

PAPER- 4 – CORPORATE AND ALLIED LAWS

Question No. 1 is compulsory.

Answer any **four** from the remaining five questions

Question 1

(a) The Balance Sheet of MDL Limited as on 31st March, 2019 is as follows:

- (i) Paid up share capital - 8,00,000 equity shares of ₹ 100 each - ₹ 8.00 crore and 2,00,000 Preference Shares of ₹ 10 each carrying 10% preference dividend - ₹ 2.00 crore - Totaling ₹ 10 crore.
- (ii) Reserves & Surplus - ₹ 23 Crore
- (iii) Rate of Dividend declared by the company for the year ended 31.3.2016 - 15%; for the year ended 31.3.2017 - 20% and for the year ended 31.3.2018 - 25%.
- (iv) For the year ended 31.3.2019, the Net Profit after taxation was ₹ 1 crore.
- (v) The Board of Directors have decided to maintain the rate of dividend at the rate of 15% for the year ended 31.3.2019.
- (vi) Unclaimed dividend for the year ended 31.3.2018 - ₹ 1,00,000.

One of the directors objected to the declaration of dividend stating that surplus is to be preserved for future expansion. The Board seeks your advice about the declaration of dividend as per the Companies Act, 2013 and rules made there under. **(4 Marks)**

- (b) (i) PDP Limited has one Wholly-owned subsidiary AB Limited and one Joint Venture Company, KRN Limited in which PDP Limited has got 60% share. PDP Limited has got plans to go for listing with National Stock Exchange at the end of 2020. The Managing Director, Mr. P, is interested to prepare the Consolidated Financial Statements for the year ended 31.3.2020. The Chief Financial Officer, Mr. G, has not agreed to such a proposal. You are required to advise the company and to decide the validity of the views of the Managing Director and the CFO as per the relevant provisions of the Companies Act, 2013.
- (ii) Mr. Rajan is a Chartered Accountant and is practising as an individual in the name of Rajan & Co. He is the Statutory Auditor of RYR Limited for the last 10 years. The share capital of the company as on 31.3.2013 was ₹ 2.50 crore. Over the period of time the Paid up Share capital has been increased by way of issue of bonus shares and rights shares. The Paid up capital as on 31.3.2019 was ₹ 10.20 crore. The Annual General Meeting for the company was held on 20.9.2019. Can Mr. Rajan continue as the Statutory Auditor of the company? **(4 Marks)**
- (c) NYM Garments Limited was incorporated under the Companies Act, 1956. Now, the company is under the Insolvency proceedings and the application is pending before the Adjudicating Authority. AVR Fabrics Limited is the supplier to NYM Garments Limited and a sum of ₹ 10,00,000 is outstanding as on 31st January, 2020. A notice was issued by

the advocate of AVR Fabrics Limited to NYM Garments on 1st February, 2020 to make the payments. The notice was delivered at the registered office of NYM Garments Limited on 4th February, 2020. AVR Fabrics Limited has not received any payment or reply from the corporate debtor, NYM Garments Limited till 13th February, 2020. The Corporate Creditor, AVR Fabrics Limited, seeks your advice regarding the admission of application by NCLT on the following issues:

- (i) The procedure for filing the application and the documents to be submitted to the Tribunal.*
- (ii) If the Corporate Debtor, NYM Garments Limited, disputed the amount of claim by a reply on 25th February, 2020, stating the amount outstanding was ₹ 8,00,000 only and not ₹ 10,00,000 as claimed by AVR Fabrics Limited.*
- (iii) If the Corporate Debtor, NYM Garments Limited, has paid an amount of ₹ 7,00,000 in full settlement of the outstanding due.*

(6 Marks)

Answer

(A) As per second proviso to Section 123(1) of the Companies Act, 2013, in the event of inadequacy or absence of profits in any year, a company may declare dividend out of the accumulated profits earned by it in the previous years and transferred by the Company to the reserves. However, such declaration shall be subject to the following conditions as prescribed by the Ministry of Corporate Affairs under Rule 3 of *Companies (Declaration and Payment of Dividend) Rules, 2014*.

- (i) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year,
- (ii) The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up capital and free reserves as appearing in the latest audited financial statement.
- (iii) The amount so drawn shall first be utilized to set-off the losses incurred in the financial year in which the dividend is declared before any dividend in respect of equity shares is declared.
- (iv) The balance of reserves after such withdrawal shall not fall below 15% of its paid-up share capital as appearing in the latest audited financial statement.

Calculation and Conclusion based on the above Rule

Condition (i)

Average rate of dividend declared by the Company in the three years immediately preceding that year = $(15\% + 20\% + 25\% = 60\% / 3 \text{ years}) = 20\%$

The proposed dividend = 15%. The proposed dividend is below the average rate of dividend declared in the three years immediately preceding that year.

Hence, the first condition is satisfied.

Condition (ii)**(Amount in Rs)**

(a) Amount required for declaration of Dividend to Equity Shareholders @15% on ₹ 8 crore	1,20,00,000
(b) Amount available for the Current Year (Net Profit)	1,00,00,000
(c) Less: Amount required for Preference Dividend @10% on ₹ 2 crore	20,00,000
(d) Net amount available after Preference Dividend	80,00,000
(e) Amount required to be drawn from the Reserves (a)-(d)	40,00,000

As per the second condition, the amount that can be withdrawn shall not exceed 10% of the paid-up capital and free Reserves i.e. 10% of ₹ 33 crore (Rs 10 crore plus ₹ 23 crore)

= 10% of ₹33 crore = ₹3.30 crores.

