how many votes does he have in one Board Meeting.

(b)In case of private company, where an alternate director is appointed in place of a non- executive director whose term is indefinite, then, what will be the tenure of such alternate director, provide the original director does not return to India for a longer period say 3-4 years?

(c)Can an Executive Director/Whole Time Director/Managing Director appoint alternate directors?

Ans 9: **(a)** According to Section 161(2) of the Companies Act, 2013, the Board of Directors of a company may, if so authorized by its articles or by a resolution passed by the companyin general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India.

According to section 165, no person shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time. However, the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Hence, in the instant case, a person can be appointed as an alternate director for onlyone director in the **same company** but maximum twenty different companies.

An alternate director will have only one vote as he can hold alternate directorship for one director only in the same company.

(b) According to second proviso to section 161(2), an alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place hehas been appointed returns to India.

Third proviso says that if the term of office of the original director is determined beforehe so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

Hence, in the instant case, the alternate director shall hold office till the time original director returns to India, even if the period is as long as 3-4 years.

(c) As per section 161(2), the Board of Directors of a company may, if so authorized by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India.

From the above provision, it is clear that an alternate director can be appointed for any director. Hence, an alternate director can be appointed for Executive director/ Whole Time Directors / Managing Director however, not by them but by the Board of Directors.

(10) Mr. 'R' holds directorship in 10 Public Companies and 11 Private Companies as on 31.05.2019. One of the above Private Company is a dormant Company. Apart from the dormant Company, on 30.06.2019 a Private Company (in which Mr. R is holding directorship) has become a subsidiary of a Public Company.

In the light of the provisions of the Companies Act, 2013 examine and decide:

(i)The validity of holding directorship of Mr.'R' with reference to number of directorship as on 31.05.2019 and as on 30.06.2019.

(ii)Whether a Company has power to specify any lesser number of Companies in which a director of the Company may act as a director?

Ans 10: **(i)**According to Section 165 of the Companies Act, 2013, no person shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time. Whereas that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included.

In the instant case, holding of directorship of Mr. R as on 31.05.2019 is valid as he is holding directorship in 10 public companies and in 11 private companies out of which one company is dormant company. So, maximum directorship he is holding in 20 companies.

Holding of directorship of Mr. R as on 30.06.2019 is not valid, as on 30.06.2019 a private company (in which Mr. R is holding directorship) has become a subsidiary ofa public company. Accordingly, it means that this private company shall deemed to be included in the limit of public companies and thereby increasing the number of public companies in which he is holding directorship to 11 and making it in valid.

(ii) According to section 165(2), Subject to the provisions of sub-section (1), the members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors.

2.Appointment and Remuneration of Managerial Personnel

Section A- Test Your Knowledge

(1)Due to non-compliance of certain requirements under the Companies Act, 2013 not amounting to fraud, Shikha Super-Market Limited was required to re-state its financial statements for the financial year 201718 during the current year. After the financial statements were restated, it was found that Mr. Kumar, the Managing Director (MD) of that period, who is now retired, was paid excess remuneration to the extent of 5,00,000. In the given situation, choose the correct option out of those given below, which indicates whether such excess remuneration paid to ex-MD Mr. Kumar is recoverable or not.

a) Excess remuneration of 5,00,000 paid to Mr. Kumar, ex-MD of Shikha Super-Market Limited, cannot be recovered since such recovery after retirement is invalid.
b) Excess remuneration of 5,00,000 paid to Mr. Kumar, ex-MD of Shikha Super-Market Limited, shall be recovered irrespective of his retirement from the company.
c) Only 2,50,000, being 50% of excess remuneration of 5,00,000, paid to Mr. Kumar, ex- MD of Shikha Super-Market Limited, is validly recoverable because no fraud implicating him is involved.
d) Only 1,25,000, being 25% of excess remuneration of 5,00,000, paid to Mr. Kumar, ex- MD of Shikha Super-Market Limited, is validly recoverable because no fraud implicating him is involved.

Ans 1: (b)

(2) The Board of Directors of Capable Hospitality Services Limited has entrusted Mr. Vikas, the newly appointed Managing Director (MD) of the company, with some powers. However, Mr. Vikas is not interested in discharging administrative functions as authorised by the Board of Directors, sincehe is of the view that he should have been entrusted with substantial powers of the management. Out of the following four options, which one is correctly applicable in relation to the functions Bank Limited, the main banker of the company.

a) To draw and endorse any cheque on the account of Capable Hospitality Services Limited maintaine with National Commercial Bank Limited, the main banker of the company.
b) To sign the financial statements of Capable Hospitality Services Limited.
c) To draw and endorse any bill of exchange when it exceeds 1,00,000.
d) To draw and endorse any bill of exchange when it exceeds 5,00,000.

Ans 2: (b)

(3) Mr. Joseph Daniel, holding the office of Whole-time Director (WTD) in Tasty Choco-Chips Limited, is desirous of appointing Mr. Vanilla Sequera, who has attained the age of 72 years, as the Managing Director (MD) of the company. However, the Board of Directors is of the opinion that no company shall appoint or continue the employment of any person as Managing Director, Whole-time Director or Manager who is below the age of twenty-one years or has attained the age of seventy years. From the following four options, select the one which is applicable in relation to the validity or invalidity of appointing Mr. Vanilla Sequera as the Managing Director (MD) of Tasty Choco-Chips Limited:

a) In spite of the fact that Mr. Vanilla Sequera has attained the age of 72 years, he can be validly appointed as Managing Director by the Board of Directors of Tasty Choco-Chips Limited when the recommendation has been made by Mr. Joseph Daniel, the Whole -time Director.
b) Since Mr. Vanilla Sequera has attained the age of 72 years, he cannot be validly appointed as Managing Director of Tasty Choco-Chips Limited.
c) In spite of the fact that Mr. Vanilla Sequera has attained the age of 72 years, he can be validly appointed as Managing Director by the shareholders of Tasty Choco-Chips Limited through passing a Special Resolution in general meeting.
d) In spite of the fact that Mr. Vanilla Sequera has attained the age of 72 years, he can be validly appointed as Managing Director of Tasty Choco-Chips Limited if an application is made to the jurisdictional National Company Law Tribunal (NCLT) and its permission is received for such appointment.

Ans 3: (c)

(4) On June, 20, 2019, Mr. Anil Mehra was appointed as Manager of PQR Music Systems Limited for a period of five years. Considering his performance and dedication towards the company, the management of PQR Music Systems Limited decided to re-appoint him as Manager before the completion of his tenure. Out of the following four options, choose the one which indicates the date on which his re-appointment will be considered valid?

a) June 24, 2023
b) February 1, 2023
c) March 12, 2022
d) September 10, 2022

Ans 4: (a)

(5) Lockworth Safety Gears Limited which pays remuneration to its Directors on yearly basis, has Harsha as Whole-time Director (WTD). Recently, the company appointed Mr. Raviyansh as Managing Director (MD). While paying remuneration, Lockworth Safety Gears Limited needs to keep in view that the overall remuneration payable to the Directors including Managing Director, Whole-time Director and Manager shall not exceed maximum limit prescribed under the relevant provisions. After the appointment of Mr. Raviyansh as Managing Director, since the company has both Whole-time Director as well as Managing Director, select the appropriate option from those given below which indicates the maximum remuneration that is allowed in a Financial Year:

a) 3% of net profits.
b) 5% of net profits.
c) 10% of net profits.
d) 11% of net profits.

Ans 5: (c)

(6) Mr. Abhishek has been in full time employment at F&I Limited (a listed company) working as Chief Financial Officer (CFO). He has been given the offer to hold the office of Whole-time Director at M&N Limited whose more than 51% of the paid-up share capital is held by F&I Limited. After considering the applicable provisions, you are required to choose the correct

option from the following four which indicates whether Mr. Abhishek can validly proceed or not with the offer of Whole-time Director extended by M&N Limited while also continuing as Chief Financial Officer (CFO) of F&I Limited:

a) Mr. Abhishek can validly proceed with the offer of Whole-time Director at M&N Limited while also continuing as Chief Financial Officer (CFO) because being a Key Managerial Personnel he shall not be disentitled from accepting the offer of Whole-time Director in any other company after obtaining the permission of Board of Directors of his parent company i.e., F&I Limited.
b) Mr. Abhishek will not be able to proceed with the offer of Whole-time Director at M&N Limited since a whole time Key Managerial Personnel cannot hold office in more than one company at the same time.
c) Mr. Abhishek can proceed with the offer of Whole-time Director at M&N Limited while also continuing as Chief Financial Officer (CFO) since M&N Limited is a subsidiary of F&I Limited.
d) Mr. Abhishek will not be able to proceed with the offer of Whole-time Director at M&N Limited since a whole time Key Managerial Personnel cannot hold office in more than one company at the same time including its subsidiary company.

Ans 6: (c)

(7) Hasmukh Entertainment Limited, incorporated under the Companies Act, 2013, appointed Mr. Ram Kishore, a well-qualified and experienced person, as Whole-time Director (WTD) for a period of five years in the Annual General Meeting (AGM) held on August 28, 2019. In order that Mr. Ram Kishore continues with the company as whole time Director (WTD), he was re-appointed in advance as Whole-time Director (WTD) for another term of five years in the Annual GeneralMeeting which was held on September 28, 2021. The second term of five years will start after the expiry of first term in August, 2024. From the following alternatives, choose the one which indicates the validity or otherwise of re-appointment of Mr. Ram Kishore for the second term of five years by the company:

a) The re-appointment of Mr. Ram Kishore in advance as Whole-Time Director (WTD) for another term of five years is valid because re-appointment can be made for a period not exceeding 5 years at any time provided the Articles of Association of the company provide for such re-appointment before one year from the completion of his 'yet-to-expire' term.
b) The re-appointment of Mr. Ram Kishore in advance as Whole-Time Director (WTD) for another term of five years is invalid because his re-appointment as Whole-time Director (WTD) cannot be made earlier than one year before the expiry of his first term.
c) The re-appointment of Mr. Ram Kishore in advance as Whole-Time Director (WTD) for another term of five years is valid provided the resolution for such re-appointment had earlier been passed with the consent of all the Directors present at the Board Meeting and thereafter, such re-appointment was taken up at the Annual General Meeting for approval.
d) The re-appointment of Mr. Ram Kishore in advance as Whole-Time Director (WTD) for another term of five years is invalid because no special resolution for his re-appointment was passed at the Annual General Meeting for approval.

Ans 7: (b)

Section B- Descriptive Questions

(1)Advise Super Specialties Ltd. in respect of the following proposals under consideration of its Board of Directors:

(i)Payment of commission of 4% of the net profits per annum to the directors of the company;

(ii)Payment of remuneration of rupees 40,000 per month to the whole-time director of the company which is running in loss and having an effective capital of rupees 95 lacs.

Ans 1: **(i)** Under section 197 (1) the limit of total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent of the netprofits of that company for that financial year computed in the manner laid down in section 198. Further, the third proviso to section 197 (1) provides that except with the approval of the company in general meeting by a special resolution, the remuneration payable to directors who are neither managing directors nor whole-time directors shallnot exceed one per cent. of the net profits of the company, if there is a managing or whole-time director or manager. Whereas in any other case, the remuneration payable to directors shall not exceed three percent of the net profits.

Therefore, in the given case, the commission of 4% is beyond the limit specified, and the same should be approved by the members by passing a special resolution.

(ii) As per section 197(3) of the Companies Act, 2013, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including managing or whole time director or manager or any other non-executive director, including an independent director, any remuneration exclusive of any fees payable to directors except in accordance with the provisions of Schedule V. Section II of Part II of Schedule V provides that where in any financial year during the currency of tenure of a managerial person or other director, a company has no profits or its profits are inadequate, it may pay remuneration to the managerial person not exceeding ₹ 60 lakhs for the year if the effective capital of the company is negative or upto ₹ 5 crore.

In the given situation, the proposed remuneration of 40,000 rupees per month (i.e. 4,80,000 rupees per annum) can be paid to the whole-time director of the company which is running in loss because the remuneration is within the permissible limit of ₹ 60 lakhs.

(2) Mr. X, a Director of MJV Ltd., was appointed as Managing Director on 1st April 2017. One of the terms of appointment was that in the absence of adequacy of profits or if the company had no profits in a particular year, he will be paid remuneration in accordance with Schedule

For the financial year ended 31st March 2019, the company suffered heavy losses. The company was not in a position to pay any remuneration but he was paid ₹ 50 lakhs for the year. The effective capital of the company is ₹ 150 crores. Referring to the provisions of the Companies Act, 2013, as contained in Schedule V, examine the validity of the above payment of remuneration to Mr. X.

Ans 2: Under Section II of Part II of Schedule V to the Companies Act, 2013, the remuneration payableto managerial personnel is linked to the effective capital of the company. Schedule V states that where in any financial year during the currency of tenure of a managerial person or other director, a company has no profits or its profits are inadequate, it may pay

remuneration to the managerial person not exceeding ₹ 120 Lakhs in the year in case the effective capital of the company is between ₹ 100 crores and ₹ 250 crores. However, the remuneration in excess of ₹ 120 Lakh may be paid if the resolution passed by the shareholders is a special resolution.

From the foregoing provisions as contained in Schedule V, the payment of ₹ 50 lakh in the year of loss as remuneration to Mr. X is less than ₹ 120 lakhs which is otherwise permissible when the effective capital of the company is between ₹ 100 crores and ₹ 250 crores. Thus, payment of ₹ 50 lakhs being made to Mr. X is within the prescribed limit and can be validly made to him.

(3)Mr. Doubtful was appointed as Managing Director of Carefree Industries Ltd. for a period of five years with effect from 1.4.2016 on a salary of ₹12 lakhs per annum with other perquisites. The Board of Directors of the company came to know about certain questionable transactions entered into by Mr. Doubtful and therefore, terminated his services as Managing Director from 1.3.2019. Mr. Doubtful termed his removal as illegal and claimed compensation from the company. Meanwhile the company paid a sum of ₹ 5 lakhs on adhoc basis to Mr. Doubtful pending settlement of his dues. Discuss whether:

(i)The company is bound to pay compensation to Mr. Doubtful and, if so, how much.

(ii)The company can recover the amount of ₹ 5 lakhs paid on the ground that Mr. Doubtfulis not entitled to any compensation, because he is guided by corrupt practices.

Ans 3: According to Section 202 of the Companies Act, 2013, compensation can be paid only to a Managing Director, Whole-time Director or Manager. The amount of compensation cannot exceed the remuneration which he would have earned if he would have been in the office for the unexpired term of his office or for 3 years whichever is shorter. No compensation shall bepaid, if the director has been found guilty of fraud or breach of trust or gross negligence inthe conduct of the affairs of the company.

In light of the above provisions of law, the company is not liable to pay any compensation to Mr. Doubtful, if he has been found guilty of fraud or breach of trust or gross negligence in the conduct of affairs of the company. But it is not proper on the part of the company to withhold the payment of compensation on the basis of mere allegations. The compensation payable by the company to Mr. Doubtful would be 25 Lakhs calculated at the rate of 12 Lakhs per annum for unexpired term of 25 months.

Regarding ad-hoc payment of 5 Lakhs, it will not be possible for the company to recover the amount from Mr. Doubtful in view of the decision in case of Bell vs. Lever Bros. (1932) AC 161 where it was observed that a director was not legally bound to disclose any breach of his fiduciary obligations so as to give the company an opportunity to dismiss him. In that case the Managing Director was initially removed by paying him compensation and later on it was discovered that he had been guilty of breaches of duty and corrupt practices and that he could have been removed without compensation.

(4) International Technologies Limited, a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration:

(i)Commission at the rate of five percent of the net profits to its Managing Director,Mr. Kamal.

(ii)The directors other than the Managing Director are proposed to be paid monthly remuneration of rupees 50,000 and also commission at the rate of one percent of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed two percent of the net profits of the company. The commission is to be distributed equally among all the directors.

(iii)The company also proposes to pay suitable additional remuneration to Mr. Bhatt, a director, for professional services rendered as software engineer, whenever such services are utilized.

You are required to examine with reference to the provisions of the Companies Act, 2013 the validity of the above proposals.

Ans 4: International Technologies Limited, a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration:

(i) **Commission at the rate of 5% of the net profits to its Managing Director, Mr. Kamal**: Part (i) of the Second Proviso to Section 197(1), provides that except with the approval of the company in general meeting by a special resolution, the remuneration payable to any one managing director or whole time director or manager shall not exceed 5% of the net profits of the company and if there is more than one such director then remuneration shall not exceed 10% of the net profits to all such directors and manager taken together.

In the present case, since the International Technologies Limited is being managed by a Managing Director, the commission at the rate of 5% of the net profit to Mr. Kamal, the Managing Director is allowed and no approval of company in general meeting is required.

(ii) The directors other than the Managing Director are proposed to be paid monthly remuneration of rupees 50,000 and also commission at the rate of 1 % of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed 2% of the net profits of the company: Part (ii) of the Second Proviso to Section 197(1) provides that except with the approval of the company in general meeting by a special resolution, the remuneration payable to directors who are neither managing directors nor whole time directors shall not exceed-

(A) 1% of the net profits of the company, if there is a managing or whole-time director or manager;

(B) 3% of the net profits in any other case.

In the present case, the maximum remuneration allowed to directors other than managing or whole-time director is 1% of the net profits of the company because the company is managed by a managing director. Hence, if the company wants to fix directors' remuneration at not more than 2% of the net profits of the company, the approval of the company in general meeting is required by passing a special resolution.

(iii) The company also proposes to pay suitable additional remuneration to Mr. Bhatt, a director, for professional services to be rendered by him as software engineer, whenever such services are utilized by the company:

(1) According to section 197(4), the remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either

i. by the articles of the company, or

ii. by a resolution or,

iii. if the articles so require, by a special resolution, passed by the company in general meeting, and

(2) the remuneration payable to a director determined aforesaid shall be inclusiveof the remuneration payable to him for the services rendered by him in any other capacity.

(3) Any remuneration for services rendered by any such director in other capacity shall not be so included if—

i. the services rendered are of a professional nature; and

ii. in the opinion of the Nomination and Remuneration Committee, if the company is covered under sub-section (1) of section 178, or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

Hence, in the present case, the additional remuneration payable to Mr. Bhatt,a director, for professional services rendered by him as software engineer will not be included in the maximum managerial remuneration. Accordingly, such additional remuneration shall be allowed but opinion of Nomination and Remuneration Committee needs to be obtained.

Also, the International Technologies Limited (a listed company) shall disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as are prescribed under Rule 5 of the Companies (Appointment and Remuneration of Managerial personnel) Rules, 2014.

(5) The following particulars are extracted from the statement of profit and loss of Surya Cement Limited for the year ended 31st March 2023:

Sr. No	Particulars	Amount
1)	Gross Profit	60,00,000
2)	*Profit on sale of building (Cost 10,00,000 and written down value 6,00,000)*	*5,00,000*
3)	Salaries & wages	2,50,000
4)	Sundry Repairs to Fixed Assets	1,00,000
5)	Subsidy from the government	3,00,000
6)	Compensation for breach of contract	1,00,000
7)	Depreciation	1,40,000
8)	Loss on sale of investments	2,00,000
9)	Interest on unsecured loans	50,000
10)	Interest on debentures issued by the company	1,00,000
11)	Repair Expenses to fixed assets (Capital in nature)	2,00,000
12)	Net Profit	13,00,000

You are required to calculate the overall managerial remuneration payable under section 197 of the Companies Act, 2013 subject to the provisions under Schedule V.

Ans 5: The managerial remuneration shall be computed in accordance with the provisions laid downin section 198 of the Companies Act 2013

Particulars		Amount
	Net profit	13,00,000
Less:	Capital profits on sale of building (Note 1)	1,00,000
	Salaries & Wages (Note 2)	-
	Sundry repairs to fixed Assets (Note 2)	-
	Subsidy from the government (Note 3)	-
	Compensation from breach of contract (Note 2)	-
	Depreciation (Note 2)	-
	Loss on Sale of Investments (Note 4)	-
	Interest on unsecured loans (Note 2)	-
	Interest on debentures (Note 2)	-
Add:	Repair expenses to fixed assets (Capital in Nature) (Note 5)	2,00,000
	Net profits as per section 198	14,00,000

Therefore, the overall maximum managerial remuneration shall be 11% of the Net profits computed in accordance with section 198 i.e. 11% x 14,00,000 = ₹1,54,000. It is assumed that the net profit given in the question is arrived after giving effect to all the line items given therein.

Notes:

1) As per section 198(3), credit shall not be given for profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets; provided that where the amount for which any fixed asset is sold exceeds the written-down value thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written- down value.

Accordingly, the calculation of capital profit is computed as under: Profit = Selling Price – Written down value

5,00,000 = Selling Price – 6,00,000. Therefore, Selling Price = 11,00,000. Capital profit = 11,00,000 – 10,00,000 (original cost) = ₹ 1,00,000

2) According to section 198 (4), the following sums shall be deducted:

a) All the usual working charges – salaries and wages are considered as usual working charges

b) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature
c) any compensation or damages to be paid in virtue of any legal liability including a liability arising from a breach of contract
d) interest on debentures issued by the company
e) interest on unsecured loans and advances
f) depreciation to the extent specified in section 123

Since all of the above charges are already deducted while arriving at net profit, no effect will be given.

3) According to section 198 (1), credit shall be given for bounties and subsidies received from any government, or any public authority constituted or authorised in this behalf, by any government, unless and except in so far as the Central Government otherwise directs.
4) According to section 198(5), Loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or any part thereof shall not be deducted. In the given question, in the absence of the specific information about the nature of investments, the said investments are considered as current investments and revenue in nature and accordingly no effect is given as it is already deducted while arriving at net profit.
5) According to section 198(4), expenses on repairs, whether to immovable or to movable property is deducted only for repairs which are not capital in nature. Accordingly, wehave added back to the net profit.

