PAPER 4: CORPORATE AND ALLIED LAWS

Part I – I : RELEVANT AMENDMENTS FOR NOVEMBER 2021 EXAMINATION

Applicability of Relevant Amendments/ Circulars/ Notifications/ Regulations etc.

For November 2021 examinations for Paper 4: Corporate and Allied Laws, the significant amendments made upto 30th April, 2021 are relevant.

Given here are the relevant amendments which shall be read in line with the principal Act. These amendments made uptill **30th April, 2021** are arranged chapter wise as per the study material for the convenience of the students.

SECTION A: COMPANY LAW & INSOLVENCY AND BANKRUPTCY CODE, 2016

The Companies Act, 2013 have been regularly amended by the Government vide enforcement of various amendment Act, namely Companies (Amendment) Act, 2017, the Companies (Amendment) Ordinance, 2018, the Companies (Amendment) Ordinance Act, 2019 and the Companies (Amendment) Second Ordinance, 2019, the Companies (Amendment) Act, 2019 and the Companies (Amendment) Act, 2020 and through enforcement of various legislative amendments made vide Circulars and Notifications.

Following are the relevant amendments pertaining to the Companies Act, 2013:-

CHAPTER 1: DECLARATION AND PAYMENT OF DIVIDEND

MCA Vide Notification S.O. 1303(E) dated 24th March 2021 the Central Government hereby appoints the 24th March, 2021 as the date on which the provisions of section 23 & 45 of the said Act shall come into force.	In **section 124 of** the principal Act, for sub-section (7), the following sub-section shall be substituted, namely:— "(7) If a company fails to comply with any of the requirements of this section, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of ten lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees."

CHAPTER 2: ACCOUNTS AND AUDIT

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

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

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

(i) In **rule 3** which deals with the Manner and Procedure of selection and appointment of auditors, following are the amendments:

(a) Explanation shall be omitted.

(b) proviso to sub-rule (7) shall be omitted.

(ii) In the principal rules, in **rule 10A** i.e., related to Internal Financial controls system, for the words "adequate internal financial controls system", the words "internal financial controls with reference to financial statements" shall be substituted.

(iii) In the principal rules, in **rule 14** which deals with the remuneration of the cost auditor, following are the changes-

(a) in clause (a), in sub-clause (i), for the words, "who is a cost accountant in practice", the words "who is a cost accountant" shall be substituted;

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

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

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

In the Companies (Accounts) Rules, 2014,

(i) In sub-rule (5) of **Rule 8** which deals with the **Matters to be included in Board's report**, after clause (viii) the following clauses shall be inserted, namely:-

"(ix) a disclosure, as to whether maintenance of cost records as specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013, is required by the Company and accordingly such accounts and records are made and maintained,

(x) a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013,"

(ii) after sub-rule (5), the following **Sub Rule (6),** rule shall be inserted, namely:-

"(6) This rule shall not apply to One Person Company or Small Company".

(iii) after rule 8, the following **rule 8A** shall be inserted, namely:-

"8A. Matters to be included in Board's Report for One Person Company and Small Company-

(1) The Board's Report of One Person Company and Small Company shall be prepared based on the stand alone financial statement of the company, which shall be in abridged form and contain the following:-

(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;

(b) number of meetings of the Board;

(c) Directors' Responsibility Statement as referred to in sub-section (5) of section 134;

(d) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;

(e) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report;

(f) the state of the company's affairs;

(g) the financial summary or highlights;

(h) material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company;

(i) the details of directors who were appointed or have resigned during the year;

(j) the details or significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future.

(2) The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2.".

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

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

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

(i) in rule 2 which deals with the definitions, -

(a) in sub-rule (1), in sub-clause (i) of clause (c) which defines "Corporate Social Responsibility (CSR)", after the words "relating to activities", the words ", areas or subjects" shall be inserted;

(b) in sub-rule (1), in sub-clause (ii) of clause (c), for the words "cover subjects enumerated", the words "include activities, areas or subjects specified" shall be substituted;

(c) in sub-rule (1), in clause (e) which defines "CSR Policy", for the words "company as", the words "company in areas or subjects" shall be substituted.