Since the requirement is ₹ 40,00,000 only, it satisfies this condition.

The balance in Reserves and Surplus after withdrawal will be ₹ 22,60,00,000

i.e. (₹ 23,00,00,000 minus ₹ 40,00,000)

Condition (iii)

As per the third condition, there is no loss to be set-off in the current year. There is an inadequacy of profit only.

Condition (iv)

As per the fourth condition, the balance in the Reserves and Surplus after withdrawal as per the second condition, should not fall below 15% of its paid up capital i.e. 15 % of ₹ 10 crore (i.e. ₹8 crore plus ₹ 2 crore) = ₹ 1,50,00,000/-

Since the balance after the withdrawal is more than the amount i.e. ₹ 22,60,00,000/-, the fourth condition is also satisfied.

Advice to the Board

MDL Limited can declare dividend at the rate of 15% of the paid up capital. Accordingly, the objection of one of the directors to the declaration of dividend is not correct.

NOTE:

1. The paid up capital of Preference shares is taken at ₹ 2 Crores
2. The figures of Reserves and Surplus as given in the question is assumed as Free Reserves available for distribution of dividend.

- (b) (i) As per Section 129 (3) of the Companies Act, 2013 where a Company has one or more subsidiaries, associate companies, it shall in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the Company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the Company along with the laying of its financial statement. The consolidation of financial statements shall be made in accordance with the provisions of Schedule III of the Act and the applicable Accounting Standards.

Exemptions from preparation of CFS (Consolidated Financial Statements):

As per Rule 6 of the *Companies (Accounts) Amendment Rules, 2016*, preparation of consolidated financial statements by a Company is not required if it meets the conditions stated therein including a Company whose securities are not listed or are not in the process of listing on any stock exchange, whether in or outside India;

In the given instance, PDP Limited has one Wholly Owned Subsidiary (AB Limited) and a Joint Venture Company (KRN Limited) but is not listed with NSE. The Company has got plans to go for listing at the end of 2020 with NSE and therefore, it cannot be said to be in the process of listing with any Stock Exchange.

Whereas, the Managing Director, Mr. P is interested to prepare the Consolidated Financial Statements (CFS) for the year ended 31.3.2020. Hence, in line with the above stated law, PDP Limited is not required to prepare CFS.

Therefore, the view of CFO, Mr. G holds good and the proposal of Mr. P, the Managing Director is invalid.

- (ii) As per Section 139 (2) of the Companies Act, 2013, listed companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint (1) an individual as an Auditor for more than one term of five consecutive years and (2) an audit firm as Auditor for more than two terms of five consecutive years.

Further Rule 5 of the *Companies (Audit and Auditors) Rules, 2014*, has prescribed certain classes of companies for the purpose of Section 139(2) including all unlisted public companies having paid-up share capital of Rupees 10 crore or more.

In the instant case, the paid-up share capital of the Company as on 31.03.2019 is ₹10.29 Crore. Mr. Rajan, is practicing in his individual capacity and is the statutory auditor of RYR Limited for the last ten years.

Since Mr. Rajan had already been statutory Auditor of RYR Limited for more than one term of five consecutive years and the paid-up share capital is more than ₹10 crore, he cannot continue as the Statutory Auditor of RYR Limited.

Note: The question is silent whether the Company is a Listed Company or an Unlisted Company. If a candidate writes his answer from the listed company point of view, due credit must be given as the answer will be the same.

(c) (i) Procedure for filing the application and documents to be submitted to the Tribunal:

As per Sections 8 & 9 of the Insolvency and Bankruptcy Code, 2016, an Operational Creditor shall on the occurrence of default i.e. on the date the amount became due (on 31st January, 2020), shall 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 (i.e. on 4th February, 2020) or copy of invoice, intimate to the Operational Creditor about the existence of a dispute, if there is any and record of pendency of any suit or arbitration proceedings.

After the expiry of ten days (i.e., latest by 14th February), if the Operational Creditor does not receive his payment or the confirmation of a dispute that existed even before the demand notice was sent, then, as per the law, AVR Fabrics Limited (Operational Creditor) may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

The operational creditor shall, along with the application furnish the following documents to the Tribunal:

- (a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;
- (b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;
- (c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available;
- (d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and
- (e) any other proof confirming that there is no payment of an unpaid operational debt by the Corporate Debtor or such other information, as may be prescribed.

(ii) Intimation of existence of dispute

The reply of the Corporate Debtor, NYM Garments Limited as to the existence of dispute relating to amount of claim, will not be considered by the Adjudicating Authority as the dispute is intimated beyond the period of 10 days from the date of receipt of demand notice i.e., on 25th February, 2020. However, the application made by AVR Fabrics Limited will be admitted by the NCLT.

(iii) Full settlement of dues

Where a Corporate Debtor NYM Garments Limited has paid an amount of 7,00,000 in full settlement of the outstanding due, the same shall be, within a period of ten days of the receipt of the demand notice brought to the notice of the operational creditor by sending an attested copy of the record of electronic transfer of the repayment of the amount from the bank account of the corporate debtor. Accordingly, the Adjudicating Authority can reject the application of the Operational Creditor if it is proved that the Corporate Debtor, NYM Garments Limited, had paid ₹7,00,000/- in full settlement of the outstanding dues.