(6) You are provided with the relevant extract of the financials of Tribhuke Limited for the financial year ended as on 31st March 2023 as below:

Sr.No	Particulars	Amount
1	Authorised Share Capital	10,00,00,00,000
2	Issued and Paid up Share Capital	5,00,00,000
3	Share Premium Account	25,00,000
4	Reserves and Surplus (Amount of 25,00,000 is included as Revaluation Reserve)	35,00,000
5	Term loan repayable after 1 year	12,00,000
6	Current Borrowings (Cash Credit Loan from Banks)	20,00,000
7	Non-Current Investments	10,00,000
8	Accumulated Losses	5,00,000
9	Preliminary expenses not written off	3,00,000

The company has three managerial persons in its Board of Directors – Mr. A – Managing Director, Mr. B – Whole Time Director and Mr. C – Director-. According to their terms of appointment, in case the company has no or inadequate profits, the managerial remuneration payable to them shall be in accordance with Schedule V. You are required to compute the total managerial remuneration payable considering the provisions of Schedule V.

Ans 6: Section II of Part II of Schedule V states the provisions applicable for the payment of managerial remuneration in case where the company has no profits or its profits are inadequate. In such a case, managerial remuneration is payable on the basis of the effective capital as on the last date of the financial year for which the remuneration is payable. Accordingly, to compute the total managerial remuneration payable, effective capital is calculated as:

Particulars	**Amount**
Issued and Paid up Capital	5,00,00,000
Add: Share Premium Account	25,00,000
Add: Reserves and surplus excluding revaluation reserve	10,00,000
Add: Term Loan repayable after 1 year (excluding working capital loans)	12,00,000
Less: Non-Current Investments	10,00,000
Less: Accumulated Losses	5,00,000
Less: Preliminary Expenses	3,00,000
Effective Capital	5,29,00,000

Explanation 1 to Section II of Part II of Schedule V states effective capital means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, over drafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.

Section II of Part II of Schedule V states that where the effective capital is 5 crores and above but less than 100 crores, the remuneration payable shall not exceed Rs. 84 lakhs. Accordingly, the total managerial remuneration payable by the Companies to three managerial personnel for the year ended 31st March, 2023 shall not exceed 252 lakhs (84 lakhs x 3 managerial personnel).

Note: As nothing is specified about Mr. C, whether he is part-time or non-executive or Independent director, he may be considered as director in whole time employment.

3.Meeting of Board and its Powers

Section A- Test Your Knowledge

(1)Chetan Motorboats Limited, incorporated on 25th June, 2019 is desirous of making donations to a reputed political party. Out of the following options, choose the one which correctly depicts as to when Chetan Motorboats Limited shall be eligible to make such donations to a political party:

a) Chetan Motorboats Limited shall be eligible to make donations to a political party after one year from the date of its incorporation.
b) Chetan Motorboats Limited shall be eligible to make donations to a political party after two years from the date of its incorporation.
c) Chetan Motorboats Limited shall be eligible to make donations to a political party after three years from the date of its incorporation.
d) Chetan Motorboats Limited shall be eligible to make donations to a political party after five years from the date of its incorporation.

Ans 1: (c)

(2) Out of the total strength of six Directors of SQ Transformers Limited, five are attending a Board Meeting to consider the investment of funds of the company. The resolution relating to investment shall be taken as passed in which of the following cases:

a) When all the five Directors of SQ Transformers Limited attending the meetingconsent to such investment of funds.
b) When any four Directors of SQ Transformers Limited out of five attending themeeting consent to such investment of funds.
c) When any three Directors of SQ Transformers Limited out of five attending themeeting consent to such investment of funds.
d) Investment proposal must be consented to by the total strength of six Directors of SQ Transformers Limited.

Ans 2: (a)

(3)The Board of Directors of Shanta Hospitality Services Limited is desirous of contributing certain amount to Ashirwad Dharmarth Sansthan, a bona fide charitable organization operating in the National Capital Region, during the financial year 2021-2022. The profits and losses of the earlier five financial years are as under:

Year	Profit/ (Loss)
2020-2021	(30,00,000)
2019-2020	1,80,00,000

2018-2019	2,10,00,000
2017-2018	1,85,00,000
2016-2017	1,40,00,000

From the following four options, select the appropriate one which indicates the amount that the Board of Directors of Shanta Hospitality Services Limited can contribute to Ashirwad Dharmarth Sansthan:

a) The Board of Directors of Shanta Hospitality Services Limited cannot contribute any amount to Ashirwad Dharmarth Sansthan in the financial year 2021-2022 since it suffered losses of Rs. 30,00,000 in the immediate previous financial year 2020-2021.
b) The Board of Directors of Shanta Hospitality Services Limited can contribute maximum of Rs. 9,00,000 to Ashirwad Dharmarth Sansthan in the financial year 2021-2022.
c) The Board of Directors of Shanta Hospitality Services Limited can contribute maximum of Rs. 6,00,000 to Ashirwad Dharmarth Sansthan in the financial year 2021-2022.
d) The Board of Directors of Shanta Hospitality Services Limited can contribute maximum of Rs. 3,00,000 to Ashirwad Dharmarth Sansthan in the financial year 2021-2022.

Ans 3: (c)

(4)A seven days' notice of the Board Meeting was served on all the ten directors of Goodluck Publishers Limited by sending it on their registered postal addresses. However, before the holding of scheduled Board Meeting, some unavoidable happenings took place. Mr. M was hospitalised because of serious stomach pain just two days before the Meeting. Mr. Y proceeded to London since his son met with an accident and the incidence required his immediate presence. As scheduled earlier, Mr. X and Mr. B went to Australia for attending a technical seminar that would help improving the existing publishing techniques. Mr. A, extremely busy in finalizing the arrangements relating to his daughter's marriage, was also unable to attend the impending board meeting. A day before the board meeting, Mr. E's grand-mother got hospitalised and therefore, he was involved in taking care of her but he assured to attend the meeting through video conferencing. Mr. P was scheduled to arrive for the meeting by 2 p.m. on the same day of the meeting but his flight got delayed by eight hours. Mr. D, Mrs. G and Mr. H were in the town and were available for the Board Meeting. Could the Board Meeting be held as per the scheduled time?

a) The Board Meeting cannot be held because minimum sixty percent directors (i.e. 6 outof 10) must attend it at the scheduled time to complete the quorum.
b) The Board Meeting cannot be held because minimum fifty percent directors (i.e. 5 out of 10) must attend it at the scheduled time to complete the quorum.
c) Since the quorum is complete, the available directors can hold the Board Meeting as per the schedule.
d) The Board Meeting cannot be held because minimum seventy percent directors (i.e. 7out of 10) must attend it at the scheduled time to complete the quorum.

Ans 4: (c)

(5)Seafood Market.ing Limited, incorporated on 1st April, 2019, conducted four Board Meetings during the Financial Year 2019-20 i.e. on 6th April, 2019, 28th August, 2019, 30thSeptember, 2019 and 30th March, 2020. Select the

correct opti.on from those given below as to whether there is contravention of provisions or not regarding frequency of holding the Board Meetings by Seafood Marketing Limited:

a) There is no contravention of the provisions relating to holding of Board Meetings because four Board Meetings have been held by Seafood Marketing Limited during the Financial Year 2019-20.
b) There is no contravention of the provisions relating to holding of Board Meetings by Seafood Marketing Limited because the first Board Meeting was held within 30 days ofthe incorporation of the company.
c) There is contravention of provisions in respect of conduct of the Board Meetings by Seafood Marketing Limited because gap between initial two consecutive Board Meetings (held on 6th April, 2019 and 28th August, 2019) is 143 days and further, gap betweennext two consecutive Board Meetings (held on 30th September, 2019 and 12th March, 2020) is 163 days.
d) There is contravention of provisions in respect of conduct of the Board Meetings by Seafood Marketing Limited because gap between initial two consecutive Board Meetings (held on 6th April, 2019 and 28th August, 2019) is 123 days and further, gap betweennext two consecutive Board Meetings (held on 30th September, 2019 and 12th March, 2020) is 143 days.

Ans 5: (c)

Section B- Descriptive Questions

1.(i) What is the procedure to be followed, when a board meeting is adjourned for want of quorum?

(ii) How is a resolution by circulation passed by the Board or its Committee?

Ans 1: (i) Section 174(4) of the Companies Act, 2013 provides that, if a Board meeting could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned to the same day in the next week, at the sametime and place, or if that day is a national holiday, till the next succeeding day which is not a national holiday, at the same time and place..

(ii)(a) The Companies Act, 2013 permits a decision of the Board of Directors to be taken by means of a resolution by circulation. Board's approvals can be taken in two ways - one, by a resolution passed at a Board Meeting and the other, by means of a resolution passed by circulation.

In terms of Section 175(1) of the Companies Act, 2013 no resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the following provisions have been complied with:

(1) the resolution has been circulated in draft, together with the necessarypapers, if any,
(2) the draft resolution has been circulated to all the directors, or membersof the committee, as the case may be;
(3) the Draft resolution has been sent at their addresses registered with the company in India;
(4) such delivery has been made by hand or by post or by courier, or throughprescribed electronic means;

Rule 5 of the Companies (Meetings of Board and its Powers) Rules, 2014 provides that a resolution in draft form may be circulated to the directors together with the necessary papers for seeking their approval, by electronic means which may include E-mail or fax.

(5) such resolution has been approved by a majority of the directors or members, who are entitled to vote on the resolution;

(b) However, if at least 1/3rd of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the Chairperson shall put the resolution to be decided at a meeting of the Board (instead of being decided by circulation).

(c) A resolution that has been passed by circulation shall have to be necessarilynoted in the next meeting of Board or the Committee, as the case may be, and made part of the minutes of such meeting.

(2) Mr. P and Mr. Q who are the directors of C-Tech Limited informed the company about their inability to attend the Board meeting because the notice thereof was not served on them.

Discuss whether there is any default on the part of C-Tech Limited and the consequences thereof.

Ans 2: Under section 173(3) of the Companies Act, 2013 a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

Section 173(4) further provides that every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of 25,000.

In the given case, as no notice was served on Mr. P and Mr. Q who are the directors of C- Tech Limited, every officer responsible for such default in serving notice shall be punishable with fine of 25,000 as required by Section 173 (4).

Neither the Companies Act, 2013 nor the Companies (Meetings of the Board and its Powers) Rules, 2014 lay down any specific provision regarding the validity of a resolution passed by the Board of Directors in case notice was not served to all the directors. The Companies Act, 2013 clearly provide for the notice to be sent to every director. The Supreme Court, in case of Parmeshwari Prasad vs. Union of India (1974) has held that the resolutions passed in the board meeting shall not be valid, since notice to all the Directors was not given in writing. Hence, even though the directors concerned knew about the Board meeting, the meeting shall not be valid and resolutions passed thereat also shall not be valid.

(3)A director goes abroad for a period of more than 3 months and an alternate director has been appointed in his place under Section 161(2). During the period of absence of the original director, a board meeting was called. In this connection, with reference to the provisions of the Companies Act, 2013, advise who should be given the notice of Board meeting i.e. the "original director" or the "alternate director"?

Ans 3: According to Section 161(2) of the Companies Act, 2013, the Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India.

According to Section 173(3), a meeting of the Board may be called by giving at least 7 days' notice in writing to every director at his address registered with the company and such noticeshall be sent by hand delivery or by post or by electronic means.

There is no legal precedence whether the notice of the meeting is to be sent to the original director or the alternate director. But as a matter of prudence such notice may be served to both the alternate director as well as the original director who is for the time being outside India.

(4) Examine with reference to the provisions of the Companies Act, 2013 whether notice of a Board Meeting is required to be sent to the following persons:

(i)An interested Director;

(ii)A Director who has expressed his inability to attend a particular Board Meeting;

(iii)A Director who has gone abroad (for less than 3 months).

Ans 4: Notice of Board Meeting

(i) **Interested director:** Section 173(3) of the Companies Act, 2013 makes it mandatory that every director needs to be given proper notice of every board meeting. It is immaterial whether a director is interested or not. In case of an interested director, notice must be given to him even though in terms of Section 184 (2) he is precluded from participation *i.e.* engaging himself in discussion or voting at the meeting on the business in which he is interested.

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

(iii) **A director who has gone abroad**: A director who has gone abroad is still a director. Therefore, he is entitled to receive notice of board meetings during his stay abroad. The Companies Act, 2013, allows delivery of notice of meeting by electronic means also i.e. through e-mail. This factor carries weight because the Companies Act, 2013 permits a director to participate in a meeting by video conferencing or any other audio- visual means also, in addition to physical presence.

(5)Out of the powers exercisable by the Board under Section 179 of the Companies Act, 2013, the Board of MN Limited wants to delegate the power to borrow monies otherwise than on debentures to the Managing Director. Advise whether such a delegation is possible? Would your answer be different, if the delegation is made to the manager or any other principal officer including a branch officer of the company?

Ans 5: Under section 179(3) of the Companies Act, 2013, the Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board:

(a) To make calls on shareholders in respect of money unpaid on their shares;
(b) To authorise buy-back of securities under section 68;
(c) To issue securities, including debentures, whether in or outside India;
(d) To borrow monies;
(e) To invest the funds of the company;

(f) To grant loans or give guarantee or provide security in respect of loans;
(g) To approve financial statement and the Board's report;
(h) To diversify the business of the company;
(i) To approve amalgamation, merger or reconstruction;
(j) To take over a company or acquire a controlling or substantial stake in another company;
(k) Any other matter which may be prescribed.

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

From the foregoing provisions, it is clear that the Board of MN Limited shall be perfectly in order if it delegates the power to borrow monies under clause (d) of Section 173 (3) to the Managing Director or to the manager or any other principal officer.

(6)Advise the Board of Director of Spectra Papers Ltd. regarding validity and extent of its powers, under the provisions of the Companies Act, 2013 in relation to the following matters:

(i)Buy-back, for the first time, the shares of the Company upto 10% of the paid-up equity share capital without passing a special resolution.

(ii)Delegation of power to the Managing Director so that he can invest surplus funds of the company in the shares of some other companies.

Ans 6: **(i)** According to clause (b) of Section 179(3), The Board of Directors of a company shall exercise the power to authorize buy-back of securities under section 68, on behalf of the company by means of resolutions passed at meetings of the Board.

According to Section 68(2), no company shall purchase its own shares or other specified securities, unless—

a) the buy-back is authorised by its articles;
b) a special resolution has been passed at a general meeting of the company authorising the buy-back:

However, nothing contained in this clause shall apply to a case where—

(1) the buy-back is, 10% or less of the total paid-up equity capital and free reserves of the company; and
(2) such buy-back has been authorised by the Board by means of a resolution passed at its meeting,

From the foregoing provisions, it is clear that in case a company, for the first time, resorts to buy-back of its own shares, when the buy-back is limited to 10% of its paid- up share capital, a special resolution will not be required if such buy-back has been authorised by the Board by means of a resolution passed at its meeting. Thus, the Board of Director of Spectra Papers Ltd. is empowered to buy-back the sharesbecause the buy-back is limited to 10% of the paid-up share capital, by means of a resolution passed at the Board meeting.

(ii) According to clause (e) of Section 179(3), the Board of Directors of a company shall exercise the power to invest the funds of the company, on behalf of the company by means of resolutions passed at the meetings of the Board.

The Board may, under the Proviso to Section 179(3), delegate the power to invest the funds of the company through a board resolution passed at a duly convened Board Meeting. However, the investment in shares of other companies will

also be governed by a specific provision contained in Section 186(5), according which no investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained.

Thus, a unanimous resolution of the Board is required. Further, Section 186 does not provide for delegation. Hence, the proposed delegation of power to the Managing Director to invest surplus funds of the company in the shares of some other companies, is not in order.

(7) An Audit Committee of a listed company constituted under Section 177 of the Companies Act, 2013, submitted its report containing the recommendations in respect of certain matters to the Board. The Board, however, did not accept the recommendations. In the light of the situation, analyze whether:

(a)The Board is empowered not to accept the recommendations of the Audit Committee.

(b)If so, what alternative course of action, would the Board resort to?

Ans 7: a) According to Section 177(8) of the Companies Act, 2013, the Board's Report shall, under the provisions of Section 134 (3) which is laid before the general meeting wherethe financial statements of the company are placed before the members, disclose the composition of the Audit Committee and where the Board has not accepted any recommendations of the Audit Committee, the same shall also be disclosed along with the reasons therefor. Hence, the Board is empowered not to accept the recommendations of the Audit Committee but only under genuine circumstances and supported by legitimate reasons for non-acceptance.

(b) If the Board does not accept the recommendations of the Audit Committee, it shall disclose the same in its report under section 134 (3) which is placed before the general meeting of the company.

(8) MNC Ltd., a company, whose paid up capital was ` 8.00 crore, has issued right shares in the ratio of 1:1. The said company is listed with Mumbai Stock Exchange. Whether the company is required to appoint any Audit Committee and if yes, draft a suitable Board Resolution to appoint an Audit committee covering the aspects as provided in the Companies Act, 2013.

Ans 8: Under section 177(1) of the Companies Act, 2013 the Board of Directors of every listed public company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee. Therefore, MNC Ltd. being a listed company will be bound to constitute an Audit Committee under the Act.

Further under section 177(2) the Audit Committee shall consist of a minimum of threedirectors with independent directors forming a majority.

Further, majority of the members of Audit Committee including its Chairperson shall be persons with ability to read and understand the financial statement.

The draft Board Resolution for the constitution of an Audit Committee may be as follows:

"Resolved that pursuant to the provision contained in section 177 of the Companies Act 2013and the applicable clause of Listing Agreement with the Mumbai Stock Exchange, an Audit Committee of the Company be and is hereby constituted with effect from the conclusion of this meeting, with members as under:

1. Mr. A -- An Independent Director.
2. Mr. B -- An Independent Director
3. Mr. C – An Independent Director
4. Mr. D -- An Independent Director
5. Mr. FE -- Financial Executive
6. Mr. MD -- Managing Director

Further resolved that the Chairman of the Committee, who shall be an Independent Director, be elected by the committee members from amongst themselves.

Further resolved that the quorum for a meeting of the Audit Committee shall be the chairman of the Audit Committee and 2 other members (other than the Managing Director),

Further resolved that the terms of reference of the Audit Committee shall be in accordance with the provisions of section 177(4) of the Companies Act, 2013.

Further resolved that the Audit committee shall conduct discussions with the auditors periodically about internal control system, the scope of audit including the observations of the auditors.

Further resolved that the Audit Committee shall review the quarterly and annual financial statements and submit the same to the Board with its recommendations, if any.

Further resolved that the recommendations made by the Audit Committee on any matter relating to financial management including the audit report shall be binding on the Board. However, where such recommendations are not accepted by the Board, the reasons for the same shall be recorded in the minutes of the Board meeting and communicated to the shareholders.

Further resolved that the Company Secretary of the Company shall be the Secretary to the Audit Committee.

Further resolved that the Chairman of the Audit Committee shall attend the annual general meeting of the Company to provide any clarifications on matters relating to audit as may be required by the members of the company.

Further resolved that the Board's Report/Annual Report to the members of the Company shall include the particulars of the constitution of the Audit Committee and the details of the non- acceptance of any recommendations of the Audit Committee with reasons therefor."

(9) The Balance Sheets of last three years of PTL Ltd., contain the following information and figures:

	As at 31.03.2017 ₹	As at 31.03.2018 ₹	As at 31.03.2019 ₹
Paid up capital	50,00,000	50,00,000	75,00,000
General Reserve	40,00,000	42,50,000	50,00,000
Credit Balance in	5,00,000	7,50,000	10,00,000

Profit & Loss Account			
Debenture Redemption Reserve	**15,00,000**	**20,00,000**	**25,00,000**
Securities Premium	**2,00,000**	**2,00,000**	**2,00,000**
Secured Loans	**10,00,000**	**15,00,000**	**30,00,000**

On going through other records of the Company, the following is also determined:

Net Profit for the year (as calculated in accordance with the provisions of the Companies Act, 2013)	**12,50,000**	**19,00,000**	**34,50,000**

In the ensuing Board Meeting scheduled to be held on 5thSeptember, 2019, among other items of agenda, following items are also appearing:

(i)To decide about borrowing from financial institutions on long-term basis.

(ii)To decide about contributions to be made to charitable funds.

Based on above information, you are required to find out as per the provisions of the Companies Act, 2013, the amount upto which the Board can borrow from Financial institution and the amount upto which the Board of Directors can contribute to Charitable funds during the financial year 2019-20 without seeking the approval in general meeting.

Ans 9: **(i) Borrowing from Financial Institutions:** As per Section 180(1)(c) of the Companies Act, 2013, the Board of Directors of a company, without obtaining the approval of shareholdersin a general meeting, can borrow money including moneys already borrowed upto an amount which does not exceed the aggregate of paid up capital of the company, free reserves and securities premium. Such borrowing shall not include temporary loans obtained from the company's bankers in the ordinary course of business. Here, free reserves do not include the reserves set apart for specific purpose.

Since the decision to borrow is to be taken in a meeting to be held on 5thSeptember, 2019, the figures relevant for this purpose are the figures as per the Balance Sheet as at 31.03.2019. According to the above provisions, the Board of Directors of PTL Ltd. can borrow, without obtaining approval of the shareholders in a general meeting, upto an amount calculated as follows:

Particulars	₹
Paid up Capital	75,00,000
General Reserve (being free reserve)	50,00,000
Credit Balance in Profit & Loss Account (to be treated as freereserve)	10,00,000
Debenture Redemption Reserve (This reserve is not to be considered since it is kept apart for specific purpose of debenture redemption)	----
Securities Premium	2,00,000
Aggregate of paid-up capital, free reserves and securities premium	137,00,000
Total borrowing power of the Board of Directors of the company, i.e, 100% of the aggregate of paid-up capital, free reserves and securities premium	137,00,000
Less: Amount already borrowed as secured loans	30,00,000
Amount upto which the Board of Directors can further borrow without the approval of shareholders in a general meeting.	107,00,000

(ii)Contribution to Charitable Funds: As per Section 181 of the Companies Act, 2013, the Board of Directors of a company without obtaining the approval of shareholders in a general meeting, can make contributions to genuine charitable and other funds upto an amount which, in a financial year, does not exceed five percent of its average net profits during the three financial years immediately preceding, the financial year.