(ii) in rule 5 which deals with the "CSR Committees", in clause (i) of sub rule (1), for the words "an unlisted public company or a private company", the words "a company" shall be substituted.

(iii) In **rule 6** which states of **CSR Policy**, following are the changes-

(a) in sub-rule (1), in clause (a), for the words "falling within the purview of" the words "areas or subjects specified in" shall be substituted;

(b) in sub-rule (1), in second proviso to clause (b), for the words, "activities included in Schedule VII" the words "areas or subjects specified in Schedule VII" shall be substituted.

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

4. Constitution of NFRA

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

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

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

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

Relevant sections	Amendment
Amendment of section 129 (Financial statement)	In section 129 of the principal Act, for **sub-section (*3*),** the following sub-section shall be substituted, namely:— "(*3*) Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (*2*), prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along

	with the laying of its financial statement under sub-section (2): Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries and associate company or companies in such form as may be prescribed: Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed."
Amendment of section 134 (Financial statement, Board's report, etc.)	In section 134 of the principal Act,— (a) for **sub-section (1),** the following sub-section shall be substituted, namely:— "(1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon."; (b) in **sub-section (3),—** (i) for clause (a), the following clause shall be substituted, namely:— "(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;" (ii) in clause (p), for the words "annual evaluation has been made by the Board of its own performance and that of its committees and individual directors", the words "annual evaluation of the performance of the Board, its Committees and of individual directors has been made" shall be substituted; (iii) after clause (q), the following provisos shall be inserted, namely:—

	"Provided that where disclosures referred to in this sub-section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report: Provided further that where the policy referred to in clause (e) or clause (o) is made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available." (c) after sub-section (3), the following **sub-section 3A** shall be inserted, namely:— "(3A) The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by One Person Company or small company.".
Amendment of section 135 (Corporate Social Responsibility)	In section 135 of the principal Act,— (i) in **sub-section (1),—** (a) for the words "any financial year", the words "the immediately preceding financial year" shall be substituted; (b) the following proviso shall be inserted, namely:— "Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors."; (ii) in **sub-section (3),** in clause (*a*), for the words and figures "as specified in Schedule VII", the words and figures "in areas or subject, specified in Schedule VII" shall be substituted; (iii) in **sub-section (5),** for the Explanation, the following Explanation shall be substituted, namely:— 'Explanation.—For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.'
Amendment of section 137 (Copy of financial statement	In section 137 of the principal Act,— (i) in **sub-section (1),—** (a) the words and figures "within the time specified under section 403" shall be omitted;

to be filed with Registrar).	(b) in the second proviso, the words and figures "within the time specified under section 403" shall be omitted; (*c*) after the fourth proviso, the following proviso shall be inserted, namely:— 'Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.'. (ii) in sub-section (2), the words and figures "within the time specified, under section 403" shall be omitted; (iii) in sub-section (3), for the words and figures "in section 403", the word "therein" shall be substituted.
Amendment of section 139 (Appointment of auditors).	In section 139 of the principal Act, in **sub-section (1),** the first proviso shall be omitted.

7. Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of enforcement
Amendment of Section 132	(a) **after sub-section (*1*),** the following sub-section shall be inserted, namely:— "(*1A*) The National Financial Reporting Authority (NFRA) shall perform its functions through such divisions as may be prescribed." (b) **after sub-section (*3*),** the following sub-sections shall be inserted, namely:— "(*3A*) Each division of the NFRA shall be presided over by the Chairperson or a full-time	**15th August, 2019**

	Member authorised by the Chairperson. (*3B*) There shall be an executive body of the NFRA consisting of the Chairperson and full-time Members of such Authority for efficient discharge of its functions under sub-section (*2*) [other than clause (*a*)] and sub-section (*4*)."; (c) **in sub-section (*4*),** in clause (*c*), for sub-clause (*B*), the following sub-clause shall be substituted, namely:— "(*B*) debarring the member or the firm from— I. being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or II. performing any valuation as provided under section 247, for a minimum period of six months or such higher period not exceeding ten years as may be determined by the NFRA."	
Amendment of section 137.	**in sub-section (3),—** (a) for the words "punishable with fine", the words "liable to a penalty" shall be substituted; (b) for the portion beginning with "punishable with imprisonment", and ending with "five lakh rupees or with both", the words "shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a	**2nd November, 2018**

	further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees" shall be substituted.	
Amendment of section 140.	**for sub-section (3),** the following sub-section shall be substituted, namely:— "(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.".	**2nd November, 2018**

8. Amendment in schedule VII: The MCA vide Notification No. G.S.R. 390(E) dated **30th May, 2019** has inserted the following item after item (xi) to Schedule VII:

(xii) disaster management, including relief, rehabilitation and reconstruction activities.