Question 2

- (a) *Mr. Balan is a Director of Green Tea Plantation Limited and True Spicy Agro Products Limited for the year ended 31st March, 2019. Some irregularities were found in the affairs of Green Tea Plantation Limited for mismanagement. Green Tea Plantation Limited did not file the financial statements for the year ended 31st March, 2019. It also failed to pay interest on loans taken from a Nationalized Bank for the last two years. On 5th January, 2020 his name is proposed to be appointed as an additional Director of Standard Agro Products Limited. The company has sought declaration from Mr. Balan and he submitted the declaration that he is not attracted by the disqualification stated under the provisions of Section 164 of the Companies Act, 2013. Decide under the provisions of the Companies Act, 2013:*
- (i) *Is the declaration submitted by Mr. Balan to Standard Agro Products Limited in order?*
 - (ii) *Can he continue as a Director of Green Tea Plantation Ltd. and True Spicy Agro Products Limited?* **(4 Marks)**
- (b) (i) *Superfine Limited is under the Insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 and Mr. Rakesh is the Interim Resolution Professional (IRP). He collated the details of all claims from the financial creditors, operational creditors and others. The number of financial creditors are 12 in numbers having a total claim of ₹ 6.00 crore out of which two financial creditors (Mr. A and Mr. D) are also operational creditors of the company. Mr. A whose total claim is ₹ 50.00 lakh includes an operational credit for supply of material - ₹ 10.00 lakh. Similarly Mr. D whose total claim of ₹ 20 lakh includes ₹ 5.00 lakh for supply of materials to Superfine Limited. How shall the committee of creditors be constituted by IRP?*
- (ii) *During the proceedings it came to the knowledge of IRP that Mr. P is a relative of the Managing Director of Superfine Limited who is a financial creditor for ₹ 5.00 lakh. He informed the IRP to participate in the meeting of COC. Discuss the validity of Mr. P's request.* **(4 Marks)**
- (c) (i) *Mr. Ganesh has been appointed as the Investigating Authority by Securities and Exchange Board of India to investigate the affairs of a listed company on the*

reasoning that the transactions in securities are being dealt in a manner detrimental to the investors.

The Investigating Officer has taken over charge and the custody of books and documents after due approval of the Magistrate. He is unable to complete the investigation within 180 days. The Board of Directors of the company filed an application with SEBI to return the books and documents. Discuss the validity of the request of the Board of Directors of the company.

During the investigation, one of the directors of the company had refused to answer the questions and produce the books and documents. What is the punishment that can be imposed on him under the provisions of the SEBI Act, 1992?

- (ii) *What do you understand by the term "Cease and desist proceedings"? Can such a proceedings be initiated against any listed public company for the violation of insider trading?* **(6 Marks)**

Answer

- (a) (i) Whether the declaration submitted by Mr. Balan to Standard Agro products Limited is in order?**

Yes, the declaration submitted by Mr. Balan is in order.

According to Section 164(2) of the Companies Act, 2013, a person who is or has been a director of a Company which:

- (a) Has not filed the financial statements or annual returns for any continuous three financial years
- (b) Has failed to repay the deposits accepted by it or interest thereon on due date or redeem its debentures on due date or pay dividends declared and such failure continues for one year or more

shall not 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.

In the present case, the financial statements of Green Tea Plantation Limited was not filed for one year. This does not attract any disqualification. Further, non-payment of interest to the nationalized bank is not a ground for disqualification under Section 164(2) of the Act.

- (ii) Yes, Mr. Balan can continue to act as a director of Green Tea Plantation Ltd and True Spicy Agro Products Limited as no disqualification attaches to him under Section 164(2) of the Act.

- (b) (i) Constitution of Committee of Creditors (CoC):**

As per Section 21 of the Insolvency and Bankruptcy Code after the collation of all claims received against the Corporate Debtor and determination of the financial

position of the corporate debtor, the interim resolution professional shall constitute a Committee of Creditors.

The Committee of Creditors shall comprise of all financial creditors of a corporate debtor. The Resolution Professional shall identify the Financial Creditors and constitute a Committee of Creditors.

Where a Creditor is both a Financial and an Operational Creditor

Where any person is a Financial Creditor (FC) as well as an Operational Creditor (OC), such person shall be a financial creditor to the extent of the financial debt owed by the corporate debtor, and shall be included in the Committee of Creditors, with voting share proportionate to the extent of financial debts owed to such creditor.

- (ii) As per proviso to Section 21(2) of the Insolvency and Bankruptcy Code, a Financial Creditor, if he is a related party of the Corporate Debtor, shall not have any right of representation, participation or voting in a meeting of the Committee of Creditors.

As Mr. P who is a Financial Creditor, is a relative of the Managing Director of Superfine Limited, the Corporate Debtor, his request to participate in the meeting of CoC does not hold valid.

(c) (i) Validity of the Request of the Board of Directors

The given problem is based on Section 11C of the Securities and Exchange Board of India Act, 1992 which deals with the provision related to investigation of the affairs of such intermediary or persons associated with the securities market.

Where the Board has reasonable ground to believe that the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; it may, at any time by order in writing, direct any person (i.e., Investigating Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the Board.

The Investigating Authority may during the investigation keep in its custody any books, registers, other documents and record produced for six months and thereafter shall return the same to any intermediary or any person associated with securities market by whom or on whose behalf the books, registers, other documents and record are produced.

Where the Investigating officer who has taken over the charge and custody of books and documents is unable to complete the investigation within 180 days, he shall return the same to person associated with securities market by whom or on whose behalf the books, registers, other documents and record are produced. The Investigating Authority may call for any book, register, other document and record if they are needed again.

As per the provision, Board of Directors of the Company need not require to file an application with SEBI to return the books and documents. The investigating Authority, Mr. Ganesh may keep books and documents during the investigation for six months under his custody and thereafter shall return the same.

Punishment

If during the investigation, one of the Director without reasonable cause, refused to answer and produce the books and documents, such person shall be punishable with:

Imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.