According to the above provisions, the Board of Directors of the PTL Ltd. can make contributions to charitable funds, without obtaining approval of the shareholders in a general meeting, upto an amount calculated as follows:

Net Profit for the year (as calculated in accordance with the provisions of the Companies Act, 2013):

Particulars	₹
For the financial year ended 31.3.2017	12,50,000
For the financial year ended 31.3.2018	19,00,000
For the financial year ended 31.3.2019	34,50,000
TOTAL	66,00,000

Average of net profits during three preceding financial years	22,00,000
Five per cent thereof	1,10,000

Hence, the maximum amount that can be donated by the Board of Directors of PTL Ltd. to a genuine charitable fund during the financial year 2019 -2020 will be limited to ₹ 1,10,000 and the said donation shall not require seeking of approval from the shareholders at a general meeting.

(10) Following data relates to Prince Company Limited:

Authorised Capital (Equity Shares)	**₹ 100 crore**
Paid – up Share Capital	**₹ 40 crore**
General Reserves	**₹ 20 crore**
Debenture Redemption Reserve	**₹ 10 crore**
Provision for Taxation	**₹ 5 crore**
Securities premium	**₹ 2 crore**
Loan (Long Term)	**₹ 10 crore**
Short Term Creditors	**₹ 3 crore**

Board of Directors of the company by a resolution passed at its meeting decided to borrow an additional sum of ₹ 90 crore from the company's Bankers. Being the company's financial advisor, you are required to advise the Board of Directors regarding the procedure to be followed in this respect under the Companies Act, 2013.

Ans 10: **Borrowing by the Company (Section 180 of the Companies Act, 2013):** As per Section 180(1)(c) of the Companies Act, 2013, the Board of Directors of a company, without obtaining the approval of shareholders in a general meeting through a special resolution, can borrowthe funds including funds already borrowed upto an amount which does not exceed the aggregate of the paid-up share capital, free reserves and securities premium. Such borrowing shall not include temporary loans obtained from the company's bankers in ordinary course of business.

Free reserves do not include the reserves set apart for specific purpose.

According to the above provisions, the Board of Directors of Prince Company Limited can borrow, without obtaining approval of the shareholders in a general meeting, upto an amount calculated as follows:

Particulars	₹
Paid up Share Capital	40 Crore
General Reserve (being free reserve)	20 Crore
Debenture Redemption Reserve (This reserve is not to be consideredsince it is kept apart for specific purpose of debenture redemption)	----

Securities Premium	2 Crore
Aggregate of paid-up share capital, free reserve and securities premium	62 Crore
Total borrowing power of the Board of Directors of the company, i.e, 100%of the aggregate of paid-up share capital, free reserves and securities premium	62 Crore
(Less: Amount already borrowed as Long term loan)	(10 Crore)
Amount upto which the Board of Directors can further borrow without the approval of shareholders in a general meeting.	52 Crore

In the present case, the directors of Prince Company Limited by a resolution passed at its meeting have decided to borrow an additional sum of ₹ 90 Crore from the company 's bankers. Apparently,the proposed borrowing will be beyond the powers of the Board of Directors.

The management of Prince Company Limited, therefore, should take steps to convene the general meeting and pass a special resolution by the members in the meeting as stated in Section 180(1)(c) of the Companies Act, 2013. Then only, the proposed borrowing of ₹ 90 crore will be valid and binding on the company and its members.

(11) One of the Objects Clauses of the Memorandum of Association of Info Limited conferred upon the company power to sell its undertaking to another company with identical objects. Company's Articles also conferred upon the directors whereby power was conferred upon them to sell or otherwise deal with the property of the company. At an Extraordinary General Meeting of the company, members passed an ordinary resolution for the sale of its assets on certain terms and authorized the directors to carry out the sale. Directors refused to comply with the wishes of the members whereupon it was contended on behalf of the members thatthey were the principals and directors being their agents, were bound to give effect to their (members') decisions.

Examining the provisions of the Companies Act, 2013, answer the following:

Whether the contention of members against the non-compliance of members' decision by the directors is tenable?

Whether it is possible for the members to usurp the powers which by the Articles are vested in the directors by passing a resolution in the general meeting?

Ans 11: **Powers of Board:** In accordance with the provisions of the Companies Act, 2013, as contained under Section 179(1), the Board of Directors of a company shall be entitled to exercise all such powers and to do all such acts and things, as the company is authorized to exercise and do:

Provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or inany regulations not inconsistent therewith and duly made thereunder including regulations made by the company in general meeting.

Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the members or articles of the company or otherwise to be exercised or done by the company in general meeting.

Section 180 (1) of the Companies Act, 2013, specifies the powers which the Board of Directors of a company shall exercise only with the consent of the company by a special resolution. Clause (a) of Section 180 (1) defines one such power as the power to sell, leaseor otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking of the whole or substantially the whole or any of such undertakings.

Therefore, the sale of the undertaking of a company can be made by the Board of Directors only with the consent of members of the company accorded by passing a special resolution.

Even if the power is given to the Board by the memorandum and articles of the company, the sale of the undertaking must be approved by the shareholders in general meeting by passing a special resolution.

Therefore, the correct procedure to be followed is for the Board to approve the sale of the undertaking clearly specifying the terms of such sale and then convene a general meeting of members to have the proposal approved by a special resolution.

In the given case, the procedure followed is completely incorrect and violative of the provisions of the Companies Act, 2013. The shareholders cannot on their own make out a proposal of sale and pass an ordinary resolution to implement it through the directors.

The contention of the shareholders is incorrect in the first place as it is not within their authority to approve a proposal independent of the Board of Directors. It is for the Board to approve a proposal of sale of the undertaking and then let the members to approve it by a special resolution. Accordingly, the contention of the members that they were the principals and the directors as their agents were bound to give effect to the decisions of the members is not correct.

Further, in exercising their powers the directors do not act as agent for the majority of members or even for all the members. The members therefore, cannot by resolution passed by a majority or even unanimously supersede the powers of directors or instruct them howthey shall exercise their powers. The shareholders have, however, the power to alter the Articles of Association of the company in the manner they like subject to the provisions of the Companies Act, 2013.

(12) (i)R Ltd. wants to constitute an Audit Committee. Draft a board resolution covering the following matters [compliance with Companies Act, 2013 to be ensured].

(1)Members of the Audit Committee

(2)Chairman of the Audit Committee

(3)Any 2 functions of the said Committee

(ii)What would be the minimum likely turnover or capital of this company?

(iii)What is the role of the Audit Committee vis-a-vis the statutory auditor when the company wishes to engage them to perform certain engagements which are not restricted under Section 144?

Ans 12: (i) Audit Committee – Board's Resolution:

"Resolved that pursuant to Section 177 of the Companies Act, 2013, an AuditCommittee consisting of the following Directors be and is hereby constituted.

1) Mr. Independent Director
2) Mr. Independent Director
3) Mr. Independent Director
4) Mr. Independent Director
5) Mr. Managing Director.
6) Mr. Chief Financial Officer"

"Further resolved that the Chairman of the Audit Committee shall be elected by its members from amongst themselves and shall be an independent director".

"Further resolved that the quorum for a meeting of the Audit committee shall be three directors (other than the Managing Director), out of which at least two must be independent directors".

"Resolved further that the Audit Committee shall perform all the functions as laid down in section 177(4) of the Companies Act, 2013 including but not limited to:

(a) make the recommendation for appointment, remuneration and terms of appointment of the auditors of the company;
(b) review and monitor the independence and performance of auditors of the company and the effectiveness of the audit process".

"Further resolved that the Audit Committee shall review the quarterly and annual financial statements and submit the same to the Board with its recommendations if any".

(ii) Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014 states that every listed public company and a company covered under Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014 shall constitute an Audit Committee. Rule 4 has prescribed the following classes of companies to constitute an Audit Committee:

a) public companies having a paid-up share capital of 10 crore rupees or more;
b) public companies having turnover of 100 crore rupees or more;
c) public companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees.

Hence, in the given case, the likely turnover of R Ltd. shall be ₹ 100 crore or more orcapital shall be ₹ 10 crore or more.

(iii) According to section 177(5), the Audit Committee is empowered to:

(1) call for the comments of the auditors about:

(A) internal control systems,
(B) the scope of audit, including the observations of the auditors,
(C) review of financial statement before their submission to the Board,

(2) discuss any related issues with the internal and statutory auditors and themanagement of the company.

4.Inspection, Inquiry and Investigation

Section A- Test Your Knowledge

(1)At an Extra-ordinary General Meeting of Ravi Share-brokers Limited, held at its Registered Office situated at Rajendra Place, New Delhi, the shareholders passed a special resolution to the effect that the affairs of the company ought to be investigated. Ravi Share-brokers Limited, thereafter, submitted the special resolution so passed to the Central Government for further action. Under the given situation, you are required to select the appropriate option from those given below:

a) Power of the Central Government to order an investigation into the affairs of Ravi Share-brokers Limited as requested in the special resolution so submitted by the company is discretionary and therefore, it may or may not order an investigation.
b) Power of the Central Government to order an investigation into the affairs of Ravi Share-brokers Limited as requested in the special resolution so submitted by the company is mandatory and therefore, it shall order an investigation.
c) Central Government is not empowered to pass order of investigation in case of non- government companies and therefore, no order of investigation into the affairs of Ravi Share-brokers Limited as requested in the special resolution so submitted by the company shall be ordered.
d) Power of the Central Government to order an investigation into the affairs of Ravi Share-brokers Limited can be initiated just on request by the company.

Ans 1: (a)

(2)Sanchita Tech Mart Limited is in the grip of serious apprehensions that its shares might be cornered by a group of unscrupulous persons and if it happens, it would certainly result in change in the Board of Directors which might be prejudicial to the public interest. With a view to impose restrictions, Ramneek, one of the directors of Sanchita TechMart Limited, seeks your advice as to how the company can impose restrictions on the transfer of shares of the company. Choose the correct option from those given below:

a) Sanchita Tech Mart Limited can make an application to the National Company Law Tribunal (NCLT) under Section 222 for imposition of restrictions on securities.
b) Sanchita Tech Mart Limited can make an application to the Central Government under Section 222 for imposition of restrictions on securities.
c) Sanchita Tech Mart Limited can make an application to the National Company Law Tribunal (NCLT) under Section 216 for investigation into the ownership of company.
d) Sanchita Tech Mart Limited can make an application to the Central Government under Section 216 for investigation into the ownership of the company.

Ans 2: (a)

(3)After perusal of the inspector's report made under Section 223 of the Companies Act, 2013, it appears to the Central Government that some action is required to be taken against a company, it may cause to be presented to the Tribunal:

a) A petition for the winding up of the company on the ground that it is just and equitable that it should be wound up.
b) An application under Section 241 of the Companies Act, 2013.
c) Both (a) and (b)
d) A petition for the merger of the company on the ground that it is just and equitable that it should be merged.

Ans 3: (c)

(4)Under the garb of cement business, some of the directors of Royal Cement Limited, a company incorporated in the year 2001 and having its factories at Rohtak and Bhiwani, were involved in several illegal activities. In such a situation, on receipt of a report of the Registrar of Companies or inspector under Section 208 or in the public interest or on request from any Department of the Central Government or a State Government, the Central Government may,by order, assign the investigation into the affairs of Royal Cement Limited to the Serious Fraud Investigation Office (SFIO). In addition to the above bases, there is one more basis which may prompt the Central Government to assign the investigation to the Serious Fraud Investigation Office (SFIO). From the following four options, choose such appropriate basis for assigning the investigation to the SFIO.

a) On intimation through an Ordinary Resolution passed by the shareholders of Royal Cement Limited that the affairs of the company are required to be investigated.
b) On intimation through a Special Resolution passed by the shareholders of RoyalCement Limited that the affairs of the company are required to be investigated.
c) On an intimation received from certain senior employees of Royal Cement Limited that the affairs of the company are required to be investigated.
d) On an intimation received from certain ex-directors of Royal Cement Limited that the affairs of the company are required to be investigated.

Ans 4: (b)

(5)Mr. Raman, an Inspector appointed under Section 212 of the Companies Act, 2013, started investigations into the affairs of C-Tech Innovative Solutions Ltd. During the process of investigation, Mr. Raman noticed certain unusual facts and information regarding the transactions made by C-Tech Innovative Solutions Ltd. with its subsidiary company Shyamala InfoTech Solutions Ltd. Based on the information so collected from the investigation, Mr. Raman wanted to investigate the affairs of Shyamala InfoTech Solutions Ltd. also. Out of the following options, which one correctly indicates whether Mr. Raman can proceed with the investigation of the affairs of subsidiary company Shyamala InfoTech Solutions Ltd. or not in the light of the applicable provisions of the Companies Act, 2013.

a) Mr. Raman shall be able to proceed with the investigation of the affairs of subsidiary company Shyamala InfoTech Solutions Ltd. after obtaining the prior approval of the Director, Serious Fraud Investigation Office (SFIO).
b) Mr. Raman shall not be able to proceed with the investigation of the affairs of subsidiary company Shyamala InfoTech Solutions Ltd. since it is not within his powersto undertake investigation of any other entity.
c) Mr. Raman shall be able to proceed with the investigation of the affairs of subsidiary company Shyamala InfoTech Solutions Ltd. after obtaining the prior approval of the National Company Law Tribunal in whose jurisdiction the registered office of the subsidiary company is located.
d) Mr. Raman shall be able to proceed with the investigation of the affairs of subsidiary company Shyamala InfoTech Solutions Ltd. after obtaining the prior approval of the Central Government.

Ans 5: (d)

(6)Sunder Cosmetics Limited was served a notice by the jurisdictional Registrar of Companies to produce at his office for inspection of certain more books of accounts, other books, papersand explanations, etc. at 11 A.M. on January 5, 2022. Choose the applicable option from those given below that indicates the reason for such inspection by the concerned Registrar of Companies:

a) Since no information or explanation was furnished by Sunder Cosmetics Limited to the Registrar of Companies within the time specified in the earlier notice issued by him.
b) Since Registrar of Companies, on an examination of the documents furnished by Sunder Cosmetics Limited, was of the opinion that the information or explanation furnished by the company was inadequate.
c) Since Registrar of Companies was satisfied on a scrutiny of the documents furnished by Sunder Cosmetics Limited, that an unsatisfactory state of affairs existed in the company and the information or documents so furnished did not disclose a full and fair statement of the information required.
d) In all of the situations given above in option (a), (b) and (c), inspection can be preferred.

Ans 6: (d)

Section B- Descriptive Questions

(1)Provide various grounds on which the investigation is assigned to Serious Fraud Investigation Office?

Ans 1: As per section 212 of the Companies Act, 2013, the Central Government may assign the investigation into affairs of a company to the Serious Frauds Investigation Office on the basis of an opinion formed from the following:

a) After the inspection of books of account or papers or inquiry the Registrar shall submit a written report to the Central Government. The report may recommend the need for further investigation along with reasons in support. The Central Government on receipt of such report can order an investigation under Serious Frauds Investigation Office.
b) The company may pass a special resolution and can request Central Government to investigate into the affairs of the company.

c) The Central Government can order investigation under Serious Frauds Investigation Office, in public interest.
d) The departments Central Government and State Governments can request for investigation under Serious Frauds Investigation Office.

(2)Discuss the powers of Inspectors regarding investigation into affairs of related companies.

Ans 2: Section 219 states that, if the inspector appointed under Sections 210, 212 or 213 to investigate into the affairs company considers it necessary for the purposes of the investigation to investigate, he can do the investigation of the affairs of other related companies or body corporate with the prior approval of the Central Government.

- **Holding or Subsidiary Company:** which is or has been at the relevant time been the company's subsidiary or holding or subsidiary of its holding company;
- **Related Party:** which is or has been at the relevant time been managed by any person as a managing director or manager who is or was at the relevant time the managing director or the manager of the company;
- **Deemed Control:** whose Board of Directors' comprises nominees of the company or is accustomed to act in accordance with the directions of the company or any of its directors; or
- **In Employment of Company:** in case any person is or has at any relevant time been the company's managing director or manager or employee.

The results of the investigation are relevant to the investigation of the affairs of the company for which he is appointed.

(3)A group of creditors of XYZ Limited makes a complaint to the Registrar of Companies, Gujarat alleging that the management of the company is indulging in destruction and falsification of the accounting records of the company. The complainants request the Registrar to take immediate steps to seize the records of the company so that the management may not be allowed to tamper with the records. The complaint was received at 11 A.M. on 06th June, 2018 and the registrar has attempted to enter the premise of company but has been denied by the company, due to not having order from special court.

Is the contention of company being valid in terms of Companies Act, 2013?

Ans 3: Section 209, of the Companies Act, 2013 states that, if the Registrar has **reasonable ground to believe** that the books and papers of

- A company or
- relating to the key managerial personnel or
- any director or
- auditor or
- company secretary in practice if the company has not appointed a company secretary are likely to be destroyed, mutilated, altered, falsified or secreted he may, after obtaining an order from the special court for the seizure of such books and papers,

(a) enter with such assistance as may be required and search the place where such books or papers are kept; and
(b) seize such books and papers as he considers necessary after allowing the company to take copies or extracts there from.

According the above provisions the registrar may enter, search and seize the books only after obtaining an order from the Special Court.

In the given scenario, the registrar has failed to obtain permission from the special court so, he is not authorized to enter the premises of the company and seize the books of accounts of XYZ Limited. Hence, the contention of the XYZ Limited is valid in law.

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

(a)Is the contention of company being valid in law?

(b)What is remedy available to Mr. Atul?

(c)What is remedy available to Mr. Atul, if reply of Tribunal has been received within 30 days of application?

Ans 4: The provision of Section 218 states that, the company shall require to take approval of the tribunal before taking action against the employee if there is any pendency of any proceedings against any person concerned in the conduct and management of the affairs of the company.

The company shall require approval in the following circumstances:

- discharge or suspension of an employee; or
- punishment to an employee by dismissal, removal, reduction in rank or otherwise; or
- change in the terms of employment to the disadvantage of employee(s); The Tribunal shall notify its objection to the action proposed in writing.

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

Appeal to the Appellate Tribunal

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

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

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

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

5.A group of shareholders of FMG Limited made a complaint to the concerned Registrar of Companies (ROC) that the business of the Company is being carried on for unlawful and fraudulent purposes and filed an application to enquire into the affairs of the Company. Referring to and analyzing the provisions of the Companies Act, 2013, decide:

(i)Whether the ROC has the power to order for an inquiry into the affairs of the Company?

(ii)If yes, state the procedure to be followed by the ROC.

(iii)Whether the inquiry should be pursued by the ROC in case the complaint is withdrawnby the same group of shareholders subsequent to the Order for enquiry?

(iv)Whether the Central Government has the power to direct the ROC to carry out the inquiry?

Ans 5: (i) Yes, the ROC has the power to order for an inquiry as he deems fit after providing the company a reasonable opportunity of being heard, into the affairs of the company ifhe is satisfied on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act. [Section 206(4) of the Companies Act, 2013]

(ii)Procedure followed by ROC: The Registrar may, after informing the company of the allegations made against it by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard.

(iii)The inquiry can be pursued by the ROC in case the complaint is withdrawn by same group of shareholders subsequent to the order for inquiry in terms of section 206(4).

(iv)Yes, the Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar for the purpose to carry out the inquiry under section 206(4).

5.Compromises, Arrangements and Amalgamations

Section A- Test Your Knowledge

(1)Sectoral Regulators shall make representation, if any, within _____from the date of receipt of Notice of the Meeting to be called, held and conducted by the National Company Law Tribunal(NCLT) in respect of a scheme of compromise or arrangement.

a) 45 days.
b) 30 days.
c) 60 days.
d) 90 days.

Ans 1: (b)

(2)It is imperative that the Scheme of Compromise or Arrangement needs to be approved by the members or class of members or creditors or class of creditors. From the given options, select the one which correctly indicates the minimum requirement for such approval:

a) The Scheme of Compromise or Arrangement shall be approved by more than 50% majority in number of members or class of members or creditors or class of creditors, as the case may be, who are present and voting at the meeting.
b) The Scheme of Compromise or Arrangement shall be approved by more than 75% majority in value of members or class of members or creditors or class of creditors, as the casemay be, who are present and voting at the meeting.
c) The Scheme of Compromise or Arrangement shall be approved by more than 75% majority in number of members or class of members or creditors or class of creditors, as the case may be, who are present and voting at the meeting.
d) Both (a) and (b) together.

Ans 2: (d)

(3)Mr. Aman is a registered holder of 15,000 equity shares of Kanha Textiles Limited whose issued capital is ₹ 1,00,00,000 divided into 10,00,000 equity shares of ₹ 10 each. He was offered a price, as determined by the registered valuer, for purchase of his shares by the majority shareholders. Since he has agreed to the proposal of selling his shares at the offered

price, you are required to select the correct option from those given below that indicates the period within which such amount shall be disbursed to him:

a) Maximum within 15 days, such offered amount shall be disbursed to him.
b) Maximum within 30 days, such offered amount shall be disbursed to him.
c) Maximum within 60 days, such offered amount shall be disbursed to him.
d) Maximum within 90 days, such offered amount shall be disbursed to him.

Ans 3: (c)

(4)Navneet Textiles Limited, with a view to save itself from the looming liquidation, proposed a scheme of compromise to its creditors which valued 75,00,000. In the process, the company filed the said Scheme with the jurisdictional National Company Law Tribunal (NCLT). From the following options, select the one which correctly depicts the minimum strength of creditors in value that must confirm to the scheme of compromise so that Tribunal may dispense with calling of a meeting of the creditors:

a) The strength of creditors in value of Navneet Textiles Limited that must confirm to the scheme of compromise so that Tribunal may dispense with calling of a meeting of the creditors is minimum 70%.
b) The strength of creditors in value of Navneet Textiles Limited that must confirm to the scheme of compromise so that Tribunal may dispense with calling of a meeting of the creditors is minimum 80%.
c) The strength of creditors in value of Navneet Textiles Limited that must confirm to the scheme of compromise so that Tribunal may dispense with calling of a meeting of the creditors is minimum 90%.
d) The strength of creditors in value of Navneet Textiles Limited that must confirm to the scheme of compromise so that Tribunal may dispense with calling of a meeting of the creditors is minimum 95%.