- (ii) As per the Section 11D of the Securities and Exchange Board of India Act, 1992 the term "Cease and desist proceedings" means that if the Board finds, after causing an inquiry to be made, that any person has violated, or is likely to violate, any provisions of this Act, or any Rules or Regulations made thereunder, it may pass an order requiring such person to cease and desist from committing or causing such violation.

Yes, as the per proviso to the said section, where the Board has reasonable grounds to believe that any listed public company has indulged in insider trading or market manipulation, such proceedings can be initiated against it for violation of insider trading.

Question 3

- (a) *The Balance Sheet of RML Limited contains the following information about its financial position as on 31st March, 2019:*

10,00,000 Equity shares of ₹100 each	₹ 10.00 crore
Reserves & Surplus which includes revaluation reserve of ₹ 2.00 crore	₹ 12.00 crore
Credit Balance in Profit & Loss Account	₹ 2.00 crore
Secured Loan from a Nationalized Bank	₹ 8.00 crore
Net Profit in the last three years were: 31.3.2016 - ₹ 1.20 crore, 31.3.2017 - ₹ 1.50 crore and 31.3.2018 - ₹ 1.80 crore.	

- (i) *The Board of Directors decide to borrow an additional sum of ₹ 10.00 crore for the expansion. Decide whether the company is eligible to borrow the additional funds and the limit thereof.*
- (ii) *The Board also decide to make donation to two major political parties totaling ₹ 10,00,000. Comment on the validity of the action of the Board and the maximum amount of donation which the company can contribute.* **(4 Marks)**

- (b) *M & N Project Engineering Services Private Limited had applied to the Registrar of Companies to be considered as Dormant company as the project got delayed due to the non-clearance from the National Green Tribunal. The RoC has granted the certificate to allow the status of dormant company in May 2018. Now the company is granted clearance from National Green Tribunal. The Board of the company wants to revive the status as active company. They seek your advice on approval by the Registrar for revival of status as active company.* **(4 Marks)**
- (c) (i) *What is a Scheduled Offence under the Prevention of Money Laundering Act, 2002 (PMLA)? An Export house has committed an offence under Section 135 of the Customs Act, 1962 by undervaluing the exported item. The declared value of the export item is ₹ 50 lakhs. Under which part of the Schedule of the PML Act, will this violation be classified as an offence?*
- (ii) *Softskin Soaps and Consumer Goods Limited has applied to Delhi Stock Exchange to list its securities. The Board of the Stock Exchange after one month refused to list the securities and returned the application. The information of refusal is received by the company on 10th April 2020. The company is aggrieved by the refusal of stock exchange. What is the remedy available under the Securities Contracts (Regulations) Act, 1956?* **(6 Marks)**

Answer**(a) (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 shareholders in a general meeting, can borrow money including moneys already borrowed up to 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.

According to the above provisions, the Board of Directors of RML Ltd. can borrow, without obtaining approval of the shareholders in a general meeting, up to an amount calculated as follows:

Particulars	₹ in Crore
Paid up Capital	10
Reserves & Surplus (excluding Revaluation Reserve)	10
Credit Balance in Profit & Loss Account (to be treated as Free Reserve)	2
Aggregate of Paid-up Capital and Free Reserves	22
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	22
Less: Amount already borrowed as secured loans	8
Amount up to which the Board of Directors can further borrow without the approval of shareholders in a general meeting.	14

- (ii) According to Section 182(1) of the Companies Act, 2013, a Company except a Government Company and a Company which has been in existence for less than three financial years, can make political contributions, directly or indirectly, to any political party.

Further, the contribution shall be made by a Company only after passing a resolution at a meeting of the Board of Directors authorizing such contribution.

In view of the above provisions, RML Limited can contribute the said amount of ₹ 10,00,000 to the concerned political parties. However, it needs to pass a Board resolution authorizing making of such contribution at a meeting of the Board of Directors.

(b) Application for seeking status of an Active Company:

According to the Rule 8 of the *Companies (Miscellaneous) Rules, 2014*,

- (a) An application for obtaining the status of an active company shall be made in *Form MSC-4* along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by a return in *Form MSC-3* in respect of the financial year in which the application for obtaining the status of an active company is being filed:

However, the Registrar shall, initiate the process of striking off the name of the company if the Company remains as a dormant company for a period of consecutive 5 years.

- (b) The Registrar shall, after considering the application filed for obtaining the status of an active company, issue a certificate in *Form MSC-5* allowing the status of an active company to the applicant.
- (c) Where a dormant company does or omits to do any act mentioned in the grounds of application in *Form MSC-1* submitted to Registrar for obtaining the status of dormant company, affecting its status of dormant company, the directors shall within 7 days from such event, file an application for obtaining the status of an active company.
- (d) Where the Registrar has reasonable cause to believe that any Company registered as 'dormant company' under his jurisdiction has been functioning in any manner, directly or indirectly, he may initiate the proceedings for enquiry under Section 206

of the Act and if, after giving a reasonable opportunity of being heard to the Company in this regard, it is found that the Company has actually been functioning, the Registrar may remove the name of such Company from register of dormant companies and treat it as an active Company.

M & N Project Engineering Services Private Limited can follow the above procedure for revival of status as active company.

- (c) (i) The term “**Scheduled Offence**” has been defined in clause (y) of sub-section (1) of Section 2 of the Prevention of Money Laundering Act, 2002.

Accordingly, it means –

- (a) the offenses specified under **Part A** of the Schedule; or
- (b) the offenses specified under **Part B** of the Schedule if the total value involved in such offenses is one crore rupees or more; or
- (c) The offenses specified under **Part C** of the Schedule.

An offence under Section 135 of the Customs Act, 1962 by undervaluing the exported items is covered under Part A of the Schedule.

- (ii) **Right of appeal against refusal of Stock Exchange to list securities of Public Companies (Section 22 A)**

Where a recognized stock exchange acting in pursuance of any power given to it by its bye-laws, refuses to list the securities of any Public Company or Collective Investment Scheme, the Company or scheme shall be entitled to be furnished with reasons for refusal, and may –

within 15 days from the date on which the reasons for such refusal are furnished to it, or where the Stock Exchange has omitted or failed to dispose of, within the time specified in corresponding provisions of Companies Act, 2013, the application for permission for the shares or debentures to be dealt with on the Stock Exchange, within 15 days from the date of expiry of the specified time or within such further period, not exceeding one month, as the Securities Appellate Tribunal (SAT) may on sufficient cause being shown, allow, appeal to SAT against such refusal, omission or failure, as the case may be, and thereupon, SAT may, after giving the stock exchange an opportunity of being heard -

vary or set aside the decision of the Stock Exchange, or

where the Stock Exchange has omitted or failed to dispose of the application within the specified time, grant or refuse the permission

and where the SAT sets aside the decision of the recognized Stock Exchange or grants the permission, the Stock Exchange shall act in conformity with the orders of Central Government.

In the instant case, Softskin Soaps and Consumer Goods Limited can follow the above provisions.

Question 4

- (a) *The shareholders of SKM Limited are not satisfied with the performance of the company. Some of the activities carried on by the company are not in the interest of the company and its members. The total number of shareholders as per the Register of Members as on 31.3.2019 was 2,000 and 450 members holding 16% of the paid up value of the shares have made an application jointly to the Central Government to appoint an Inspector to carry out the investigation and find out the true picture. With reference to the provisions of the Companies Act, 2013, mention whether the application will be accepted? Elaborate. After the filing of the application about 100 members holding about 7% of the paid up capital had withdrawn. Decide whether the application is maintainable or not.* **(4 Marks)**

- (b) (i) *Puresoft Solutions Private Limited is incorporated in Singapore and more than 60% of the paid up share capital is held by two citizens of India who are Software Engineers. The company wants to open a branch office in Kolkata.*

Determine the status of Puresoft Solutions as per the provisions of the Companies Act, 2013.

- (ii) *North Sea Shipping Limited is incorporated in South Korea. It has established an office in Paradeep. Mr. Jonathan is the Branch in charge and the Compliance Officer in India. He has received a communication from the Chief Executive Officer in South Korea to explore the possibilities of issuing Indian Depository Receipts to the extent of ₹ 1,000 million in financial year 2020-21. He has approached you being financial consultant for your advice.*

Advise him as per the provisions of the Companies Act, 2013.

(4 Marks)

- (c) (i) *In the interpretation of a statute, 'proviso' plays a major role in clarifying the true intention of the legislature to bring such an enactment. Define the term "Proviso". Enumerate the difference between "Proviso", "Exceptions" and "Saving clause".*

- (ii) *Mr. D has been arrested at the Chennai Airport in connection with certain offenses under the Foreign Exchange Management Act, 1999. The Adjudicating Authority (AA) imposed a fine of ₹ 5 lakh on him. In order to secure the penalty, AA directs the officials to confiscate the deposit of ₹ 10 lakh lying in the account of D maintained at a nationalized Bank in New Delhi. Comment upon the validity of the confiscation proposal of the Adjudicating Authority for the levy of penalty under the relevant provisions of FEMA, 1999.* **(6 Marks)**

Answer**(a) Investigation into affairs of Company (Section 210 of the Companies Act, 2013)**

Section 210 of the Companies Act, 2013 provides for Investigation into affairs of a Company. According to this Section:

Investigation in the opinion of Central Government:

Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a Company,—

- (a) on the receipt of a report of the Registrar or Inspector under Section 208;
- (b) on intimation of a Special Resolution passed by a Company that the affairs of the Company ought to be investigated; or
- (c) in public interest,

it may order an investigation into the affairs of the Company. [Sub-section (1)]

In the instant case, the shareholders' application will not be accepted under Section 210 of the Companies Act, 2013 because Central Government may order an investigation into affairs of the Company only on the intimation of a special resolution passed by a Company that the affairs of the Company ought to be investigated and then may appoint the Inspectors.

Here, 450 members holding 16% of the paid up value of the shares of the Company have made an application to the Central Government to appoint an Inspector to carry out investigation but it is not sufficient as the Company has not passed the special resolution.

It is immaterial that later on 100 members holding 7% of the paid up capital had withdrawn from the application. The application is still invalid due to non passing of Special Resolution.

(b) (i) Foreign Company [Section 2(42)]:

“**Foreign Company**” means any company or body corporate incorporated outside India which-

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) conducts any business activity in India in any other manner.

Requirement of holding of paid up share capital [Section 379 (2) of the Companies Act, 2013]:

Where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by:

- (i) one or more citizens of India; or

- (ii) by one or more companies or bodies corporate incorporated in India; or
- (iii) by one or more citizens of India and one or more companies or bodies corporate incorporated in India,

whether singly or in the aggregate, such company shall comply with the provisions of Chapter XXII and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India. [Section 379(2)]

In the instant case, Puresoft Solutions Private Limited is a Foreign Company and has to comply with the provisions of Chapter XXII i.e. legal provisions for companies incorporated outside India.