Ans 4: (c)

(5)In respect of a scheme of compromise submitted by Neon Colour Prints Limited to the jurisdictional National Company Law Tribunal (NCLT), a meeting of the shareholders was held on the specified date and time and at the designated place. The company had 1200 shareholders holding equity shares of ₹ 1,20,00,000 (12,00,000 equity shares of ₹ 10 each) who all voted using the prescribed modes. However, 100 shareholders holding ₹ 36,00,000 worth of shares voted against the approval of the scheme of compromise. Choose the correct option from those stated below as to whether the scheme of compromise submitted by Neon Colour Prints Limited to the jurisdictional National Company Law Tribunal (NCLT) is to be considered as approved or not:

a) The scheme of compromise submitted by Neon Colour Prints Limited to the jurisdictional National Company Law Tribunal (NCLT) is to be considered as approved sinceshareholders holding more than one-half worth of shares in value voted in favour of the scheme.
b) The scheme of compromise submitted by Neon Colour Prints Limited to the jurisdictional National Company Law Tribunal (NCLT) is to be considered as approved sinceshareholders holding more than fifty-five percent worth of shares in value voted in favour of the scheme.
c) The scheme of compromise submitted by Neon Colour Prints Limited to the jurisdictional National Company Law Tribunal (NCLT) is to be considered as approved since shareholders holding more than sixty percent worth of shares in value voted in favour ofthe scheme.
d) The scheme of compromise submitted by Neon Colour Prints Limited to the jurisdictional National Company Law Tribunal (NCLT) is not to be considered as approved by the shareholders.

Ans 5: (d)

(6)Orange Communications Limited is planning to merge with itself its Wholly-owned Subsidiary (WoS) Vaartalaap Tech Limited under the scheme of fast track merger. After due approval of the Merger Scheme, the same was filed with the Central Government for its approval. However, the Central Government is of the opinion that the said Merger Scheme is not in the public interest. In case such an opinion is formed, then with which authority the Central Government can file an application stating its objections?

a) The Central Government cannot file an application in this respect except to decide thematter on its own.
b) The Central Government can file an application before the National Company Law Tribunal (NCLT) stating its objections.
c) The Central Government can file an application before the Delhi High Court stating itsobjections.
d) The Central Government can file a 'Special Leave Petition' before the Hon'ble SupremeCourt stating its objections.

Ans 6: (b)

(7)Abhik Trading and Marketing Company Limited is wholly owned subsidiary (WOS) of Eternal Cosmetics Limited. Keeping in view the expansion plans, Swapna and Shilpa, the two Directorsof latter company are contemplating to make an application before the appropriate forum for merger of the subsidiary company Abhik Trading and Marketing Company Limited with holding company Eternal Cosmetics Limited under Section 232 of the Companies Act, 2013. However, Vibha Kumar, the Company Secretary of Eternal Cosmetics Limited is of the opinion that the merger between a holding and subsidiary company should have been undertaken as per the provisions of Section 233 which state procedure for fast track merger and not under Section 232. Which statement, out of the four given below, is applicable in the above stated situation:

a) The opinion of Vibha, the Company Secretary of the Eternal Cosmetics Limited, holds ground since merger between a holding and subsidiary company should have been undertaken as per the provisions of Section 233 of the Companies Act, 2013 which states procedure for fast track merger.
b) The opinion of Vibha, the Company Secretary of the Eternal Cosmetics Limited, does not hold ground since merger between a holding and subsidiary company is validly possible only as per Section 232 of the Companies Act, 2013.
c) The opinion of Vibha, the Company Secretary of the Eternal Cosmetics Limited, does not hold ground since the provisions given for fast track merger under Section 233 of the Companies Act, 2013 are of the optional nature.
d) The opinion of Vibha, the Company Secretary of the Eternal Cosmetics Limited, does not hold ground since the provisions given for fast track merger under Section 233 of the Companies Act, 2013 can be applied for merging only small companies.

Ans 7: (c)

Section B- Descriptive Questions

(1)ABC Limited is a wholly owned subsidiary company of XYZ Limited. The Company wants to make application for merger of Holding and Subsidiary Companies under Section 232. The Company Secretary of the XYZ Limited is of the opinion that company cannot apply for merger as per section 232. The company shall have to apply for merger as per section 233 i.e. Fast Track Merger. Is it a valid contention expressed by the Company Secretary?

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

- Two or more small companies
- A holding company and its wholly-owned subsidiary company. If 100% of share capital of subsidiary company is held by the holding company, the latter company may hold the shares of subsidiary company in the name of any nominee or nominees with a view to ensure that the number of members of subsidiary company is not reduced below the statutory limit as mentioned in section 187.
- such other class or classes of companies as may be prescribed.

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

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

(2)A meeting of members of ABC Limited was convened under the orders of National Company Law Tribunal (NCLT) to consider a scheme of compromise and arrangement. Notice of the meeting was sent in the prescribed manner to all the 600 members holding in the aggregate 25,00,000 shares. The meeting was attended by 450 members holding 15,00,000 shares. 210 members holding 11,00,000 shares voted in favour of the scheme. 180 members holding 3,00,000 shares voted against the scheme. The remaining members abstained from voting.

Examine with reference to the relevant provisions of the Companies Act, 2013 whether the scheme was approved by the requisite majority.

Ans 2: As per section 230 (6), of the Companies Act, 2013 where majority of persons at a meeting held shares **representing 3/4th in value**, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and further such compromise or arrangement was sanctioned by the Tribunal by an order. The majority of persons representing 3/4th in value shall be counted considering the following:

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

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

In this case out of 600 members, 450 members attended the meeting, but only 390 members voted at the meeting. As 210 members voted in favour of the scheme the requirement relating to majority in number (i.e. 196) is satisfied. 390

members who participated in the meeting held 14,00,000, three-fourth of which works out to 10,50,000 while 210 members who voted for the scheme held 11,00,000 shares. As both the requirements are fulfilled, the scheme is approved by the requisite majority.

(3)A meeting of members of DEF Limited was convened under the orders of the Court for the purpose of considering a scheme of compromise and arrangement. The meeting was attended by 300 members holding 10,00,000 shares. 120 members holding 7,00,000 shares in the aggregate voted for the scheme. 140 members holding 2,00,000 shares in aggregatevoted against the scheme. 40 members holding 1,00,000 shares abstained from voting. Examine with reference to the relevant provisions of the Companies Act, 2013 whether the scheme was approved by the requisite majority?

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

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

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

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

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

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

(4)At the meeting of the members of QRS Limited, a scheme of compromise and arrangement was approved by requisite majority. The National Company Law Tribunal (NCLT) after complying with the provisions, issued an Order, approving the scheme of compromise and arrangement.

List the matters to be provided in the Order issued by NCLT under Section 230 (7) of the Companies Act, 2013. Also state as to when shall the Order be filed with ROC?

Ans 4: According to section 230(7) of the Companies Act, 2013, an order made by the Tribunal under sub-section (6) shall provide for all or any of the following matters, namely:—

a) where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;
b) the protection of any class of creditors;
c) if the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions of section 48;
d) if the compromise or arrangement is agreed to by the creditors under sub-section (6), any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall abate;
e) such other matters including exit offer to dissenting shareholders, if any, as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement.

The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order. [Section 230(8)]

5. A Ltd. (transferee company) decides to acquire B Ltd. (transferor company) by acquiring its shares via a process of takeover u/s 235 of the Companies Act, 2013. A Ltd. prepared a scheme by which an offer was made to the shareholders of B Ltd. The offer was made on 1st August, 2019. The offer remained open for four months. Such offer was approved byshareholders having 92% value of the shares. Subsequently A Ltd. gave a notice to the remaining dissenting shareholders that it desires to acquire their shares. Such notice was given on 5th January, 2019. Certain dissenting shareholders made an application to the Tribunal that acquisition of their shares should not be permitted. However, their application was dismissed by the Tribunal. Hence A Ltd. acquired shares of 5% of the dissenting shareholders (out of balance 8%). The shareholding of balance 3% shareholders continued to remain with them. Comment on the validity of such a takeover by A Ltd.

Ans 5: The basic requirements as to acquisition of shares mentioned in Section 235 of the Companies Act, 2013 are as follows:-

1. The scheme or contract involving the transfer of shares in a company (transferor company) to another company (transferee company) has been approved by theholders of not less than 9/10th (90%) in value of the shares whose transfer is involved.
2. The approval of 9/10th shareholders in value shall be received within 4 months after making of an offer in that behalf by the transferee company.
3. The transferee company shall express his desire to acquire the remaining shares of dissenting shareholder in 2 months after the expiry of the said 4 months and shall give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.

The transferee company shall be entitled as well as bound to acquire the shares of the dissenting shareholders where no application is made by any dissenting shareholders to the tribunal in 1 month of receipt of notice of acquisition of shares or where an application is made by any dissenting shareholder but such application is dismissed by the Tribunal.

In the given case, since application made by the dissenting shareholders has been dismissedby the Tribunal, A Ltd is bound to acquire all the shares of the dissenting shareholders i.e. entire 8% shareholding.

Since A Ltd acquired only 5% shareholding of the dissenting shareholders, this is in contravention of Section 235 of the Companies Act, 2013. Hence, the takeover of B Ltd. by A Ltd. is invalid.

6.Prevention of Oppression and Mismanagement

Section A- Test Your Knowledge

(1)Due to the impending recession, the profits of Super Star Car Manufacturers Limited decreased considerably for the financial year 2020-2021 and therefore, its Board of Directors did not recommend any dividend for the year. At the Annual General Meeting of Super Star Car Manufacturers Limited, a group of shareholders objected to the Board's decision of not recommending any dividend and coerced the directors to reverse such decision. On refusal bythe Board, the disappointed members felt oppressed and filed a complaint with the National Company Law Tribunal (NCLT) against the action of the Board. In the given scenario, which option out of the four mentioned below, is the most appropriate:

(a) The contention of the shareholders of Super Star Car Manufacturers Limited who filed a complaint with NCLT against the action of the Board for not recommending dividend shallbe tenable.
(b) The action of the Board of Directors of Super Star Car Manufacturers Limited, not to recommend any dividend shall amount to oppression and mismanagement.
(c) The action of the Board of Directors of Super Star Car Manufacturers Limited who actedin the interest of the company by not recommending any dividend shall not amount to oppression and mismanagement.
(d) Both (a) and (b).

Ans 1: (c)

(2)The shareholders of Viable Plastic Industries Limited passed a special resolution at the Extra- ordinary General (EGM) of the company to alter the Articles of Association and empower Board of Directors to transfer the shares of any shareholder who competes with the business of the company. Mr. Akshat, one of the minority shareholders of Viable Plastic Industries Limited who was carrying on a competing business of manufacturing plastic bottles and containers as well as marketing them, challenged the validity of the alteration to be made in the Articles of Association and claimed such action as oppression against minority. Which of the option from the following four is applicable in the given situation?

(a) The action of Mr. Akshat challenging the validity of the alteration to be made in the Articles of Association and claiming such action as oppression against minority is not valid since the Articles are being altered after following the due process of law.

(b) The action of Mr. Akshat challenging the validity of the alteration to be made in the Articles of Association and claiming such action as oppression against minority is not valid since the Articles are being altered in the interest of the company.
(c) The action of Mr. Akshat challenging the validity of the alteration to be made in the Articles of Association and claiming such action as oppression against minority is valid since the act complained of is oppressive and prejudicial to the interest of the company.
(d) Both (a) and (b)

Ans 2: (d)

(3)Meenu Automotive Private Limited, whose issued and paid-up share capital is ₹ 1,00,00,000 consisting of 1,00,000 lakh equity shares of ₹ 100 each, has 150 shareholders as per its Register of Members. Some of the shareholders are contemplating to file an application before the National Company Law Tribunal (NCLT) alleging various acts of fraud and mismanagement. Which of the following options correctly indicates as to who can apply to the National Company Law Tribunal (NCLT) for relief against oppression and mismanagement happening in a company having share capital:

(a) In the above case such shareholders who are contemplating to file an application beforethe National Company Law Tribunal (NCLT) alleging various acts of fraud and mismanagement must be minimum one hundred and twenty five or not less than one-fifth of the total number of members, whichever is more, or any member or members holding at least one-fifth of the issued share capital on which all the calls have been paid.
(b) In the above case such shareholders who are contemplating to file an application before the National Company Law Tribunal (NCLT) alleging various acts of fraud and mismanagement must be minimum fifty or not less than one-tenth of the total number of members, whichever is more, or any member or members holding at least one-fifteenth of the issued share capital on which all the calls have been paid.
(c) In the above case such shareholders who are contemplating to file an application beforethe National Company Law Tribunal (NCLT) alleging various acts of fraud and mismanagement must be minimum seventy five or not less than one-fifth of the total number of members, whichever is less, or any member or members holding at least one- twentieth of the issued share capital on which all the calls have been paid.
(d) In the above case such shareholders who are contemplating to file an application beforethe National Company Law Tribunal (NCLT) alleging various acts of fraud and mismanagement must be minimum one hundred or not less than one-tenth of the total number of members, whichever is less, or any member or members holding at least one- tenth of the issued share capital on which all the calls have been paid.

Ans 3: (d)

(4)The issued and paid-up equity share capital of Golden Kalash Clothes Private Limited is ₹1,00,00,000 (10,00,000 equity shares of ₹ 10 each) which is held by ten shareholders. Jasmine holds 80,000 equity shares worth ₹ 8,00,000. Sensing oppression and mismanagement in the company, she is contemplating to apply to the National Company Law Tribunal (NCLT) for relief.

Out of the following four options which one is applicable in the given situation:

(a) Jasmine being a single member cannot apply for relief against oppression andmismanagement propagated by Golden Kalash Clothes Private Limited since at least 60% of total shareholders must apply for such relief i.e. at least 6 shareholders in the present case.

(b) Jasmine cannot apply to the National Company Law Tribunal (NCLT) for relief against oppression and mismanagement since she is holding 80,000 equity shares worth ₹ 8,00,000 which is less than one-tenth of the issued and paid-up equity share capital of Golden Kalash Clothes Private Limited.

(c) Jasmine, being one-tenth of the total number of shareholders, can apply to the National Company Law Tribunal (NCLT) for relief against oppression and mismanagement propagated by Golden Kalash Clothes Private Limited.

(d) Jasmine, being a single member, cannot apply for relief against oppression and mismanagement propagated by Golden Kalash Clothes Private Limited since at least 50% of total shareholders must apply for such relief i.e. at least 5 shareholders in the present case.

Ans 4: (c)

(5)For the past five years Mr. Rohtash was the holder 5,500 shares of Delta Software Solutions Ltd. which has issued share capital of ₹ 5,00,000 divided into 50,000 shares of ₹ 10 each. Mr. Rohtash was in the knowledge of some material changes that had taken place in Delta Software Solutions Ltd. and according to him they were prejudicial to the interest of members as well as the company.To contain the directors from continuing with unjustified changes, he wanted to make an application to the jurisdictional National Company Law Tribunal (NCLT) under Section 241 of the Companies Act, 2013. However, before Mr. Rohtash could proceed further and file the application with NCLT, he expired within one hour because of severe heart attack. Immediately thereafter, his only son Umang, a child specialist working in the Government Hospital, inherited his 5,500 shares.Is it possible for Umang to file an application with the jurisdictional National Company Law Tribunal (NCLT) highlighting the conduct of the affairs of the company in a manner which is prejudicial to the interest of members as well as the company. Choose the correct option from those given below whether Umang can proceed further:

(a) Though Mr. Rohtash was eligible under Section 244 of the Companies Act, 2013 to make an application to the jurisdictional National Company Law Tribunal (NCLT) but his son Umang cannot file the application because he has not yet completed six months as holder of the shares which he inherited after the death of his father Mr. Rohtash.

(b) Though Mr. Rohtash was eligible under Section 244 of the Companies Act, 2013 to makean application to the jurisdictional National Company Law Tribunal (NCLT) but his son Umang cannot file the application because he has not yet completed four months as holder of the shares which he inherited after the death of his father Mr. Rohtash.

(c) Though Mr. Rohtash was eligible under Section 244 of the Companies Act, 2013 to make an application to the jurisdictional National Company Law Tribunal (NCLT) but his son Umang cannot file the application because he has not yet completed three months as holder of the shares which he inherited after the death of his father Mr. Rohtash.

(d) Since Mr. Rohtash was eligible under Section 244 of the Companies Act, 2013 to make an application to the jurisdictional National Company Law Tribunal (NCLT), his son Umangcan also file the application because he has inherited the 5,500 shares after the death ofhis father Mr. Rohtash.

Ans 5: (d)

(6)Mr. Derek Jonathan, a majority shareholder, represented himself to be the Managing Director of Floyd Ceramics Ltd., and also discharged the functions in the capacity as Managing Director. However, he was not formally appointed as Managing Director of Floyd Ceramics Ltd. A group of six members, holding 1/12th of the issued share capital, which amounted to 1/10th of paid-upshare capital of the company filed an application with the National Company Law Tribunal (NCLT) claiming that such an act of Mr. Derek Jonathan constituted oppression. The total number of members of Floyd

Ceramics Ltd. are seventy-two. Which of the following statements is the most appropriate one in the above-mentioned situation?

(a) The group of six members cannot file an application with National Company Law Tribunal (NCLT) as the strength of members is less than 1/10th of total number of members of Floyd Ceramics Ltd. However, after filing the application with NCLT, it is within the discretion of NCLT to allow the application to be filed even with fewer number of members.
(b) The group of six members cannot file an application with National Company Law Tribunal (NCLT) since the members hold less than 1/10th of the issued share capital of the company.
(c) The group of six members cannot file an application with the National Company Law Tribunal (NCLT) since the given fact pattern does not constitute oppression.
(d) Since the group of six members holds 1/10th of the paid-up share capital of the company, they can file an application with the National Company Law Tribunal (NCLT).

Ans 6: (c)

Section B- Descriptive Questions

(1)ABC Private Limited having share capital has eight shareholders. Can a member holding less than one-tenth of the share capital of the company apply to the Tribunal for relief against oppression and mismanagement? Give your answer according to the provisions of the Companies Act, 2013.

Ans 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.

In the given case, there are eight shareholders in ABC Private Limited. As per the condition (a) above, 10% of 8 i.e. 1 member can apply to the Tribunal. Therefore, a single member can present a petition to the Tribunal, regardless of the fact that he holds less than one-tenth of the company's share capital.

(2)The issued and paid up capital of MNC Limited is ₹ 5 crores consisting of 5,00,000 equity shares of ₹ 100 each. The said company has 500 members. A petition was submitted before the Tribunal signed by 80 members holding 10,000 equity shares of the company for the purpose of relief against oppression and mismanagement by the majority shareholders. Examining the provisions of the Companies Act, 2013, decide whether the said petition is maintainable. Also explain the impact on the maintainability of the above petition, if subsequently 40 members, who had signed the petition, withdraw their consent.

Ans 2: As per the provisions of Section 244 of the Companies Act, 2013, in the case of a company having share capital, members eligible to apply for oppression and mismanagement shall be lower of the following:

100 members; or

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

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

The share holding pattern of MNC Limited is as follows:

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

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

(i) No. of members making the petition – 80
(ii) Amount of share capital held by members making the petition – ₹ 10,00,000 The petition shall be valid if it has been made by the lowest of the following:

100 members; or

50 members (being $1/10^{th}$ of 500); or

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

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

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

(3)A group of shareholders consisting of 25 members decide to file a petition before the Tribunal for relief against oppression and mismanagement by the Board of Directors of Fly By Night Operators Ltd. The company has a total of 300 members and the group of 25 members holds one-tenth of the total paid-up share capital accounting for one-fifteenth of the issued share capital. The main grievance of the group is that due to mismanagement by the Board of Directors, the company is incurring losses and the company has not declared any dividends even when profits were available in the past years for declaration of dividend. In the light of the provisions of the Companies Act, 2013, advise the group of shareholders regarding the success of (i) getting the petition admitted and (ii) obtaining relief from the Tribunal.

Ans 3: Section 244 of the Companies Act, 2013 provides the right to apply to the Tribunal for relief against oppression and mis-management. This right is available only when the petitioners hold the prescribed limit of shares as indicated below:

(i) In the case of company having a share capital, not less than 100 members of the Company or not less than one tenth of the total number of its members whichever is less or any member or members holding not less than one tenth of the issued share capital of the company, provided that the applicant(s) have paid all calls and other dues on the shares.
(ii) In the case of company not having share capital, not less than one-fifth of the total number of its members.

Since the group of shareholders do not number 100 or hold 1/10th of the issued share capital or constitute 1/10th of the total number of members, they have no right to approach the Tribunal for relief.

However, .the Tribunal may, on an application made to it waive all or any of the requirements specified in (i) or (ii) so as to enable the members to apply under section 241.

As regards obtaining relief from Tribunal, continuous losses cannot, by itself, be regarded as oppression (Ashok Betelnut Co. P. Ltd. vs. M.K. Chandrakanth).

Similarly, failure to declare dividends or payment of low dividends also does not amount to oppression. (Thomas Veddon V.J. vs. Kuttanad Robber Co. Ltd).

Thus, the shareholders may not succeed in getting any relief from Tribunal.

(4)A group of members of XYZ Limited has filed a petition before the Tribunal alleging various acts of oppression and mismanagement by the majority shareholders of the company. The Petitioner group holds 12% of the issued share capital of the company. During the pendency of the petition, some of the petitioners holding about 5% of the issued share capital of the company wish to disassociate themselves from the petition and they along with the other majority shareholders have submitted before the Tribunal that the petition may be dismissed on the ground of non-maintainability. Examine their contention having regard to the provisions of the Companies Act, 2013.

Ans 4: The argument of the majority shareholders that the petition may be dismissed on the groundof non-maintability is not correct. The proceedings shall continue irrespective of withdrawal of consent by some petitioners. It has been held by the Supreme Court in Rajmundhry Electric Corporation vs. V. Nageswar Rao, AIR (1956) SC 213 that if some of the consenting members have subsequent to the presentation of the petition withdraw their consent, it would not affect the right of the applicant to proceed with the petition. Thus, the validity of the petition must be judged on the facts as they were at the time of presentation. Neither the right of the applicants to proceed with the petition nor the jurisdiction of Tribunal to dispose it of on its merits can be affected by events happening subsequent to the presentation of the petition.

(5)A group of members holding 380 lakh issued share capital in Zolo Tech Ltd. a listed public company having total issued share capital of 15000 lakhs as per latest financial statements alleged that company Board of Directors is conducting an act which is ultra vires the Articles or Memorandum of the company without altering the Memorandum or Articles of the company. They make an application to Tribunal (NCLT) to restrain the company from doing such ultra- vires act. With reference to the provision of Companies Act, 2013 ascertain whether the application will be admitted by tribunal (NCLT).