- (ii) According to Section 390 of the Companies Act, 2013, and according to the *Companies (Registration of Foreign Companies) Rules, 2014*, Indian Depository Receipts (IDR) means any instrument in the form of a depository receipt created by a Domestic Depository in India and authorized by a Company incorporated outside India making an issue of such depository receipts.

According to Section 390, notwithstanding anything contained in any other law for the time being in force, the Central Government may make rules applicable for—

- (i) the offer of Indian Depository Receipts (IDR);
- (ii) the requirement of disclosures in prospectus or letter of offer issued in connection with IDR;
- (iii) the manner in which the IDR shall be dealt with in a depository mode and by custodian and underwriters; and
- (iv) the manner of sale, transfer or transmission of IDR,

by a Company incorporated or to be incorporated outside India, whether the company has or has not established, or will or will not establish, any place of business in India.

According to the *Companies (Registration of Foreign Companies) Rules, 2014*, no Company incorporated or to be incorporated outside India, whether the company has or has not established, or may or may not establish, any place of business in India shall make an issue of Indian Depository Receipts (IDRs) unless it complies with the conditions mentioned under this Rule, in addition to the *Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009* and any directions issued by the Reserve Bank of India.

- (c) (i) **Proviso:** The normal function of a “proviso” is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a

general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.

Distinction between Proviso, Exception and saving Clause

There is said to exist difference between provisions worded as 'Proviso', 'Exception', or 'Saving Clause'.

Exception is intended to restrain the enacting clause to particular cases.

Proviso is used to remove special cases from general enactment and provide for them specially.

Saving Clause is used to preserve from destruction certain rights, remedies or privileges already existing.

- (ii) Section 13(1) of FEMA, 1999 deals with the levy of penalty on the person who contravenes any provision of the Act.

In the present case, the Adjudicating Authority has levied a penalty of ₹5 lakhs on Mr. D. The Adjudicating Authority, may, if he thinks fit, in addition to any penalty which he may impose for such contravention, direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any of the person committing such contravention or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.

Explanation: For the purpose of this sub-section, "property" in respect of which the contravention takes place shall include:

- (a) Deposits in a Bank where the said property is converted into such deposits
- (b) Indian currency where the said property is converted into such deposits
- (c) Any other property which has resulted out of the conversion of that property

In view of this power, the Adjudicating Authority can confiscate the deposits of ₹10,00,000/- lying in the Nationalized Bank in New Delhi.

Question 5

- (a) *Genuine Spares and Accessories Limited has got a good reputation in the market and has loyal customers. Due to the local competition and from unbranded spares, its turnover has gone down over the years and it had ended in red with a loss of ₹ 2.00 crore for the year ended 31.3.2020 and the same trend is expected to continue for the year ended 31.3.2021. It has got a large amount of unpaid trade creditors of ₹ 1,25,00,000 and unpaid dividends for the year ended 31.3.2016 - ₹ 1,50,000 and 31.3.2017 - ₹ 80,000.*

Even during the difficult periods of business environment, the company continued the business. One of the directors has suggested in the meeting of the Board of Directors that the company can compromise or make arrangements with creditors. Mr. Magesh is the Chief Accounts Officer of the company for the last two decades. He has been entrusted with the task of finding out the possibility of making compromise with the creditors. Enumerate the formalities to be observed by the company with regard to (i) filing of compromise application and (ii) disclosures to be made in the application by the company. **(4 Marks)**

- (b) A Public Limited Company is finalizing its accounts for the year ended 31.3.2020 and the Chief Financial Officer has been asked to compute the net profit for the purpose of managerial remuneration on the basis of the following information:

Net Profit as per the Profit and Loss Account ₹ 500.00 lakh

The Profit & Loss account includes the following items:

- (i) Profit from the sale of a machinery ₹ 50.00 lakh
- (ii) Profit from the sale of forfeited shares ₹ 1.00 lakh

The Profit and Loss Account does not include the following items:

- (i) Interest on unsecured loans and advances ₹ 2.00 lakh
- (ii) Bad debts to the extent to be written off ₹ 5.00 lakh

Calculate the correct net profit for the purpose of determining the managerial remuneration. **(4 Marks)**

- (c) (i) High Energy Oil Engines Limited and All Power Batteries Limited have entered into an arrangement to combine their business activities whose total present turnover is ₹ 7,000 crores as per the latest financial information. After receiving information about the amalgamation of the two companies, the Competition Commission passed an order approving the combination with certain modifications and to report within 30 working days. Even ninety days after the intimation of order, the companies have not made the modification as proposed by the Commission.

Comment on the consequences of non-acceptance of modifications by the companies as per the relevant provisions of the Competition Act, 2002.

- (ii) High Growth Housing and Finance Limited is incorporated as a Public Limited company in 2010 and its net owned fund as on 31.3.2019 was ₹ 250 crore. The Board of Directors have decided to commence a business of securitisation and to apply to Reserve Bank of India. From the financial statements of the company it is seen that the company had incurred a net loss of ₹ 2.00 crore in 2014 and posted good profits in the subsequent years till 2019. The Board seeks your advice with regard to the conditions to be fulfilled for grant of approval by RBI as an ARC.

(6 Marks)

Answer

- (a) Section 230 of the Companies Act, 2013 contains the powers of the Tribunal on the filing of application for the Compromise or Arrangement. According to this section:

(i) **Filing of Compromise Application:**

Where a compromise or arrangement is proposed between—

- (a) a Company and its Creditors or any class of them; or
- (b) a Company and its Members or any class of them,

the Tribunal may, on the application of the-

- Company, or
- Creditor, or
- Member of the Company, or
- Liquidator in case of Company is into voluntary liquidation

order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

Explanation—For the purposes of this sub-section, arrangement includes a reorganization of the Company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

- (ii) **Disclosures by Applicant:** The Company or any other person, by whom an application is made, shall disclose to the Tribunal by affidavit—

- (a) all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the Company and the pendency of any investigation or proceedings against the company;
- (b) reduction of share capital of the Company, if any, included in the compromise or arrangement;
- (c) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent. of the secured creditors in value, including—
 - (i) a creditor's responsibility statement in the prescribed form;
 - (ii) safeguards for the protection of other secured and unsecured creditors;
 - (iii) report by the Auditor that the fund requirements of the Company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board;

- (iv) where the Company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and
 - (v) a Valuation Report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.
- (b) In computing the net profits of a company in any financial year for the purpose of Section 197, credit shall not be given for the following sums, namely:—
- profits on sales by the Company of forfeited shares;
 - 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:

In making the computation aforesaid, the following sums shall be deducted, namely:—

- interest on unsecured loans and advances;
- debts considered bad and written off or adjusted during the year of account.

Particulars	Amount ₹ In Lakhs
Net Profit	500
Less: Profit from sale of Machinery	50
Less: Profit from sale of forfeited shares	1
Less: Interest on unsecured loans and advances	2
Less: Bad Debts to the extent written off	5
Balance being the Net Profit for the purpose of Managerial Remuneration	442

- (c) (i) **Consequence of non-acceptance of the modification [Section 31(9) of the Competition Act, 2002]:** If the parties fail to accept the modification proposed by the Commission within thirty working days or within a further period of thirty working days, the combination shall be deemed to have an appreciable adverse effect on competition and be dealt with in accordance with the provisions of this Act.

As per Sub-section 10, where the Commission has directed that the combination shall not take effect or the combination is deemed to have an appreciable adverse effect on competition under sub-section (9), then, without prejudice to any penalty which may be imposed or any prosecution which may be initiated under this Act, the Commission may order that

- (a) the acquisition referred to in clause (a) of section 5; or
 - (b) the acquiring of control referred to in clause (b) of section 5; or
 - (c) the merger or amalgamation referred to in clause (c) of section 5,
- shall not be given effect to.

The Commission may however, if it considers appropriate, frame a scheme to implement its order.

(ii) Registration of ARCs (Section 3 of SARFAESI Act, 2002)

Commencement of business of securitisation or asset reconstruction: A Company can commence or carry on the business of securitisation or asset reconstruction only after obtaining a certificate of registration granted under this Section and having the net owned fund of not less than one hundred crore rupees or such other higher amount as the Reserve Bank, may, by notification, specify.

Conditions: The Reserve Bank may, for the purpose of considering to grant its approval for the application for registration of an ARC to commence or carry on the business of securitisation or asset reconstruction, as the case may be, require to be satisfied, by an inspection of records or books of such ARC, or otherwise, that the following conditions are fulfilled, namely:-

that the ARC has not incurred losses in any of the three preceding financial years;

that such ARC has made adequate arrangements for realisation of the financial assets acquired for the purpose of securitisation or asset reconstruction and shall be able to pay periodical returns and redeem on respective due dates on the investments made in the company by the qualified buyers or other persons;

that the directors of ARC have adequate professional experience in matters related to finance, securitisation and reconstruction;

that any of its directors has not been convicted of any offence involving moral turpitude;

that a sponsor of an ARC is a fit and proper person in accordance with the criteria as may be specified in the guidelines issued by the Reserve Bank for such persons;

that ARC has complied with or is in a position to comply with prudential norms specified by the Reserve Bank.

that ARC has complied with one or more conditions specified in the guidelines issued by the Reserve Bank for the said purpose.

In the instant case, the net owned funds of High Growth Housing and Finance Limited is ₹ 250 Crore and it has not incurred losses in any of the three preceding financial years.

Accordingly, the Board is advised to follow the above conditions to get the approval from RBI as an ARC.

Question 6

- (a) *Royal Productions Limited filed an application before the National Company Law Tribunal and the application was dismissed for want of evidence and documents by the Tribunal on 2.2.2020. The order was received by the company on 4.2.2020. Aggrieved by the order, the company wants to file an appeal to NCLAT. It seeks the procedure to file the appeal and the time limit for filing the appeal under the following circumstances:*
- (i) *The Tribunal has passed the order without giving a reasonable opportunity of being heard and the impugned order is passed ex-parte.*
 - (ii) *The order has been passed with the consent of both the parties before the Tribunal.*

(4 Marks)

OR

The Board of Directors of Zion Spinning and Weaving Mills Limited have decided to pass a resolution regarding the fixation of salary of General Manager (Technical) by way of circulation among the directors who are away from the Registered Office. Draft a notice with the specimen resolution.

- (b) *Arctic Refrigerators Limited has got 5000 shareholders. Some of the members have decided to file an application under Section 241 of the Companies Act, 2013, for oppression and mismanagement. Discuss the qualification of members who have the right to apply to the tribunal.*

Due to the fresh issue of shares, the shareholding of the members who filed the petition gets reduced to below required % of the paid up share capital. The main contention in the petition is challenging the validity of the issue. Is the petition maintainable? Mr. Dina, one of the directors also, wants to file an application for oppression and mismanagement. Can he do so?