Ans 5: According to section 245 of Companies Act, 2013, such number of member or members, depositor or depositors or any class of them, as the case may be, as are indicated in sub- section (2) may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for seeking an order, to restrain the company from committing an act which is ultra- vires the Articles or Memorandum of the company.

Requisite number of members to make Application under Section 245 (1) for Class Action for depositors is as prescribed in Rule 84 (4) of the National Company Law Tribunal Rules, 2016. Accordingly, in case of a company having a share capital the requisite number of member or members to file an application under section 245 shall be:-

(a) at least five per cent. of the total number of members of the company; or
(b) one hundred members of the company, whichever is less; or
(c) In case of a listed company, member or members holding not less than two per cent.of the issued share capital of the company.

In the above case, members holding 2.53% (380/15000*100) of issued share capital of Zolo Tech Ltd. which is a listed company make an application before Tribunal (NCLT). Hence as members meet condition of 2% of issued share capital, therefore their application can be admitted by the NCLT.

7.Winding Up

Section A- Test Your Knowledge

(1)A petition of winding up was filed against Raman Technology Ltd. under section 272 of the Companies Act, 2013. The Tribunal appointed a Company Liquidator and passed a windingup order on 20th of January 2023. As per the requirement of the Companies Act, 2013, state the correct statement with respect to submission of the Liquidator's report to the Tribunal:

a) Liquidator shall submit its report to Tribunal within 30 days of its appointment by Tribunal.
b) Liquidator shall submit its report to Tribunal within 45 days from winding up order.
c) Liquidator shall submit its report to Tribunal within 60 days from winding up order.
d) Liquidator shall submit its report to Tribunal within 90 days of its appointment by Tribunal.

Ans 1: (c)

(2)The order for the winding up of a company shall operate in favour of:

a) All contributories of the company
b) All the creditors of the company
c) All the contributories and the creditors of the company
d) The Central/State Government

Ans 2: (c)

(3)Mr. Raghav was appointed as Provisional Liquidator for X Ltd. against which an application for winding up was filed before the Tribunal. It is noteworthy that Mr. Raghav was having a shareholding in the same company. Enumerate the legal position of Mr. Raghav in the said condition in the light of the provisions related to its appointment in X Ltd. as per theCompanies Act, 2013:

a) Mr. Raghav cannot be appointed in X Ltd. because of having a shareholding in thesame company.
b) Mr. Raghav can be appointed in X Ltd. irrespective of his interest in the companybecause of his prior shareholding in the company before appointment.
c) Mr. Raghav can be appointed in X Ltd. with the prior intimation to the Tribunal.
d) Mr. Raghav can be appointed in X Ltd. by disclosing his shareholding by filing ofdeclaration within 7 days from the date of his appointment by the Tribunal.

Ans 3: (d)

(4)State, which amongst the following grounds, is incorrect for removal of the ProvisionalLiquidator or the Company Liquidator, as liquidator of the company:

a) Independent working having no conflict of interest.
b) Professional incompetence or failure to exercise due care and diligence inperformance of the powers and functions
c) Misconduct
d) Fraud or misfeasance

Ans 4: (a)

(5)The Periodical reports made by the Company Liquidator to the Tribunal with respect to the progress of the winding up, to be submitted at the end of each…….., may be reviewed by ……on an application by ……..

a) Quarter, Tribunal, Central Government
b) Half Year, Tribunal, Company Liquidator
c) Financial Year, Advisory Committee, Tribunal
d) Quarter, Tribunal, Company Liquidator

Ans 5: (d)

Section B- Descriptive Questions

(1)Info-tech Overtrading Ltd. was ordered to be wound up compulsory by an order dated 10thMarch, 2022 by the Tribunal. The official liquidator who had taken control of the assets and other records of the company had noticed the following:

The Managing Director of the company had sold certain properties belonging to the company to a private company in which his son was interested causing loss to the company to the extent of INR 50 lakhs. The sale took place on 15th October, 2021.

Examine what action the official liquidator can take in this matter, having regard to the provisions of the Companies Act, 2013.

Ans 1: The official liquidator can invoke the provisions contained in Section 328 of the Companies Act, 2013 to recover the assets of the company so sold. According to Section 328, if the Tribunal is satisfied that there is a preference transfer of property, movable or immovable, or any delivery of goods, payment, execution made, taken or done by or against a company within six months before making winding up application, the Tribunal may order as it may think fit and may declare such transaction invalid and restore the position.

Since in the present case, the sale of immovable property took place on 15th October, 2021 and the company went into liquidation on 10th March, 2022 i.e., within 6 months before the winding up of the company and since the sale has resulted in a loss of INR 50 lakhs to the company.

The official liquidator will be able to succeed in proving the case under Section 328 by way of fraudulent preference as the property was sold to a private company in which the son ofthe Managing Director was interested.

Hence, the transaction made will be regarded as invalid and the position will be restored asif no transfer of immovable property had been made.

(2)XYZ Limited is being would up by the Tribunal. All the assets of the company have been charged to the company's bankers to whom the company owes ₹ 5 crores. The company owes following amounts to others:

Dues to workers – ₹ 1,25,00,000

Taxes Payable to Government – ₹ 30,00,000

Unsecured Creditors – ₹ 60,00,000

You are required to compute with the reference to the provisions of the Companies Act, 2013 the amount each kind of creditors is likely to get if the amount realized by the official liquidatorfrom the sale of secured assets and available for distribution among creditors is only ₹4,00,00,000/-.

Ans 2: Section 326 of the Companies Act, 2013 talks about the overriding preferential payments to be made from the amount realized from the assets to be distributed to various kind of creditors. According to the proviso given in section 326 the security of every secured creditor shall be deemed to be subject to a *pari passu* charge in favour of the workmen to the extent of their portion.

$$\text{Workmen's Share to Secured Assets} = \frac{Amount\ Realised * Workmen's\ Dues}{Workmen's\ Dues + Secured\ Loan}$$

$$\text{Workmen's Share to Secured Assets} = \frac{40000000 * 12500000}{12500000 + 50000000}$$

$$= 40000000 * \frac{1}{5}$$

Workmen's Share to Secured Assets= 80,00,000

Amount available to secured creditor is ₹ 400 Lakhs – 80 Lakhs = ₹ 320 Lakhs

Hence, no amount is available for payment of government dues and unsecured creditors.

(3)Suman Info-tech Ltd. was ordered to be compulsory wound up by an order dated 10th March, 2022 by the Tribunal. The official liquidator who had taken control of the assets and other records of the company had noticed that:

(i)One of the contributories whose calls were pending to be paid is about to leave India to evade payment of calls and;

(ii)A person having books of accounts of the company in his possession might abscondto avoid examination of books of account in respect of the affairs of the company.

Apprehending such possibilities, Tribunal detained such contributory for next 6 months disallowing him to leave India as well as arrested and seized books of account from the person who might possibly abscond to avoid examination of the affairs of the company.

Referring to the provisions of Companies Act, 2013, answer the following in the current scenario:

(i)What is the validity of Tribunal's order for detention of contributory disallowing him to leave India?

(ii)Is it correct on Tribunal's part to arrest and seize books of accounts from the person planning to abscond to avoid examination of books of accounts in respect of the affairs of the company?

Ans 3: According to Section 301 of the Companies Act, 2013, at any time either before or after passing a winding up order, if the Tribunal is satisfied that

- a contributory or
- a person having property, accounts or papers of the company in his possession

is about to leave India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company,

the Tribunal may cause—

(a) the contributory to be detained until such time as the Tribunal may order; and
(b) his books and papers and movable property to be seized and safely kept until suchtime as the Tribunal may order.

In the instant case, by considering the above provisions:

(i) The Tribunal's order for detention of contributory for next 6 months disallowing him to leave India, is valid.
(ii) It is correct on the part of Tribunal to arrest and seize books of accounts from the person planning to abscond to avoid examination of books of accounts in respect of the affairs of the company.

(4)Due to an unprecedented flood, all the fixed assets of a Company were damaged extensively beyond renovation or repair. The costs of replacement of assets were huge and the sum insured on the fixed assets did not cover all the assets. Therefore, the operations of the Company were permanently discontinued. Meanwhile, based on a winding-up petition filed by the secured creditors, the High Court passed a winding-up order. The workers of the Company opposed the winding-up petition and also filed an appeal against the winding-up order. The workers were not sure whether their appeal would be heard in the winding-up proceedings. Examine,

under the provisions of the Companies Act, 2013, whether the appeal filed by the workers would succeed and their dues / interest will be protected in priority?

Ans 4: According to section 279 of the Companies Act, 2013, when a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose.

It is further provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.

However, the above provision shall not apply to any proceeding pending in appeal before the Supreme Court or a High Court.

According to section 325/326/327 of the Companies Act, 2013, in the winding up of a company under this Act, the workmen's dues shall be paid in priority to all other debts ranking pari passu with secured creditors.

As per the facts of the case, the High Court has already passed a winding up order of the company. Hence, the workmen can appeal against the winding up order but only with the leave of the Tribunal and subject to such terms as the Tribunal may impose. Further, the dues/ interest of the workmen will be protected in priority as workmen's dues shall be paid in priority to all other debts ranking pari passu with secured creditors.

(5)Clarks Clocks Limited, has made default in filing financial statements and annual returns fora continuous period of four financial years ending on 31st March, 2022. The Registrar of Companies having jurisdiction approached the Central Government to accord sanction to present a petition to Tribunal (NCLT) for the winding up of the company in accordance with the above ground under Section 272 of the Companies Act, 2013.

Examine the validity of the action of ROC, keeping in view the relevant provisions of the Companies Act, 2013. State the time limit for passing an order by the Tribunal under Section 273 of the Companies Act, 2013?.

Ans 5: Validity of ROC's action: According to Section 271(d) of the Companies Act, 2013, a Company may, on a petition under Section 272, be wound up by the Tribunal, if the Company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years.

In the instant case, the move by RoC to present a petition to Tribunal for the winding up of Clarks Clocks Limited is not valid as the Company has made default in filing financial statements and annual returns for a continuous period of four financial years ending on 31st March, 2022.

Time limit for passing of an Order under section 273: An order under section 273 of the Act shall be made within ninety days from the date of presentation of the petition.

8.Miscellaneous Provisions

Section A- Test Your Knowledge

(1)With an Authorised Capital of ₹ 45,00,000 (divided into 4,50,000 equity shares of ₹ 10 each) and issued and paid-up capital of ₹ 25,00,000 (divided into 2,50,000 equity shares of ₹ 10 each), Amber Prabhat Nidhi Limited incorporated in 2018 at Balaghat, Madhya Pradesh by Loknath, Premnath and other trusted people, wants to issue a certain number of preference shares to its members. Being the Financial Advisor of Amber Prabhat Nidhi Limited, you are required to advise regarding the quantum of Preference shares which can issued to the members by choosing the correct option from those given below:

a) Amber Prabhat Nidhi Limited can issue Preference Shares equivalent to Authorised Equity Share Capital after carrying out due amendment in the Capital Clause.
b) Amber Prabhat Nidhi Limited cannot issue Preference Shares.
c) Amber Prabhat Nidhi Limited can issue Preference Shares upto 50% of the Authorised Equity Share Capital after carrying out due amendment in the Capital Clause
d) Amber Prabhat Nidhi Limited can issue Preference Shares upto 75% of the Authorised Equity Share Capital after carrying out due amendment in the Capital Clause

Ans 1: (b)

(2)Who amongst the following may file an application for the restoration of the name of thecompany in the register of company and within the period of:

a) The Company itself and within 2 years from the date of passing of the order dissolving the company
b) The authorised officials of the company and within 2 years from the date of passing of the order dissolving the company
c) NCLT and within 3 years from the date of passing of the order dissolving the company
d) Any person aggrieved by an order of the Registrar and within 3 years from the date of passing of the order dissolving the company

Ans 2: (d)

(3)Within how many days authority will grant certificate of registration to the applicant to carryon the activities of a registered valuer?

a) within 30 days of the receipt of application, including the time given by the authority for presenting additional documents, information or clarification, or appearing in person, as the case may be.
b) within 45 days of receipt of the application, including the time given by the authority for presenting additional documents, information or clarification, or appearing in person, as the case may be.
c) within 60 days of receipt of the application, excluding the time given by the authority for presenting additional documents, information or clarification, or appearing in person, as the case may be.
d) within 90 days of receipt of the application, excluding the time given by the authority for presenting additional documents, information or clarification, or appearing in person, as the case may be

Ans 3: (c)

(4)A workman aggrieved by the company having its name struck off from the register of companies, applies to Tribunal for after 15 years of the publication of strikeoff of the name of the company in the gazette. Comment on the validity of filing of application by workman in the light of the companies Act, 2013:

a) Workman is not eligible to file an application for restoration of name of the company in the register of companies.
b) Only Company is eligible to file an application for restoration of name of the company in the register of companies but before expiry of 20 years of the notice from the publication in the Official Gazette.
c) Workman is eligible to file an application for restoration of name of the company in the register of companies but before expiry of 20 years of the notice from the publication in the Official Gazette.
d) Company, member, creditor or a workman are eligible to file an application for restoration of name of the company in the register of companies but after expiry of 20 years of the notice from the publication in the Official Gazette.

Ans 4: (c)

(5)Pankaj Nidhi Limited, incorporated under section 406 of the Companies Act, 2013. Pankaj Nidhi Limited wants to enter into an agreement for acquiring another company by purchase of its securities. Now the management of the Pankaj Nidhi Limited is in dilemma with respect to the requirement of entering into such an agreement. Pankaj Nidhi Limited approached you to providewith the best course of action considering the provisions of the Companies Act, 2013.

a) As per the Nidhi Rules, 2014, Nidhi company can enter into an agreement for acquiring other company by purchase of its securities provided the Nidhi company has passed a special resolution in its general meeting and also obtained the previous approval of the Regional Director having jurisdiction over such Nidhi.
b) As per the Nidhi Rules, 2014, Nidhi Company can acquire or purchase securities of any other company or control the composition of the Board of Directors of any other company in any manner whatsoever or enter into any arrangement for the change of its management.
c) As per the Nidhi Rules, 2014, Nidhi company can enter into an agreement for acquiring other company by purchase of its securities provided the Nidhi company has passed a special resolution in its general meeting and have obtained the previous approval of the Registrar of Companies (ROC) having jurisdiction over such Nidhi.

d) As per the Nidhi Rules, 2014, Nidhi company can enter into an agreement for acquiring other company by purchase of its securities provided the Nidhi company has passed a special resolution in its general meeting or have obtained the previous approval of the Registrar of Companies (Roc) having jurisdiction over such Nidhi.

Ans 5: (b)

Section B - Descriptive Questions

(1)Explain the meaning of 'Fraud' in relation to the affairs of a company and the punishment provided for the same in Section 447 of the Companies Act, 2013.

Ans 1: As per the explanation given to section 447 of the Companies Act, 2013, 'Fraud' in relationto affairs of a company or anybody corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.

"Wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss" means, the loss by unlawful means of property to which the person losing is legally entitled.

Punishment:

(i) Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one per cent of the turnover of the company, whichever is lower, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.

(ii) Where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

(iii) However, where the fraud involves an amount less than ten lakh rupees or one per cent of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both.

(2)JKL Research Development Limited is a registered Public Limited Company. The company has a unique business idea emerging from research and development in a new area. However, it is a future project and the company has no significant accounting transactions and business activities at present. The company desires to obtain the status of a 'Dormant Company'. Advise the company regarding the provisions of the Companies Act, 2013 in this regard and the procedure to be followed in this regard.

Ans 2: The provisions related to the Dormant companies is covered under section 455 of the Companies Act, 2013. According to provisions-

1. a company is formed and registered under this Act for the purpose of a future project or to hold an asset or intellectual property and has no significant accounting transaction.
2. Such company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.
3. The Registrar shall allow the status of a dormant company to the applicant and issue a certificate after consideration of the application.
4. The Registrar shall maintain a register of dormant companies in such form as may be prescribed.

In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Register shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed. However, the Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.

Thus, JKL Research Development Limited may follow the above procedure to obtain the status of a 'Dormant Company'.

(3)Gulmohar Ltd. is a company registered in India for last 5 years. Since last 2 financial years, it has not been carrying on any business or operations and has not filed financial statements and annual returns saying that it has not made any significant accounting transaction during the last two financial years. Considering the current situation, Directors of the Company is contemplating to apply to Registrar of Companies to obtain status of dormant or inactive company. Advise them on:

Whether Gulmohar Ltd. is eligible to apply to Registrar of Companies to obtain dormant status for the company?

(i)Will your answer be different if Gulmohar Ltd is continuing payment of fees to Registrar of Companies and payment of rentals for its office and accounting records for last two financials years?

(ii)Is special resolution in general meeting a pre-requisite to make an application to Registrar of Companies for obtaining the status of dormant company?

(iii)What will be your answer if it is found after making an application of dormant company to Registrar of Companies that an investigation is pending against the company which was ordered 6 months ago?

Ans 3: (i) According to section 455 of the Companies Act, 2013, an inactive company may makean application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

Here, "inactive company" means a 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.

Gulmohar Ltd., since from last two years is not carrying on business or operations and has not filed financial statements and annual returns saying it has not made any significant accounting transaction during the last two financial years. Thus, it falls within the definition of inactive company as stated above and hence is eligible to apply to Registrar of Companies to obtain the status of Dormant Company.

(ii) According to Explanation to section 455, "significant accounting transaction" means any transaction other than—

(1) payment of fees by a company to the Registrar;
(2) payments made by it to fulfill the requirements of this Act or any other law;
(3) allotment of shares to fulfill the requirements of this Act; and
(4) payments for maintenance of its office and records.

Thus, Gulmohar Ltd. is still eligible to apply to the Registrar of Companies to obtain the status of Dormant company even if it has continued 'payment of fees to Registrar of Companies and payment of rentals for its office and accounting records' for last two years, as these transactions have been kept outside the purview of significant accounting transactions.

(iii) According to the Rule 3 of the Companies (Miscellaneous) Rules, 2014, a company may make an application in prescribed form to the Registrar for obtaining the statusof a Dormant Company in accordance with the provisions of section 455 after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4thshareholders (in value).

Thus, special resolution is a pre- requisite to make an application to Registrar of Companies for obtaining the status of dormant company.

(iv) According to the Rule 3 of the Companies (Miscellaneous) Rules, 2014, a company shall be eligible to apply under this rule only, if no inspection, inquiry or investigation has been ordered or taken up or carried out against the company.

According to section 455(6), the Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of section 455.

In the given case, Gulmohar Ltd. was not eligible to apply for the status of a dormant company as an investigation was pending against the company which was ordered 6 months ago. But since, it has already made an application and then it came to the light about the pending investigation against the company, the Registrar shall not register it as a dormant company and if already registered as a dormant company, strike off the name of a dormant company from the register of dormant companies as the company has contravened the necessary requirements.

9.Compounding of Offences, Adjudication, Special Courts, National Company Law Tribunal and Appellate Tribunal

Section A- Test Your Knowledge

(1)As per the Companies Act, 2013, every petition filed before the Tribunal shall be disposed of:

(a) within 1 month from the date application is admitted
(b) within 2 months from the date of first hearing
(c) within 3 months from the date of its presentation
(d) within 6 months from its filing

Ans 1: (c)

(2)Trial of an offence under the Companies Act, by special court shall be of such an offence:

(a) which is punishable with imprisonment for a term exceeding one year
(b) which is punishable with imprisonment for a term not exceeding one year
(c) which is punishable with imprisonment for a term exceeding three years
(d) which is punishable with imprisonment for a term not exceeding three years

Ans 2: (d)

(3)Makhija Developers Limited, being unsatisfied with the order given by the NCLT, desires to prefer an appeal against the order of the NCLT. You, as a legal advisor to Makhija Developers Limited, are required to provide them with the best course of action available considering the provisions of the Companies Act, 2013.

(a) Makhija Developers Limited cannot prefer an appeal against an order passed by NCLT Mumbai u/s 9 of the Insolvency and Bankruptcy Code as Interim Resolution Professionalis already appointed.
(b) Makhija Developers Limited may be able to prefer an appeal against the order passed by NCLT Mumbai within a period of 45 days from the date of order of copy made available to Makhija Developers Limited.
(c) Makhija Developers Limited cannot prefer an appeal against an order passed by NCLT Mumbai u/s 9 of the Insolvency and Bankruptcy Code as reasonable opportunity of being heard was given to Makhija Developers Limited.

(d) Makhija Developers Limited may be able to prefer an appeal against the order passed by NCLT Mumbai within a period of 60 days from the date of order of copy made available to Makhija Developers Limited.

Ans 3: (b)

(4)Requisite number of shareholders of Vimaan Aerospace Limited, which has been incorporated under the Companies Act, 2013, filed an application with the National Company Law Tribunal (NCLT) under Section 241 highlighting the mismanagement in the conduct of the affairs of the company. Taking cognizance of the application, the National Company Law

Tribunal (NCLT) passed an order under Section 420 on November 23, 2021, providing the sought after relief to the shareholders of Vimaan Aerospace Limited. On finding some mistake in the order, the shareholders brought the same to the notice of NCLT for rectification. You are required to select the correct statement from those given below as to the circumstances under which NCLT would be able to amend its order and the maximum period which the said order can be amended:

(a) National Company Law Tribunal (NCLT) can amend its order to rectify any mistake apparent from the record when such mistake is brought to its notice by the parties and further, the order can be amended by NCLT at any time within a period of six monthsfrom the date of such order provided no appeal has been made against the said order.
(b) National Company Law Tribunal (NCLT) can amend its order to rectify any mistake apparent from the record when such mistake is brought to its notice by the parties and further, the order can be amended by NCLT at any time within a period of one year from the date of such order provided no appeal has been made against the said order.
(c) National Company Law Tribunal (NCLT) can amend its order to rectify any mistake apparent from the record when such mistake is brought to its notice by the parties and further, the order can be amended by NCLT at any time within a period of two years from the date of such order provided no appeal has been made against the said order.
(d) National Company Law Tribunal (NCLT) can amend its order to rectify any mistake apparent from the record when such mistake is brought to its notice by the parties and further, the order can be amended by NCLT at any time within a period of three years from the date of such order provided no appeal has been made against the said order.