(4 Marks)

- (c) (i) *The Central Government have decided to acquire Aspire Bank Ltd. and passed the orders in consultation with Reserve Bank of India. Do you agree that the Central Government has got the right to acquire a bank? The total number of shareholders as on the date of acquisition is 1000 and about 220 shareholders holding 30% of shareholding of Aspire Bank Limited who are aggrieved by the acquisition and the compensation amount determined. Therefore these shareholders have requested the Central Govt. to refer the matter to Tribunal. Are the shareholders justified in their request?*
- (ii) *Anush Properties Private Limited have availed a term loan from a nationalized bank on the security of a house property of a director. When the company received a copy of the Memorandum of Title Deeds registered with the Sub-Registrar, it is found that there are some discrepancies in the description of the property and the*

value of the mortgaged property. The company seeks your advice regarding the rectification of such mistakes with the office of sub-Registrar and Central Registry. Advise. **(6 Marks)**

Answer

(a) (i) Appeal to Appellate Tribunal:

According to Section 421(1) of the Companies Act, 2013, any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal (AT).

Period for filing of Appeal: As per Section 421(2), every appeal under sub-section (1) shall be filed within a period of 45 days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed.

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding 45, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

In the instant case, Royal Productions Limited can file an appeal within 45 days from 4.2.2020 which can further be extended by another 45 days.

(ii) When order made by consent of parties: No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties. [Section 421(2)]

In the instant case, since the order has been passed with the consent of both the parties before the Tribunal, no appeal shall lie to the AT.

(OR)

6. (a) Specimen Board Resolution – Passed by Circulation

Zion Spinning and Weaving Mills Ltd.

To

Mr....., Director

.....

.....

(Address in India only).

Dear Sir,

The following resolution, which is intended to be passed as a resolution by circulation as provided in Section 175 of the Companies Act, 2013, is circulated herewith as per the provisions of the said section.

If only you are Not Interested in the resolution, you may please indicate by appending your signature in the space provided beneath the resolution appearing herein below as a separate perforated slip if you are in favour or against the said resolution. The perforated slip may please be returned if and when signed within..... days of this letter.

However, it need not be returned if you are interested in the resolution.

Yours faithfully,

(Secretary)

Zion Spinning and Weaving Mills Ltd.

Resolution by circulation passed by the directors as per circulation effected..... 20.....

“RESOLVED that subject to the approval by the shareholders in a general meeting and pursuant to the provisions of the applicable provisions of the Companies Act, 2013, the salary of Mr. ____, General Manager (Technical) be and is hereby fixed at:

(1) Salary: ₹ per month

(2) Perquisites, Benefits and Facilities

with effect from 1st ____ (Month), 20__ for a period of ____ years.

“RESOLVED FURTHER that the Secretary of the company be and is hereby directed and authorized to file necessary returns with the Registrar of Companies and to do all other necessary things required under the provisions of the Companies Act, 2013.”

[Set out the resolution intended to passed]

*For/Against

Signature

*Strike off whichever is inapplicable.

- (b) Section 244 of the Companies Act, 2013 provides for the eligibility of members who hold the right to file the application under Section 241 for oppression and mismanagement with the Tribunal.

Members having right to apply:

The following members of a Company shall have the right to apply under Section 241, namely:—

in the case of a Company having a share capital, not less than one hundred 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, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

In the instant case, not less than 500 members (1/10 of 5000) have the right to apply to the Tribunal.

Due to fresh issue of shares, the shareholding of the members who filed the petition gets reduced to below 10 per cent, which is challenged as oppressive. The maintainability of the petition would be reduced after determining the validity of the issue of allotment. The petition shall be maintainable and the petitioner-member shall be entitled to relief.

It was observed in *Rao (V.M.) v. Rajeshwari Ramakrishnan* that the oppression complained off must affect a person in his capacity or character as a member of the company; harsh or unfair treatment in other capacity, e.g., as a director or a creditor is outside the purview of this chapter i.e. for filing the petition or application for oppression and mismanagement.

Thus, Mr. Dina, one of the directors of Arctic Refrigerators Limited cannot file an application for oppression and mismanagement.

- (c) (i) According to Section 36AE of the Banking Regulation Act, 1949, if Central Government is of the opinion that the Banking Company has failed to comply with the direction given to it by RBI relating to policy matters under Sections 21 and 35A and/ or the bank is being managed in a manner detrimental to the interest of the depositors or that of to the banking policy, or for better provision of credit generally or of credit to any particular section of the community or in any particular area; it is necessary to acquire the undertaking of such banking company, it (Central Government) may after consultation with RBI as it thinks fit, by notified order, acquire the undertaking of such banking company with effect from such date as may be specified in this behalf by the Central Govt.

Hence, taking into account the above provision, the Central Government can acquire Aspire Bank Ltd.

As per Section 36AG, any shareholder aggrieved with the amount of compensation may request the Central Govt. to refer the matter to Tribunal to be constituted under Section 36 AH. If the no. of representation received is not less than one-fourth of the number of shareholders holding not less than one-fourth of the paid-up share capital of the acquired bank, the Central Govt. shall constitute a Tribunal for the purpose.

In the instant case, out of 1000 shareholders of the company, 220 shareholders holding 30% of shareholding of Aspire Bank Ltd have requested the Central Government to refer the matter to Tribunal but 220 shareholders are not justified in their request because though they are holding not less than one-fourth of the paid up share capital of the bank but they are less than one-fourth of the number of shareholders ($1000 \times \frac{1}{4}$: 250).

(ii) Modification of security interest registered under this Act (Section 24 of SARFAESI, 2002)

Whenever the terms or conditions, or the extent or operation, of any security interest registered under this Act, are, or is, modified it shall be the duty of the ARC to send to the Central Registrar, the particulars of such modification. Thus, the company can follow the above procedure to rectify the mistakes in the description of the property and the value of the mortgaged property.