Ans 4: (c)

Section B- Descriptive Questions

(1)In the annual general meeting of XYZ Ltd., while discussing on the matter of retirement and reappointment of director Mr. X, allegations of fraud and financial irregularities were levelled against him by some members. This resulted into chaos in the meeting. The situation was normal only after the Chairman declared about initiating an inquiry against the director. Mr. X, however, could not be re-appointed in the meeting. The matter was

published in the newspapers next day. On the basis of such news, whether the court can take cognizance of the matter and take action against the director on its own?

Justify your answer with reference to the provisions of the Companies Act, 2013.

Ans 1: Section 439 of the Companies Act, 2013 provides that offences under the Act shall be non- cognizable. As per this section:

1. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.
2. No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder or a member of the company, or of a person authorized by the Central Government in that behalf.

Thus, in the given situation, the court shall not initiate any Suo moto action against the director Mr. X without receiving any complaint in writing of the Registrar of Companies, a shareholder of the company or of a person authorized by the Central Government in this behalf.

(2)What is the object of Constituting Panel for Mediation and Conciliation under the Companies Act, 2013? Who can file application for mediation and conciliation?

Ans 2: Under section 442 of the Companies Act, 2013, it is provided that the Central Government shall maintain a panel of experts for mediation between the parties during pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under the Act. In common parlance, mediation means intervention of some third party in a dispute with the intention to resolve the dispute. Similarly, conciliation means the powers of adjusting or settling disputes in a friendly manner through extra judicial means. The object behind the panel is to dispose the matter pending before the Government / Tribunal as mentioned above.

Filing of application: Application for mediation and conciliation can be made by:

(A) any parties to the proceedings (It shall be accompanied with such fees and in suchform as may be prescribed)
(B) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, Suo moto refer any matter pertaining to such proceedingto such number of experts as it may deem fit.

(3)Mr. Joseph, a member of Armaments Ltd., is aggrieved due to failure of the company to make payment of dividend declared in the AGM held in August 2015. He makes a complaint, in writing, before the court of competent jurisdiction within the prescribed period of limitation, but the court refused to take cognizance of the alleged offence. Explain the legal position in this regard under the Companies Act, 2013.

Also state the offences under the Companies Act, 2013 which are cognizable and which are non-cognizable.

Ans 3: Cognizance of offence: A court shall take cognizance of any offence under this Act whichis alleged to have been committed by any company or any officer thereof only on the written complaint of -

(a) The Registrar,

(b) A shareholder of the company
(c) A member of the company, or
(d) Of a person authorised by the Central Government in that behalf.

Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorized bythe Securities and Exchange Board of India.

In the present case, Mr. Joseph, a member of Armaments Ltd. is aggrieved due to failure of the company to make payment of dividend declared in the AGM held in August 2015. He makes a complaint, in writing, before the court of competent jurisdiction within the prescribed period of limitation, but the court refused to take cognizance of the alleged offence.

Here, the Court shall take cognizance of the offence relating to nonpayment of dividend as the shareholder have made a complaint in writing before the competent jurisdiction.

Cognizable and non-cognizable offences: Overriding the provisions given under the Codeof Criminal Procedure, 1973, every offence under the Companies Act, 2013 except the offences referred to in section 212(6) of the Companies Act, 2013, which deals with the investigation into affairs of company by serious fraud investigation office, shall be deemed to be non-cognizable within the meaning of the said Code.

Therefore, the offences as covered under section 212(6) shall now be deemed to be cognizable where police officer may arrest person without warrant and are non-bailable. The Companies Act, 2013 establishes the offence covered under section 212(6) as a public wrong which has to be prevented and controlled. This non-bailable nature of the offences deter the offender and the others from committing further and similar offences.

(4)Excel Ltd. committed an offence under the Companies Act, 2013. The offences falls within the jurisdiction of a special court of Bundi district in which the registered office of Excel Ltd was situated. However, in that Bundi district, there were two special courts one in X placeand other in Y place. Identify the jurisdiction of special court for trial of an offences committed by Excel Ltd.

Ans 4: All offences which are punishable in this Act with imprisonment of 2 years or more, shall be triable only by the special court established for the area in which the registered office of the company in relation to which the offence is committed. According to section 436 where there are more special courts than one for such area, by such one of them as may be specified in this behalf by the High court concerned.

Accordingly, in the given case, there are more than one special court in Bundi district where registered office of Excel Ltd. is situated. The jurisdiction for trial in special court will be specified by H.C of the State (i.e. Rajasthan).

(5)Before imposing penalty, the adjudicating authority issued a show cause notice to the company and its officers on 15th July, 2020 to represent before the adjudicating authority. The notice was served on them on 31st July 2020. State the time period within which the company and its officers who were called upon may be present before the Adjudicating authority.

Ans 5: **Issue of written notice by an adjudicating officer:** Rule 3 of the Companies (Adjudication of Penalties) Rules, 2014 read with section 454 of the Companies Act, 2013, states that before adjudging penalty, the adjudicating officer shall issue a written notice in the specified manner-

- to the company and
- to officer of the co.mpany who is in default or
- any other person, as the case may be

to show cause, within such period as may be specified in the notice (not being less than fifteen days and more than thirty days from the date of service thereon), why the penalty should not be imposed on it or him.

Accordingly, the company and its officers shall be presented before the Adjudicating Authority on or before 30th August 2020 (being not more than 30 days from the date of service of notice thereon).

(6)On an application filed before Tribunal from one of the shareholder of Company, Tribunal (NCLT) passed order on 20th December 2019 without the consent of parties. Mr. Rama, one of the party to the proceeding whose family condition was not good so didn't take much interest in order of tribunal but after few days due to aggrieved by the order, he filed an appeal before Appellate Tribunal (NCLAT) on 15th March 2020 showing sufficient cause of delay for not filling appeal up to 45 days from the date of order. The Appellate Tribunal has passed an order dated 30th April 2020, Mr. Rama was not satisfied and made application to Supreme Court on 30th September 2020 against the order of the Appellate Tribunal.

Considering the given situation, examine whether Appeal filed before the Supreme Court is admissible after showing cause of delay.

Ans 6: According to Section 423 of the Companies Act, 2013, any person aggrieved by an order of the Appellate Tribunal may prefer an appeal to the Supreme Court on any question of law arising out of Appellate Tribunal's order.

Every appeal shall be filed within a period of 60 days from the date on which a copy of the order of the Appellate Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed.

Supreme Court may entertain an appeal even after the expiry of the said period of 60 days from the date aforesaid, but within a further period not exceeding 60 Days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within period.

In above case, since Mr. Rama even aggrieved by order of Appellate Tribunal filed application before Supreme Court on 30th September 2020. But as Supreme Court can entertain appeal only up to 60 days + 60 Days (Extension if sufficient cause). Since this appeal was filed beyond 120 days by Mr. Rama, so, appeal filed before the Supreme Court is not admissible.

MODULE 2

SECTION B: SECURITIES LAWS

1.THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT,1992

Section A- Test Your Knowledge

(1)Aayush, Bipin, Caroll & Co., a firm of Chartered Accountants, was appointed as statutory auditor of Ruchika Flavours Limited, a listed company, for the financial year 2019-20. Mr. Bipin is the engaging partner of the said audit with a team of fifteen members. While conducting audit of the financial statements of Ruchika Flavours Limited, two members of Mr. Bipin's team, who are Chartered Accountants, passed the information to their friends and relatives disclosing that the profits of Ruchika Flavours Limited for this year are increasing by 25% in comparison to the previous audited financial year. At the time of passing the information, it was not available in the public domain through the company. Certain personswho were in possession of this information, purchased the shares of Ruchika Flavours Limited at a low price. After the audited financial statements came into public domain, the market price of the shares increased sharply and they made profit by selling the shares, earlier purchased at low price, at the enhanced market price. You are required to select the correct option which indicates whether it is a case of insider trading or not and if it is a case of insider trading then the quantum of penalty that can be levied under the Securities and Exchange Board of India, Act, 1992.

a) It is not a case of insider trading since both the Chartered Accountants are part of statutory audit team and therefore, are not restricted to use any information relating to Ruchika Flavours Limited.
b) It is not a case of insider trading since the information disclosed by both the Chartered Accountants of statutory audit team is not a price-sensitive information.
c) It is a case of insider trading and therefore, the penalty leviable would be not less than ₹10 lacs but which may extend to ₹ 25 crores or three times of profits made out of insider trading, whichever is higher.
d) It is a case of insider trading and therefore, the penalty leviable would be not less than ₹ 25 crores or three times of profits made out of insider trading, whichever is lower.

Ans 1: (c)

(2)Akshara Builders and Developers Ltd., a company listed on BSE Limited, is contemplating upper revision in the rate of interest of its existing 12% bonds by 1% so as to make them 13% bonds with effect from August 14, 2021. The said proposal is to be laid before the Board of Directors at a Board Meeting to be held on July 14, 2021. From the following options, choose the one which correctly indicates the latest date by which Akshara Builders and DevelopersLtd. is required to intimate the BSE Limited about the Board Meeting where increase in rate of interest is being considered, keeping in view the Regulation 29 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015:

a) Akshara Builders and Developers Ltd. is required to intimate BSE Limited about the Board Meeting, where increase in rate of interest is being considered, latest by July 1, 2021.
b) Akshara Builders and Developers Ltd. is required to intimate BSE Limited about the Board Meeting, where increase in rate of interest is being considered, latest by July 3, 2021.
c) Akshara Builders and Developers Ltd. is required to intimate BSE Limited about the Board Meeting, where increase in rate of interest is being considered, latest by July 5, 2021.
d) Akshara Builders and Developers Ltd. is required to intimate BSE Limited about the Board Meeting, where increase in rate of interest is being considered, latest by July 7, 2021.

Ans 2: (b)

(3)W Ltd. made the following compliances for the June 2022 quarter, as required by SEBI(LODR) Regulations, 2015 :-

1) It submitted its unaudited quarterly financial statements to the recognised stock exchange on 31st July, 2022.
2) It submitted its quarterly compliance report on corporate governance on 10th July, 2022.

What shall be the last date of submission of quarterly financial statements to the stock exchange for W Ltd., in case W Ltd. was not able to submit the same on 31st July, 2022, and whether it can be submitted in unaudited form also?

a) 15th August, 2022 and no, it needs to be submitted in audited form.
b) 31st August, 2022 and yes, it can be submitted in unaudited form.
c) 31st July, 2022 and no, it needs to be submitted in audited form.
d) 15th August, 2022 and yes, it can be submitted in unaudited form.

Ans 3: (d)

(4)Mr. Amar is holding the post of directorship in following Listed entities- LE 1, LE 2, LE 3, LE4, LE 5 LE 6, and LE 7 as on January 2020. He received an offer of directorship from LE 8 in April 2020. Whether Amar can join the LE 8?

a) Yes, as per the SEBI(LODR)Regulation, directorship is restricted to 8 listed entities. Hence Mr. Amar can.
b) Yes, as per the SEBI(LODR)Regulation read with the companies Act, 2013, Mr. Amar can accept directorship in 10 listed compa.nies.
c) No, as per the SEBI(LODR)Regulation, directorship cannot be in more than sevenlisted entities with effect from April 1, 2020, Mr. Amar cannot.
d) Yes, as no restriction is marked on holding of directorship in the Listed companies.

Ans 4: (c)

(5)As per SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, noacquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise ____ of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company:

a) Ten percent or more
b) Twenty per cent or more
c) Twenty-five per cent or more
d) Fifty per cent or more

Ans 5: (c)

Section B- Descriptive Questions

(1)A group of complainants have alleged that Mr. Z, a Member of the Securities and Exchange Board of India (SEBI) has pecuniary interest in some of the cases that came up before the Board and that he misused his position and therefore, he should be removed from his office. The complainants seek your advice. Advise.

Ans 1: **Removal of Member of the SEBI (Section 6 of the Securities and Exchange Board of India Act, 1992)**

According to section 6 of the Securities and Exchange Board of India Act, 1992, the Central Government shall have the power to remove a member appointed to the Board, if he/she :

(i) is, or at any time has been adjudicated as insolvent;
(ii) is of unsound mind and stands so declared by a competent court;
(iii) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude.
(iv) has, in the opinion of the Central Government so abused his position as to render his continuance in office detrimental to the public interest.

Before removing a member, he will be given a reasonable opportunity of being heard in the matter.

In the present case, a group of complainants have alleged that Mr. Z, a member of the SEBI has pecuniary interest in some of the cases that came up before the Board and he misused his position and therefore, he should be removed from his office.

Here, above complainants may approach the Central Government for removal of Mr. Z, a member of the SEBI and if the Central Government is of the opinion that Mr. Z has so abused his position as to render his continuation in office detrimental to the public interest, the Central Government may remove Mr. Z from his office after giving him a reasonable opportunity ofbeing heard in the matter.

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

Ans 2: Price manipulation in the shares of ABC Ltd. can be considered as fraudulent and unfair trade practices relating to securities market. In this case SEBI may exercise the following powers under section 11(4) of securities and Exchange Board of India Act, 1992.

(i) Suspend the trading of any security (in this case the securities of ABC Ltd.) in a recognized stock exchange.
(ii) Restrain persons (in this case ABC Ltd.) from accessing the securities market. It can also prohibit any person associated with securities market (i.e. brokers who have indulged in price manipulation) to buy, sell or deal in securities market.

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

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

(3)Clever who is registered as an Intermediary fails to enter into an agreement with his clientand hence penalised by SEBI under section 15B of the SEBI Act. Advise Mr. Clever as to what remedies are available to him against the order of SEBI.

Ans 3: Remedies against SEBI order: Section 15B of the Securities and Exchange Board of IndiaAct, 1992 lays down that if any person, who is registered as an intermediary and is required under this Act or any rules or regulations made there under, to enterr into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Mr. Clever has been penalised under the above mentioned provision. Two remedies are available to Mr. Clever in this matter:-

(i) Appeal to the Securities Appellate Tribunal: Section 15T of the SEBI Act, (1) any person aggrieved, —

(a) by an order of the Board made, on and after the commencement of theSecurities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made there under; or
(b) by an order made by an adjudicating officer under this Act; or

(c) by an order of the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order made by the Board or the Adjudicating Officer or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be, is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

The Securities Appellate Tribunal shall send a copy of every order made by it to the Board, or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be the parties to the appeal and to the concerned Adjudicating Officer.

The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

(ii) **Appeal to the Supreme Court:** Section 15Z of the SEBI Act, 1992 provides that any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order to him on any question of fact or law arising out of such order. The Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

(4)A group of investors are upset with the functioning of two leading stock brokers of Calcutta Stock Exchange and want to make a complaint to SEBI for intervention and redressal of their grievances. Explain briefly the purpose of establishing SEBI and what type of defaults by thestock brokers come within the purview of SEBI Act, 1992.

Ans 4: The Securities and Exchange Board of India (SEBI) was established primarily for the purpose of

1. to protect the interests of investors in securities
2. to promote the development of securities market
3. to regulate the securities market and
4. For matters connected therewith and incidental thereto.

The following defaults by stock brokers come within the purview of SEBI Act:

(a) Any failure on the part of the stock broker to issue contract notes in the form and inthe manner specified by the Stock Exchange.

(b) Any failure on the part of the broker to deliver any security or to make payment of the amount due to the investor in the manner or within the period specified in the regulations.
(c) Any collection of charges by way of brokerage in excess of the brokerage as specified in the regulations. (Section 15 F, SEBI Act, 1992)

(5)Mr. Raman, an investor is not satisfied with the dealings of his stock broker who is registered with Delhi Stock Exchange. Mr. Raman approaches you to guide him regarding the avenues available to him for making a complaint against the stock broker under Securities and Exchange Board of India Act, 1992 and also the grounds on which such complaint can be made. You are required to briefly explain the answer to his queries.

Ans 5: Securities and Exchange Board of India (SEBI) was established for regulating the various aspects of stock market. One of its functions is to register and regulate the stock brokers. In the light of this, Mr. Raman is advised that the complaint against the erring stock broker may be submitted to SEBI.

The grounds on which or the defaults for which complaints may be made to SEBI are as follows:

(a) Any failure on the part of the stock broker to issue contract notes in the form andmanner specified by the stock exchange of which the stock broker is a member.
(b) Any failure to deliver any security or any failure to make payment of the amount dueto the investor in the manner within the period specified in the regulations.
(c) Any collection of charges by way of brokerage which is in excess of the brokeragespecified in the regulations.

(6)On the complaint of Mr. Kamlesh Gupta, after enquiry SEBI finds that Mr. P. Mehta, a Chief Executive Officer of the Company, on the basis of unpublished price sensitive information, has indulged in the trading of the securities of that company. Explain, on the basis of the said finding, what action SEBI can take against Mr. P. Mehta under the Securities and Exchange Board of India Act, 1992.

Ans 6: Section 15G of the Securities and Exchange Board of India (SEBI) Act, 1992 deals withpenalty for Insider Trading. According to this, if any insider

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate on any stock exchange on the basis of any unpublished price sensitive information; or
(ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary cause of business or under any law, or
(iii) counsels or procures for, any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information,

shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher. As such SEBI can, after following the prescribed procedure, impose a penalty on Mr. P. Mehta. The maximum penalty that SEBI can impose is Rupees twenty-five crores or three times the amount of profits made out of insider trading, whichever is higher.

(7)Securities and Exchange Board of India (SEBI) has undertaken inspection of books of accounts and records of LR Ltd., a listed public company. Specify the measures which may be taken by SEBI under the Securities and Exchange Board of India Act, 1992 to protect the interest of investors and securities market, on completion of such inquiry.

Ans 7: As per section 11 (4) of the Securities and Exchange Board of India Act, 1992, the Board may, by an order, for reasons to be recorded in writing, in the interest of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

1. suspend the trading of any security in a recognised stock exchange;
2. restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;
3. suspend any office-bearer of any stock exchange or self-regulatory organization from holding such position;
4. impound and retain the proceeds or securities in respect of any transaction which is under investigation;
5. attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached.

6. direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation.

The amount disgorged, pursuant to a direction issued, under the SEBI Act or the Securities Contracts (Regulation) Act, 1956 or the Depositories Act, 1996, as the case may be-

- shall be credited to the Investor Protection and Education Fund (IPEF) established by the Board, and
- such amount shall be utilised by the Board in accordance with the regulations made under this Act.".

Provided that the Board may take any of the measures specified in clause (d) or clause

(e) or clause (f), in respect of any listed public company or a public company (notbeing intermediaries referred to in section 12) which intends to get its securities listedon any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market :

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.

Penalty: The Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.

(8)Mr. S, a member of MN Ltd., obtained an order from the Securities and Exchange Board of India (SEBI) against the company. But the company failed to redress the grievance of Mr. S within the time fixed. Consequently, SEBI imposed penalty on the company. The company, however, did not pay the penalty also. State how the penalty can be recovered from the company?

Ans 8: According to Section 28A of the Securities and Exchange Board of India Act, 1992, if a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement /certificate in the specified form specifying the amount due from the person and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:

a) attachment and sale of the person's movable property;
b) attachment of the person's bank accounts;
c) attachment and sale of the person's immovable property;
d) arrest of the person and his detention in prison;
e) appointing a receiver for the management of the person's movable and immovable properties.

The expression 'Recovery Officer' means any officer of the Board who may be authorized by general or special order in writing, to exercise the powers of a Recovery Officer. The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers.

(9)The composition of Audit Committee of M/s MKBTC Limited, an unlisted Public Company, as on 31-3-2019 comprised of 7 Directors including 4 Independent Directors. The majority of the members of the Audit Committee has the ability to read and understand the financial statements but none of them has accounting or related financial management expertise. The Company listed its Securities in a recognized Stock Exchange in the month of August 2019. Referring to the regulations of Securities and Exchange Board of India [Listing Obligations and Disclosure Requirements] Regulations 2015, decide whether the existing Audit Committee can continue after listing of its Securities?

Ans 9: Audit Committee: According to Regulation 18 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, every listed entity shall constitute a qualified and independent audit committee which shall have:

a) Minimum three directors as members.
b) At least Two-thirds of the members of audit committee shall be independent directors.
c) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

As per the facts of the question, M/s MKBTC Limited, listed its securities in a recognised stock exchange in the month of August, 2019. In order to comply with the requirements of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the company requires to do the following:

(i) The audit committee of M/s MKBTC Limited already has 7 directors as members, which is in compliance.
(ii) The audit committee has 4 directors as independent directors. However, once the company gets listed, at least 5 [7*(2/3)] directors shall be independent directors. Thus, they need to change the composition of audit committee once the company gets listed on stock exchange.

(iii) In the existing audit committee though majority of the members have the ability to readand understand the financial statement but none of them has accounting or related financial management expertise. However, once the company gets listed it is required that all members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise. Hence, it is required that the company should appoint at least one member in the audit committee who shall have accounting or related financial management expertise.

In view of above, the existing audit committee cannot continue after listing of its securities.

(10)Mr. Zubin (Member of SEBI) was adjudged as an insolvent by the Adjudicating authority.As of that, a group of complainants have alleged that Mr. Zubin while rendering of his services in office may be biased in the performance of his duties. Working in such a state of position by him, may be detrimental to the public interest and so should be removed from his office. Advise in the given situation, the tenability of maintenance of complaint against Mr. Zubin.

Ans 10: According to section 6 of the Securities and Exchange Board of India Act, 1992, the Central Government shall have the power to remove a member appointed to the Board, if he/she:

(i) is, or at any time has been adjudicated as insolvent;
(ii) is of unsound mind and stands so declared by a competent court;
(iii) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude.
(iv) has, in the opinion of the Central Government so abused his position as to render his continuance in office detrimental to the public interest.

Before removing a member, he will be given a reasonable opportunity of being heard in the matter.

In the present case, a group of complainants have alleged that Mr. Zubin, a member of the SEBI is being adjudicated as an insolvent. His state of position may effect on rendering of his services in a biased manner. This may be unfavorable to the public interest and so should be removed from his office.

Here, above complainants may approach the Central Government for removal of Mr. Zubin, and if the Central Government is of the opinion that Mr. Zubin was not competent in rendering of his services/duties in a office as a member of the Board. The Central Government may remove Mr. Zubin from his office in compliance with the said provision.

PART II: ECONOMIC LAWS

1.The Foreign Exchange Management Act, 1999

Section A- Test Your Knowledge

(1)In September, 2020, Mr. Purshottam Saha visited Atlanta as well as Athens and thereafter, London and Berlin on a month-long business trip, for which he withdrew foreign exchange to the extent of US$ 50,000 from his banker State Bank of India, New Delhi branch. In December, 2020 he further, withdrew US$ 50,000 from SBI and remitted the same to his son Raviyansh Saha who was studying in Toronto, Canada. In the first week of January, 2021, he sent his ailing mother Mrs. Savita Saha for a specialised treatment along with his wife Mrs. Rashmi Sahato Seattle where his younger brother Pranav Saha, holder of Green Card, is residing. For the purpose of his mother's treatment and to help Pranav Saha to meet increased expenses, he requested his banker SBI to remit US$ 75,000 to Pranav Saha's account maintained with Citibank, Seattle. In February, 2021, Mr. Purshottam Saha's daughter Devanshi Saha got engaged and she opted for a 'destination marriage' to be held in August, 2021 in Zurich, Switzerland. While on a trip to Dubai in the last week of March, 2021, he again withdrew US$ 35,000 to be used by him and Devanshi Saha for meeting various trip expenses including shopping in Dubai. Later, the event manager gave an estimate of US$ 2,50,000 for the wedding of Devanshi Saha at Zurich, Switzerland. Which option do you think is the correct one in the light of applicable provisions of Foreign Exchange Management Act, 1999 including obtaining of prior approval, if any, from Reserve Bank of India since Mr. Purshottam Saha withdrew foreign exchange on various occasions from his banker State Bank of India.

a) In respect of withdrawal of foreign exchange on various occasions from his banker State Bank of India and remitting the same outside India during the financial year 2020-21, Mr. Purshottam Saha is not required to obtain any prior approval.
b) In respect of withdrawal of US$ 35,000 in the last week of March, 2021, for a trip to Dubai, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India since the maximum amount of foreign exchange that can be withdrawn in a financial year is US$ 1,75,000.
c) After withdrawing US$ 1,00,000, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India for the remaining remittances made during the financial year 2020-21, otherwise SBI would not have permitted further withdrawals.
d) After withdrawing US$ 50,000, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India for the remaining remittances made during the financial year 2020-21, otherwise SBI would not have permitted further withdrawals.

Ans 1: (a)

(2)M/s. Kedhar Sports Academy, a private coaching club, provides coaching for cricket, football and other similar sports. It coaches sports aspirants pan India. It also conducts various sports events and campaigns, across the country. In 2022, to mark the 25th year of its operation, a cricket tournament (akin to the format of T-20) is being organized by M/s. Kedhar Sports Academy in Lancashire, England, in the first half of April. The prize money for the 'winning team' is fixed at USD 40,000 whereas in case of 'runner-up', it is pegged at USD 11,000. You are required to choose the correct option from the four given below which signifies the steps to be taken by M/s. Kedhar Sports Academy for remittance of the prize money of USD 51,000 (i.e. USD 40,000+USD 11,000) to England keeping in view the relevant provisions of Foreign Exchange Management Act, 1999:

a) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Ministry of Human Resource Development (Department of Youth Affairs and Sports).
b) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Reserve Bank of India.
c) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is not required to obtain any prior permission from any authority, whatsoever, and it can proceed to make the remittance.
d) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Ministry of Finance (Department of Economic Affairs).

Ans 2: (c)

(3)Akash Ceramics Limited, an Indian company, holds a commercial plot in Chennai which it intends to sell. M/s. Super Seller, a real estate broker with its Head Office in the USA, has been appointed by Akash Ceramics Limited to find some suitable buyers for the said commercial plot in Chennai which is situated at a prime location. M/s. Super Seller identifies Glory Estate Inc., based out of USA, as the potential buyer. It is to be noted that Glory Estate Inc. is controlled from India and hence, is a 'Person Resident in India' under the applicable provisions of Foreign Exchange Management Act, 1999. A deal is finalised and Glory Estate Inc. agrees to purchase the commercial plot for USD 600,000 (assuming 1 USD = `70). According to the agreement, Akash Ceramics Limited is required to pay commission @ 7% of the sale proceeds to M/s. Super Seller for arranging the sale of commercial plot to Glory Estate Inc. and commission is to remitted in USD to the Head Office of M/s. Super Seller located in USA. Considering the relevant provisions of Foreign Exchange Management Act, 1999, which statement out of the four given below is correct (ignoring TDS implications arising under the Income-tax Act, 1961):

a) There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of commission upto USD 25,000 by Akash Ceramics Limited to M/s. Super Seller but for the balance commission of USD 17,000, prior permission of RBI is required to be obtained.
b) There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of commission upto USD 30,000 by Akash Ceramics Limited to M/s. Super Seller but for the balance commission of USD 12,000, prior permission of RBI is required to be obtained.
c) There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of entire commission of USD 42,000 by Akash Ceramics Limited to M/s. Super Seller.
d) It is mandatory to obtain prior permission of Reserve Bank of India (RBI) for remittance of entire commission of USD 42,000 by Akash Ceramics Limited to M/s. Super Seller.

Ans 3: (d)

(4)Mr. Raman, a non-resident Indian, has a Systematic Investment Plan (SIP) with a prominent Indian mutual fund. Due to some impending financial difficulties, he requested his elder brother Mr. Raghav, a resident Indian currently working as Manager in a multi-national company at Mumbai, to make payment of a few subsequent instalments of SIP on his behalf. Which option, do you think, correctly signifies whether Mr. Raghav is permitted to undertake such transaction of paying a few instalments of SIP on behalf of his nonresident brother considering the applicable provisions of the Foreign Exchange Management Act, 1999:

a) Mr. Raghav is not permitted to undertake such transaction of paying a few instalments of SIP on behalf of his non-resident brother since it amounts to payment for the credit of a nonresident person.
b) Mr. Raghav is permitted to undertake such transaction of paying a few instalments of SIP on behalf of his non-resident brother since Mr. Raman is his real brother.
c) Mr. Raghav is permitted to undertake such transaction of paying a few instalments of SIP on behalf of his non-resident brother only if his employer permits.
d) Mr. Raghav is permitted to undertake such transaction of paying a few instalments of SIP on behalf of his non-resident brother only if he obtains prior permission of Reserve Bank of India.

Ans 4: (a)

(5)Mohita Periodicals and Mags Publications Limited, having registered office in Chennai, has obtained consultancy services from an entity based in France for setting up a software programme to strengthen various aspects relating to publications. The consideration for such consultancy services is required to be paid in foreign currency. The compliance officer of Mohita Periodicals and Mags Publications Limited, Mrs. Ritika requires your advice regarding the foreign exchange that can be remitted for the purpose of obtaining consultancy services from abroad without prior approval of Reserve Bank of India. Out of the following four options, choose the one which correctly portrays the amount of foreign exchange remittable for the given purpose after considering the provisions of the Foreign Exchange Management Act, 1999 and regulations made thereunder:

a) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based inFrance without prior approval of RBI is US$ 50,000,000.
b) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based inFrance without prior approval of RBI is US$ 10,000,000.
c) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based inFrance without prior approval of RBI is US$ 5,000,000.
d) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based inFrance without prior approval of RBI is US$ 1,000,000.

Ans 5: (d)

(6)After five years of stay in USA, Mr. Umesh came to India at his paternal place in New Delhi on October 25, 2019, for the purpose of conducting business with his two younger brothers Rajesh and Somesh and contributed a sum of ` 10,00,000 as his capital. Simultaneously, Mr. Umesh also started a proprietary business of selling artistic brassware, jewelry, etc.

procured directly from the manufacturers based at Moradabad. Within a period of two months after his arrival from USA, Mr. Umesh established a branch of his proprietary business at Minnesota, USA. You are required choose the appropriate option with respect to residential status of Mr. Umesh and his branch for the financial year 2020-21 after considering the applicable provisions of the Foreign Exchange Management Act, 1999:

a) For the financial year 2020-21, Mr. Umesh and his branch established at Minnesota,USA, are both persons resident outside India.
b) For the financial year 2020-21, Mr. Umesh is a resident in India but his branchestablished at Minnesota, USA, is a person resident outside India.
c) For the financial year 2020-21, Mr. Umesh and his branch established at Minnesota,USA, are both persons resident in India.
d) For the financial year 2020-21, Mr. Umesh is a person resident outside India but his branch established at Minnesota, USA, is a person resident in India.

Ans 6: (c)

Section B- Descriptive Questions

(1)'Printex Computer' is a Singapore based company having several business units all over the world. It has a unit for manufacturing computer printers with its Headquarters in Pune. It has a Branch in Dubai which is controlled by the Headquarters in Pune. What would be the residential status under the FEMA, 1999 of printer units in Pune and that of Dubai branch?

Ans 1: Printex Computer being a Singapore based company would be person resident outside India [(Section 2(w)]. Section 2 (u) defines 'person' under clause (viii) thereof, as person would include any agency, office or branch owned or controlled by such person. The term such person appears to refer to a person who is included in clause (i) to (vi). Accordingly, Printex unit in Pune, being a branch of a company would be a 'person'.

Section 2(v) defines a person resident in India. Under clause (iii) thereof person resident in India would include an office, branch or agency in India owned or controlled by a person resident outside India. Printex unit in Pune is owned or controlled by a person resident outside India, and hence it, would be a 'person resident in India.'

However, Dubai Branch though not owned, is controlled by the Printer unit in Pune which is a person resident in India. Hence, the Dubai Branch is a person resident in India

(2)Mr. Sane, an Indian National desires to obtain Foreign Exchange for the following purposes:

(i)Remittance of US Dollar 50,000 out of winnings on a lottery ticket.

(ii)US Dollar 100,000 for sending a cultural troupe on a tour of U.S.A.

Advise him whether he can get Foreign Exchange and if so, under what conditions?

Ans 2: Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.

(i) In respect of item No.(i), i.e., remittance out of lottery winnings, such remittance is prohibited and the same is included in First Schedule to the Foreign ExchangeManagement (Current Account Transactions) Rules, 2000. Hence, Mr. Sane can not withdraw Foreign Exchange for this purpose.

(ii) Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and Culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Hence, in respect of item (ii), Mr. Sane can withdraw the Foreign Exchange after obtaining such permission.

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person as defined in Section 2(c) read with section 10 of the Foreign Exchange Management Act, 1999.

(3)State which kind of approval is required for the following transactions under the Foreign Exchange Management Act, 1999:

(i)X, a Film Star, wants to perform along with associates in New York on the occasion of Diwali for Indians residing at New York. Foreign Exchange drawal to the extent of US dollars 20,000 is required for this purpose.

(ii)R wants to get his heart surgery done at United Kingdom. Up to what limit Foreign Exchange can be drawn by him and what are the approvals required?

Ans 3: **Approval to the following transactions under FEMA, 1999**:

(i) Foreign Exchange drawals for cultural tours require prior permission/approval of the Ministry of Human Resources Development (Department of Education and Culture) irrespective of the amount of foreign exchange required. Therefore, in the given case X, the Film Star is required to seek permission of the said Ministry of the Government of India.

(ii) Individuals can avail of foreign exchange facility within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the expenses requires an approval from RBI. However in connection with medical treatment abroad, no approval of the Reserve Bank of India is required. Therefore, R can draw foreign exchange up to amount estimated by a medical institute offering treatment.

(4)Referring to the provisions of the Foreign Exchange Management Act, 1999, examine whether V, an exporter is bound to make declaration of a gift of Jewellery valued at ` 20,000 exported from India to United Kingdom.

Ans 4: In accordance with provisions of the FEMA, 1999 as contained in section 7 read with section 8, an exporter shall make appropriate declaration of the value of the goods being exported and he is also required to repatriate the foreign

exchange due ((to India in respect of such exports to India in the manner within the time as may be prescribed. Under section 8, the exporter is under an obligation to realise and repatriate to India such foreign. However, if there is an delay in the receipt of export, it will not be a violation which shall be punishable. Section 8 applies to a resident who shall take all the reasonable steps, depending upon the individual case.

There are certain categories of export for which declaration need not be made. These are given under the Regulation 4 of the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015. According to the regulation, export of goods by way of gift shall be accompanied by a declaration / undertaking by the exporter confirming that they are not more than five lakh rupees in value. Taking into consideration the above, since the value of gift of jewellery to V's friend in the United Kingdom is less than ` 5 lac in value, declaration (as per the format specified in the regulations) is not required to be furnished by the exporter to the specified authority.

(5)Referring to the provisions of the Foreign Exchange Management Act, 1999, state the kind of approval required for the following transactions:

(i)M requires U.S. $ 5,000 for remittance towards hiring charges of transponders.

(ii)P requires U.S. $ 2,000 for payment related to call back services of telephones.

Ans 5: Under section 5 of the Foreign Exchange Management Act, 1999, and Rules relating thereto, some current account transactions require prior approval of the Central Government, some others require the prior approval of the Reserve Bank of India, some are freely permitted transactions and some others are prohibited transactions. Accordingly,

(i) It is a current account transaction, where M is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.
(ii) Withdrawal of foreign exchange for payment related to call back services of telephone is a prohibited transaction. Hence, Mr. P cannot obtain US $ 2,000 for the said purpose.

(6)Suresh resided in India during the Financial Year 2013-14. He left India on 15th July, 2014 for Switzerland for pursuing higher studies in Biotechnology for 2 years. What would be his residential status under the Foreign Exchange Management Act, 1999 during the Financial Years 2014-15 and 2015-16?

Mr. Suresh requires every year USD 25,000 towards tuition fees and USD 30,000 for incidental and stay expenses for studying abroad. Is it possible for Mr. Suresh to get the required Foreign Exchange and, if so, under what conditions?

Ans 6: **Residential Status:** According to section 2(v) of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year [Section 2(v)(i)]. However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period.

Generally, a student goes out of India for a certain period. In this case, Mr. Suresh who resided in India during the financial year 2013-14 left on 15.7.2014 for Switzerland for pursuing higher studies in Biotechnology for 2 years, he will be resident as he has gone to stay outside India fora 'certain period' RBI has however clarified in its AP circular no.

45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies.

Mr. Suresh will be treated as person resident in India for Financial Year 2014-2015 till 16th July 2014 and from 17th July 2014, he will be considered as person resident outside India.

However, during the Financial Year 2015-2016, Mr. Suresh will be considered as person resident outside India as he left India on 15th July 2014.

Foreign Exchange for studies abroad: According to Para I of Schedule III to Foreign Exchange Management (Current Account Transactions), Amendment Rule, 2015 dated 26th May, 2015, individuals can avail of foreign exchange facility for the studies abroad within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit shall require prior approval of the RBI. Further proviso to Para I of Schedule III states that individual may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case the foreign exchange required is only USD 55,000 per academic year and hence approval of RBI is not required

7(i)Mr. P has won a big lottery and wants to remit US Dollar 20,000 out of his winnings tohis son who is in USA. Advise whether such remittance is possible under the Foreign Exchange Management Act, 1999.

(ii) Mr. Z is unwell and would like to have a kidney transplant done in USA. He would like to know the formalities required and the amount that can be drawn as foreign exchange for the medical treatment abroad.

Ans 7: Remittance of Foreign Exchange (Section 5 of the Foreign Exchange Management Act, 1999): According to section 5 of the FEMA, 1999, any person may sell or draw foreign exchange to or from an authorized person if such a sale or drawal is a current account transaction. Provided that Central Government may, in public interest and in consultation with the reserve bank, impose such reasonable restrictions for current account transactions as may be prescribed.

As per the rules, drawal of foreign exchange for current account transactions are categorized under three headings-

1. Transactions for which drawal of foreign exchange is prohibited,
2. Transactions which need prior approval of appropriate government of India for drawal of foreign exchange, and
3. Transactions which require RBI's prior approval for drawl of foreign exchange.

(i) Mr. P wanted to remit US Dollar 20,000 out of his lottery winnings to his son residing in USA. Such remittance is prohibited and the same is included in the Foreign Exchange Management (Current Account Transactions) Rules,2000.

Hence Mr. P cannot withdraw foreign exchange for this purpose.

(ii) "Remittance of foreign exchange for medical treatment abroad" requires prior permission or approval of RBI where the individual requires withdrawal of foreign exchange exceeding USD 250,000. The Schedule also prescribes that for the purpose of expenses in connection with medical treatment, the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalized Remittance Scheme, if so required by a medical institute offering treatment.

Therefore, Mr. Z can draw foreign exchange up to the USD 250,000 and no prior permission/ approval of RBI will be required. For amount exceeding the above limit, authorised dealers may release foreign exchange based on the estimate from the doctor in India or hospital or doctor abroad.

(8)Mr. Rohan, an Indian Resident individual desires to obtain Foreign Exchange for the following purposes:

(A)US$ 120,000 for studies abroad on the basis of estimates given by the foreign university.

(B)Gift Remittance amounting US$ 10,000.

Advise him whether he can get Foreign Exchange and if so, under what condition(s)?

Ans 8: **(A) Remittance of Foreign Exchange for studies abroad:** Foreign exchange may be released for studies abroad up to a limit of US $ 250,000 for the studies abroad withoutany permission from the RBI. Above this limit, RBI's prior approval is required. Further proviso to Para I of Schedule III states that individual may be allowed remittances exceeding USD 250,000 based on the estimate received from the institution abroad. In this case since US $ 120,000 is the drawal of foreign exchange, so permission of theRBI is not required.

(B) Gift remittance exceeding US $ 10,000: Under the provisions of Section 5 of FEMA 1999, certain Rules have been made for drawal of foreign exchange for current account transactions. Gift remittance is a current account transaction. Gift remittance exceeding US $ 250,000 can be made after obtaining prior approval of the RBI. In the present case, since the amount to be gifted by an individual, Mr. Rohan is USD 10,000, there is no need for any permission from the RBI.

2.The Foreign Contribution (Regulation) Act, 1999

Section A- Test Your Knowledge

(1)Alexander Philip, a foreign citizen, has made donations in kind to his known resident Indians for their personal use. When shall such donation in kind be excluded from the definition of 'foreign contribution' considering the relevant provisions of Foreign Contribution (Regulation) Act, 2010?

a) A donation in kind by a foreign citizen to a resident Indian shall be excluded from the definition of 'foreign contribution', if the market value, in India, of such article, on the date of such gift, is more than ₹ 1,00,000 but less than ₹ 5,00,000.
b) A donation in kind by a foreign citizen to a resident Indian shall be excluded from the definition of 'foreign contribution', if the market value, in India, of such article, on the date of such gift, is more than ₹5,00,000 but less than ₹10,00,000.
c) Any donation in kind given by a foreign citizen to a resident Indian for personal use is always excluded.
d) A donation in kind by a foreign citizen to a resident Indian shall be excluded from the definition of 'foreign contribution', if the market value, in India, of such article, on the date of such gift, is not more than ₹1,00,000.

Ans 1: (d)

(2)Mr. Vijay, Sanjay and Ajay are brothers. Mr. Sanjay who is professor reside in India, rest both the brothers settled in abroad. Mr. Sanjay on his 25th wedding anniversary received a gift from his elder brother who is American national currently. Gift includes i-phone and an old chain of their father, with attached emotional memories. I-phone in Indian rupee worth INRs1 lac 10 thousands, while chain worth INRs 80 thousand.

While younger brother of Mr. Sanjay who is British national and investment banker by profession, present him securities worth INRs 2 lacs.

Regarding the intimation of foreign contribution received by Mr. Sanjay, state the correct legal requirement in the light of the FCRA :

a) Intimation is required to be given to Central Government regarding any of the foreign contribution received by him within three months from the date of receipt of such contribution.
b) Intimation is required to be given to Central Government regarding the foreign contribution received by him with his brothers being more than limit of 1 Lakh within30 days from the date of receipt of such contribution.

c) Intimation is not required to be given to Central Government regarding the foreign contribution received by him with his brothers being less than the threshold limit of 10 Lakh whereas w.r.t. to chain of worth INR 80,000.
d) No Intimation is required to be given to Central Government regarding the foreign contribution received him as it was for personal use.

Ans 2: (c)

(3)The Certificate of registration for receiving foreign contribution was issued on 1st April, 2023 to Mr. X . What shall be the validity period for said registration:

a) 31st March 2025
b) 1st April 2026
c) 1st April, 2027
d) 31st March 2028

Ans 3: (d)

(4)Mr Raja, an office-bearer of a political party, receives foreign contribution of Rs. 9 lakh duringthe financial year 2022-2023 from his sister residing abroad. Mr. Raja is required to inform of such foreign contribution received to the Central Government within how many time period:

a) With in 30 days from the date of receipt of such foreign contribution
b) With in 3 months from the date of receipt of such foreign contribution
c) With in 6 months from the date of receipt of such foreign contribution
d) No intimation is required for such foreign contribution

Ans 4: (d)

(5)Mr. X has been found guilty of violation of the provisions of FCRA, 2010. What shall be the consequences w.r.t. the unutilised amount of foreign contribution?

a) Such unutilised amount of foreign contribution shall be forfeited.
b) Such unutilised amount of foreign contribution shall not be utilized, without the prior approval of the C.G
c) Such unutilised amount of foreign contribution shall not be utilized without the prior approval of the RBI.
d) Such unutilised amount of foreign contribution shall not be utilized till the settlement of penalty imposed

Ans 5: (b)

Section B- Descriptive Questions

(1)State under what circumstances Government can cancel the certificate of registration granted to a person under FCRA?

Ans 1: As per section 14 of the FCRA, Central Government may cancel the certificate, after carrying out an inquiry, on the following grounds –

a) the holder of the certificate has made an incorrect/false statement in the application for the grant of registration or renewal
b) the holder of the certificate has violated any of the terms and conditions of the certificate or renewal thereof
c) in the opinion of the Central Government, it is necessary in the public interest to cancel the certificate
d) the holder of the certificate has violated any of the provisions of this Act or rules or order made thereunder.
e) if the holder of the certificate has not been engaged in any reasonable activity in its chosen field for the benefit of the society for two consecutive years or has become defunct.

Any person whose certificate has been cancelled under this section shall not be eligible for registration or grant of prior permission for a period of three years from the date of cancellation of such certificate.

(2)X, an association having registration wishes to transfer the Foreign Contribution received byit to another organization? Can it do so? Is there any restriction on transfer of funds to other organisations?

Ans 2: As per amendment to Section 7 of FCRA, 2010, vide The Foreign Contribution (Amendment) Act, 2020;
No person who -

(a) is registered and granted a certificate or has obtained prior permission under this Act; and
(b) receives any foreign contribution,

shall transfer such foreign contribution to any other person.
Prior to amendment, foreign contribution could be transferred with the prior approval of the Central Government to such persons which did not possess the certificate of registration or prior permission. Further foreign contribution was also permitted to be transferred to any other person who was registered under FCRA, 2010 or had obtained prior permission. It can be seen that the legislature has placed a blanket prohibition on transfer of foreign contribution received by any person to any other person. The intention is to prevent recipients of foreign contribution acting as mere conduits or facilitating agents for obtaining foreign contributions.

(3)Can foreign contribution be received in and utilised from multiple Bank Accounts?

Ans 3: Yes. The foreign contribution should be received only in the exclusive single "FCRA account" of New Delhi Main Branch of SBI (also called designated FC account), as mentioned in the order for registration or prior permission granted and shall be independently maintained by the associations. Besides, this "FCRA Account", the association may also open "another FCRA Account" in any scheduled bank of its choice & link these accounts for transfer of foreign contribution. Also, one or more accounts (called Utilization Account) in one or more scheduled banks may be opened by the association for 'utilising' the foreign contribution after it has been received in the designated FCRA bank account, provided that no fund other than foreign contribution shall be received or deposited in such account or accounts and in all cases of any change, intimation in FC-6D is to be given online within 45 days of opening of such account.

(4)Can capital assets purchased with the help of foreign contributions be acquired in the name of the Mr Ram, an office bearer of the association?

Ans 4: No. Every asset purchased with foreign contribution should be acquired and possessed in the name of the association since an association has a separate legal entity distinct from its members.

(5)Mr. X, an individual of Indian origin but currently a citizen of a foreign country gives a donation. State whether the donation given by Mr. X will be treated as 'foreign contribution'?

Ans 5: Yes. Donation from a Person of Indian origin who has acquired foreign citizenship is treated as foreign contribution. This will also apply to Person of Indian Origin / Overseas Citizen of India cardholders. However, this will not apply to 'Non-resident Indians', who still hold Indian citizenship and they are not foreigners. Therefore, donation given by Mr. X, an individual of Indian origin with foreign nationality will be treated as foreign contribution.

(6)Mr. Rohit, a relative of Ms. Suman, who is residing in France remitted foreign contribution of Rs. 2 lakhs to her for arrangement of religious programme for the believers of Gurudev. Whether foreign remittances received from a relative are to be treated as foreign contribution as per FCRA, 2010?

Ans 6: No. As per Section 4(e) of FCRA, 2010 and Rule 6 of FCRR, 2011, even the personsprohibited under section 3, i.e., persons not permitted to accept foreign contribution, are allowed to accept foreign contribution from their relatives. However, in terms of Rule 6 of FCRR, 2011, any person receiving foreign contribution in excess of ten lakh rupees or equivalent thereto in a financial year from any of his relatives shall inform the Central Government regarding the details of the foreign contribution received by him in electronic form in Form FC-1 within three months from the date of receipt of such contribution.
Here in the given situation, since the amount remitted by Mr. Rohit is less than Rs. ten lakh, so Ms. Suman is not required to inform the Central Government.

(7)After giving a reasonable opportunity of being heard, Central Government cancelled the certification of registration of Toastea Ltd, a company registered under FCRA on the ground that such cancellation was in public interest. Two and a half years have passed since such cancellation. Company has submitted its written declaration not to involve in such activities again and requests restoration of the registration. Advise Toastea Ltd. on its eligibility for re- registration or grant of prior permission.

Ans 7: **Restoration of Registration:** As per section 14(3) of the Foreign Contribution (Regulation) Act, 2010, any person whose certificate has been cancelled under this section shall not be eligible for registration or grant of prior permission for a period of three years from the date of cancellation of such certificate.
In the instant case, Toastea Ltd. is not eligible for re-registration or grant of prior permission as only two and a half years have passed since such cancellation. So, restoration is not permissible as therequirement of three years cooling period from the date of cancellation of such certificate for re- registration is not complied with. Therefore Toastea Ltd. is advised to seek for fresh registration or grant of prior permission on the completion of three years from the date of cancellation.

(8)In the light of the provisions of the Foreign Contribution (Regulation) Act, 2010 examine and decide whether the following persons in India are permitted to receive the amount/articles in the following situations:
(i)M/s KG & Co.; a partnership firm obtained loan from a club registered in London for its business purpose.
(ii)Hello FM, a registered association, received funds from a foreign company forestablishing Frequency Model Radio Station to broadcast audio news.
(iii)Mr. Happy received a wrist watch as marriage anniversary gift from his uncle, a citizen of USA. The market value of the wrist watch is Rs. 25,000.

Ans 8: (i) As per Explanation 3 to section 2(1)(h)–Any amount received, by any person from any foreign source in India, by way of fee (including fees charged by an educational institution in India from foreign student) or towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce whether within India or outside India or any contribution received from an agent or a foreign source towards such fee or cost shall be excluded from the definition of foreign contribution within the meaning of this Thus the loan availed from a club registered in London will be covered under business hence excluded from definition of foreign contribution. However, the provisions of FEMA, 1999 shall apply and permissibility of availing foreign currency loan by a partnership firm needs to be evaluated.

(ii) As per section 3 of the FCRA, 2010, no foreign contribution shall be accepted by any association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programs through any electronic mode, or any other electronic form as defined in the Information Technology Act, 2000 or any other mode of mass communication; Accordingly, Hello FM is not permitted to receive any funds from a foreign company.

(iii) As per the provisions of the Foreign Contribution (Regulation) Act, 2010, "foreign contribution" means the donation, delivery or transfer made by any foreign source, of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf;(This sum has been specified as Rupees One lakh/-currently).
In the given situation, Mr. Happy received the wrist watch (market value Rs.25,000) as marriage anniversary gift from his uncle, a citizen of USA. Since, the value of the wrist watch is within the prescribed limit, hence, Mr. Happy is permitted to receive the article.

(9)Mr. Ramakant Hathi, an Indian Administrative Service (IAS) officer has received an invitation to visit Germany for representing India in an Annual Summit programme. Mr. Ramakant Hathi, on his visit has met with a sudden illness and received foreign hospitality of amount equivalent to INR 65,000 in the form of emergent medical treatment. Under the given scenario, you are required to advise Mr. Ramakant Hathi regarding his responsibility to intimate the receipt of Foreign Hospitality as per the provisions of the Foreign Contribution (Regulation) Act, 2010 and rules made thereunder.

Ans 9: As per section 6 of the Foreign Contribution (Regulation) Act, 2010, various categories of persons are required to take prior permission of the Central Government before accepting Foreign Hospitality, while visiting any country or territory outside India. Government servantsare one of such persons who are required to take prior permission. Provided it shall not be necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during a visit outside India.

Section 6 read along with Rule 7 of Foreign Contribution Rules 2011 and amendments thereto states that in case of emergent medical treatment aid needed on account of sudden illness during a visit abroad, the acceptance of foreign hospitality shall be required to be intimated to the Central Government within one month of such receipt in electronic form FC-2 giving full details including the source, approximate value in Indian rupees, and the purpose for which and the manner in which it was utilised. No such intimation is required if the value of such hospitality in emergent medical aid is upto one lakh rupees or equivalent.

Accordingly, Mr. Ramakant Hathi is not required to intimate such details of acceptance of foreign hospitality as the value of such hospitality in emergent medical treatment of foreign currency equivalent to INR 65,000 is within the limits specified in Rule 7 of Foreign Contribution (Regulation) Rules, 2011 of up to Rupees one lakh or equivalent.

(10)XYZ Foundation, a society registered under the Societies Registration Act, 1860, has received foreign contribution from a Mala Company LLC, a company incorporated in Singapore. XYZ Foundation deposited the amount of foreign contribution in a bank and earned interest on it. XYZ Foundation desires to invest maturity proceeds from deposits in mutual funds. You are required to advise whether XYZ Foundation is allowed to make such investment considering the provisions of the Foreign Contribution (Regulation) Act, 2010 (the Act) (Note: XYZ Foundation has obtained certificate of registration under section 11 of the Act).

Ans 10: As per section 8 of the Act, every person, who is registered and granted a certificate or given prior permission under this Act and receives any foreign contribution, shall utilise such contribution for the purpose for which the contribution has been received.

Further Rule 4 (1) of FCRR, 2011 defines speculative activities and includes instruments where there is an element of risk of appreciation or depreciation of the original investment.

Further as per the explanation 2 to the definition of foreign contribution under the Act, the interest accrued on the foreign contribution deposited in any bank referred to in section 17(1) or any other income derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution within the meaning of this clause.

Foreign contribution or any income arising out of it shall not be used for speculative business, where speculative business which includes investment in mutual fund.

Therefore, XYZ Foundation cannot use the foreign contribution or the interest earner on the foreign contribution for the Investment in Mutual Funds or for any speculative activities.

3.The Insolvency and Bankruptcy Code, 2016

Section A- Test Your Knowledge

(1)An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 was filed by the Raheja Portland Cement Limited in the capacity as operational creditor against the corporate debtor Makhija Builders and Developers Limited. The application was admitted by the order of the National Company Law Tribunal – Mumbai (NCLT, Mumbai) after giving a reasonable opportunity of being heard to Makhija Builders and Developers Limited and Mr. Ritesh was appointed as Interim Resolution Professional (IRP). However, Mr. Sanskar and Mr. Satvik, two of the directors of Makhija Builders and Developers Limited, were suspicious about the claims filed by Raheja Portland Cement Limited since they were much more than what was due to the company and therefore, they are desirous of making an appeal against the order of the NCLT, Mumbai. You, as a legal advisor, are required to advise them as to the maximum time within which an appeal against the order of the NCLT, Mumbai, can be filed by them with the National Company Law Appellate Tribunal (NCLAT).

a) Mr. Sanskar and Mr. Satvik, the two directors of Makhija Builders and Developers Limited shall be able to prefer an appeal against the order passed by NCLT, Mumbai under Section 9 of the Insolvency and Bankruptcy Code, 2016, within a period of 45 days from the date of order.
b) Mr. Sanskar and Mr. Satvik, the two directors of Makhija Builders and Developers Limited shall be able to prefer an appeal against the order passed by NCLT, Mumbai under Section 9 of the Insolvency and Bankruptcy Code, 2016, within a period of 30 days from the date of order.
c) Mr. Sanskar and Mr. Satvik, the two directors of Makhija Builders and Developers Limited shall be able to prefer an appeal against the order passed by NCLT, Mumbai under Section 9 of the Insolvency and Bankruptcy Code, 2016, within a period of 15 days from the date of order.
d) Mr. Sanskar and Mr. Satvik, the two directors of Makhija Builders and Developers Limited shall be able to prefer an appeal against the order passed by NCLT, Mumbai under Section 9 of the Insolvency and Bankruptcy Code, 2016, within a period of 10 days from the date of order.

Ans 1: (b)

(2)Aakansha Plastics Limited, having registered office at Bhatinda, Punjab, was formed in the year 2005. On March 31, 2021, its paid-up share capital was ₹ 5,00,00,000; Amount due from Debtors viz. Shilpa Furnitures Private Limited and Shobhna Traders & Co. ₹ 4,00,00,000; Secured loans obtained from Crescent Bank Limited ₹ 6,00,00,000; Amount due to creditors, namely, Sambhav & Sons and Satyadev Suppliers Private Limited ₹ 3,00,00,000. The performance of the company decreased sharply due to stiff competition, wrong planning and mismanagement and it came on the verge of insolvency. Choose from the followingalternatives as to who is the corporate debtor:

a) Shilpa Furnitures Private Limited and Shobhna Traders & Co.
b) Aakansha Plastics Limited.
c) Sambhav & Sons and Satyadev Suppliers Private Limited.
d) Crescent Bank Limited.

Ans 2: (b)

(3)Ruby Petals Limited, a small company, files an application with the National Company Law Tribunal (NCLT) stating that the fast track corporate insolvency resolution process against it cannot be completed within the prescribed period of 90 days. On being satisfied, NCLT orders to extend the period of such process by 30 days. However, Ruby Petals Limited again initiates an application for further extension of time period of insolvency process by another 10 days.From the four options given below which one, do you think, is applicable in such a situation:

a) National Company Law Tribunal can extend the period of fast track corporate insolvency resolution process against Ruby Petals Limited by another 10 days since total extension does not exceed 45 days.
b) National Company Law Tribunal can extend the period of fast track corporate insolvency resolution process against Ruby Petals Limited by another 10 days if the corporate debtor deposits ₹ 50,000 as penalty.
c) National Company Law Tribunal can extend the period of fast track corporate insolvency resolution process against Ruby Petals Limited by another 10 days if the corporate debtor deposits ₹ 1,00,000 as penalty.
d) National Company Law Tribunal cannot extend the period of fast track corporate insolvency resolution process against Ruby Petals Limited by another 10 days since such extension shall not be granted more than once.

Ans 3: (d)

(4)Munikh Hospitality Services Limited was admitted in the Corporate Insolvency Resolution Process (CIRP) under Section 7 of the Insolvency and Bankruptcy Code. The Resolution Professional (RP) Mr. Somesh, after his appointment, conducted a meeting of Committee of Creditors (CoC) but the same was adjourned due to the lack of quorum. At the appointed date and time, when the adjourned meeting was resumed, a resolution was passed by the CoC members present, representing 51% of the voting rights, for liquidation of Munikh Hospitality Services Limited, the Corporate Debtor, before the completion of the Corporate Insolvency Resolution Process (CIRP). You, as a qualified Chartered Accountant comprising the team of RP, are required to advise whether the resolution of liquidation passed by certain members of CoC representing 51% of the voting rights is valid or not considering the applicable provisions of the Insolvency and Bankruptcy Code, 2016.

a) The resolution of liquidation of Munikh Hospitality Services Limited passed by certain members of CoC representing 51% of the voting rights is not valid since the resolution has not been approved by minimum of 90% of the voting shares of the creditors.
b) The resolution of liquidation of Munikh Hospitality Services Limited passed by certain members of CoC representing 51% of the voting rights is not valid since the resolution has not been approved by minimum of 66% of the voting shares of the creditors.
c) The resolution of liquidation of Munikh Hospitality Services Limited passed by certain members of CoC representing 51% of the voting rights is not valid since such resolution cannot be passed before the completion of the CIRP.
d) The resolution of liquidation of Munikh Hospitality Services Limited passed by certain members of CoC representing 51% of the voting rights is valid since the same has been passed by the majority of creditors.

Ans 4: (b)

(5)Shivdeep submitted his claim as an operational creditor to the liquidator of Chiranjeevi Food Products Limited which is under liquidation. After submission of his claim, Shivdeep is desirous of altering it. Out of the following four options, which one correctly indicates the time period within which he can alter his claim after its submission.

a) Shivdeep can alter his claim within five days of its submission to the liquidator ofChiranjeevi Food Products Limited.
b) Shivdeep can alter his claim within ten days of its submission to the liquidator ofChiranjeevi Food Products Limited.
c) Shivdeep can alter his claim within fourteen days of its submission to the liquidator of Chiranjeevi Food Products Limited.
d) Shivdeep can alter his claim within thirty days of its submission to the liquidator ofChiranjeevi Food Products Limited.

Ans 5: (c)

Section B- Descriptive Questions

(1)When will the provisions of insolvency and liquidation be applicable to a corporate person?

Ans 1: The provisions relating to the insolvency and liquidation of corporate debtors shall be applicable only when the amount of the default is one lakh rupees or more. However, theCentral Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.

Vide Notification No. S.O.1205(E), date 24-03-22, minimum amount of default is increase to 1 crore for triggering CIRP under the IBC.

(2)What is the Insolvency Resolution Process for financial creditors?

Ans 2: A financial creditor either itself or along with other financial creditors may lodge an application before the Adjudicating Authority (National Company Law Tribunal) for initiating corporate insolvency resolution process against a corporate debtor who commits a default in payment of its dues.

The financial creditor shall along with the application give evidence in support of the default committed by the corporate debtor. He shall also give the name of the interim resolution professional.

Where the Adjudicating Authority is satisfied that a default has occurred and the application by the financial creditor is complete and there are no disciplinary proceedings pending against the proposed resolution professional, it may admit such application made by the financial creditor.

If the Adjudicating Authority is satisfied that default has not occurred (reasons to be recorded in writing) or the application is incomplete or any disciplinary proceeding is pending againstthe resolution professional, it shall reject

the application. However, the applicant may rectify the defect within seven days of receipt of notice of rejection from the Adjudicating Authority.

(3)What is the Insolvency Resolution Process for operational creditors?

Ans 3: On the occurrence of default, an operational creditor shall first send a demand notice and a copy of invoice to the corporate debtor.

The corporate debtor shall within a period of ten days of receipt of demand notice notify the operational creditor about the existence of a dispute, if there is any and record of pendency of any suit or arbitration proceedings. He shall also provide the details of repayment of unpaid operational debt in case the debt has or is being paid.

After the expiry of ten days, if the operational creditor does not receive his payment or the confirmation of a dispute that existed even before the demand notice was sent, he may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

The Adjudicating Authority shall within fourteen days of receipt of the application, admit or reject the application. However, before rejecting the application, an opportunity shall be given to the applicant to rectify the defect within seven days of receipt of rejection.

(4)What are the eligibility criteria for appointment of an Insolvency Professional as a Resolution Professional for a corporate insolvency resolution process?

Ans 4: As per Regulation 3 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, an insolvency professional shall be eligible for appointment as a resolution professional for a corporate insolvency resolution process if he and all partners and directors of the insolvency professional entity of which he is partner or director are independent of the corporate debtor i.e.,

- He is eligible to be appointed as an independent director on the board of the corporate debtor under Section 149 of the Companies Act, 2013, where the corporate debtor is a company.
- He is not a related party of the corporate debtor.
- He is not an employee or proprietor or a partner of a firm of auditors or secretarial auditors in practice or cost auditors of the corporate debtor in the **last three financial years**.
- He is not an employee or proprietor or a partner of a legal or consulting firm that hasor had any transaction with the corporate debtor amounting to **five per cent** or more of the gross turnover of such firm in the **last three financial years**.

(5)What is the procedure of Insolvency Resolution Process for a Corporate Applicant?

Ans 5: Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

The corporate applicant shall furnish the information relating to books of account and other documents and a resolution professional shall be appointed as interim resolution professional.

The Adjudicating Authority may either accept or reject the application within fourteen days of receipt of application. However, applicant shall be allowed to rectify the defect within seven days of receipt of notice of such rejection

(6)Is there any time limit for completion of the Insolvency Resolution Process?

Ans 6: Section 12 states that any Insolvency Resolution Process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate the process.

However, the National Company Law Tribunal (NCLT) may on an application made by the resolution professional, under a resolution passed by the Committee of Creditors, by a vote of 66% of voting shares, after consideration provide one extension which shall not extend more than 90 days.

Second proviso to Section 12 (3) states that the corporate insolvency resolution process (CIRP) shall compulsorily be completed within **330 days** from the insolvency commencement date including any extension of the time period of corporate insolvency resolution process granted under Section 12 and also the time taken in legal proceedings in relation to such resolution process of the corporate debtor.

(7)What is the effect of order of moratorium?

Ans 7: Section 14 contains the provisions relating to moratorium. During the moratorium period the following acts shall be prohibited:

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

Explanation to Section 14 (1)clarifies that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearanceor a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, **shall not be suspended or terminated on the grounds of insolvency**, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period.

(8)What is a Resolution plan?

Ans 8: According to Section 5 (26), a 'resolution plan' means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II of the Code.

Explanation to Section 5 (26) clarifies that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation anddemerger.

The aim of the Code is to revive the corporate debtor and therefore, resolution plan should be such that it is capable of resolving the insolvency of the corporate debtor as a going concern.

As per Section 30, the resolution applicant shall prepare resolution plan on the basis of information memorandum and submit the same to the resolution professional.

Each Resolution Plan shall be examined by the resolution professional to confirm that each such plan:

(i) provides for payment of insolvency resolution costs;
(ii) provides for repayment of the debts to operational creditors;
(iii) provides for management of affairs of the company after approval of the resolution plan;
(iv) provides for implementation and supervision of the resolution plan;
(v) does not contravene provisions of the law for the time being in force; and
(vi) conforms to such other requirement as may be specified by the Board.

The resolution plan needs to be submitted within the prescribed time as provided by Sectio 12. The prescribed time limit is 180 days and in case of extension it is 270 days. Further, 330 days have also been mandated which shall include any extension of the time period of corporate insolvency resolution process granted under Section 12 and also the time taken in legal proceedings in relation to such resolution process of the corporate debtor.

In case of Fast Track Resolution, the time limit is 90 days and if extension is required, another 45 days can be granted.

The resolution professional shall submit the resolution plan to the committee of creditors for its approval which may approve the plan by a vote of not less than 66% of voting share of the financial creditors. Operational creditors have no say in approving the resolution plan.

The resolution professional shall submit the approved plan to the Adjudicating Authority.

(9)What is the significance of the Corporate Insolvency Resolution Commencement Date?

Ans 9: The commencement date of the corporate insolvency resolution is the beginning of moratorium or a calm period till the completion of the corporate insolvency resolution process during which all suits and legal proceedings etc. against the Corporate Debtor are held in abeyance to give time to the entity to resolve its status.

(10)Mr. Ram, an operational creditor filed an application for corporate insolvency resolution process. He did not propose for the appointment of an interim resolution professional in the application. State the provisions given by the Code to resolve such a scenario including the term of IRP so appointed.

Ans 10: **Appointment of IRP:** As per Section16 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 (IBBI) for the recommendation of an insolvency professional who may act as an interim resolution professional.

The Board (IBBI) 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 the Interim Resolution Professional shall continue from his appointment till the date of appointment of the Resolution Professional by COC in its first meeting under Section 22 of the Code.