9. Amendments in Schedule VII vide Notification G.S.R. 776(E) dated **11th October, 2019**

The Central Government has amended the Schedule VII of the Companies Act, 2013.

In the said Schedule VII, for item (ix) and the entries relating thereto, the following item and entries shall be substituted, namely:

"(ix) Contribution to incubators funded by Central Government or State Government or any agency or Public Sector Undertaking of Central Government or State Government, and contributions to public funded Universities, Indian Institute of Technology (IITs), National Laboratories and Autonomous Bodies (established under the auspices of Indian Council of Agricultural Research (ICAR), Indian Council of Medical Research (ICMR), Council of Scientific and Industrial Research (CSIR), Department of Atomic Energy (DAE), Defence Research and Development Organisation (DRDO), Department of Biotechnology (DBT), Department of Science and Technology (DST), Ministry of Electronics and Information Technology) engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs)."

10. Enforcement of the Companies (Accounts) Amendment Rules, 2019 vide Notification G.S.R. 803 (E) dated 22nd October, 2019 w.e.f. 1st December, 2019

The Central Government has amended the Companies (Accounts) Rules, 2014, by the Companies (Accounts) Amendment Rules, 2019.

In the Companies (Accounts) Rules, 2014, in rule 8, in sub-rule (5), after clause (iii), the following clause shall be inserted namely:—

"(iiia) a statement regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year".

Explanation.—For the purposes of this clause, the expression "proficiency" means the proficiency of the independent director as ascertained from the online proficiency self-assessment test conducted by the institute notified under sub-section (1) of section 150.

11. Explanation added in the definition of "Government company" [Section 2(45)]:

In this section, the following explanation has been inserted in the definition **[inserted by notification dated 2-3-2020 by way of Exemptions to Government Companies under section 462 with effect from 3-3-2020]**

"Explanation.- For the purposes of this clause, the "paid up share capital" shall be construed as "total voting power", where shares with differential voting rights have been issued."

12. Amendments related to Schedule VII vide Notification G.S.R. 313(E) dated 26th May, 2020 w.e.f. 28th March, 2020

The Central Government has amended the Schedule VII of the Companies Act, 2013.

In Schedule VII, item (viii), after the words "Prime Minister's National Relief Fund", the words "or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)" shall be inserted.

13. The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020 w.e.f. 24th August 2020

(1) In the Companies (Corporate Social Responsibility Policy) Rules, 2014 (hereinafter referred to as the said rules), in rule 2, in sub-rule (1), in clause (e), stating-

"CSR Policy" relates to the activities to be undertaken by the company in areas or subjects specified in Schedule VII to the Act and the expenditure thereon, excluding activities undertaken in pursuance of normal course of business of a company;

the following proviso shall be inserted-

"Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22 and 2022-23 subject to the conditions that-

(i) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act.

(ii) details of such activity shall be disclosed separately in the Annual Report on CSR included in the Board's Report".

(2) In the said rules, in rule 4, in sub-rule 1, the words "excluding activities undertaken in pursuance of its normal course of business" shall be omitted. Now it can be read as –

"The CSR activities shall be undertaken by the company, as per its stated CSR Policy, as projects or programs or activities (either new or ongoing)".

(3) In the said rules, in rule 6, in sub-rule (1), — first proviso shall be omitted; which was as follows "Provided that the CSR activities undertaken in pursuance of normal course of business of accompany."

14. Notification dated 26th May 2020 issued by the Ministry of Corporate Affairs

The Central Government hereby makes the following further amendment to Schedule VII of the said Act, w.e.f. 28th March, 2020 namely:—

In Schedule VII, item (viii), after the words "Prime Minister's National Relief Fund", the words "or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)" shall be inserted.

It can be read as: contribution to the prime minister's national relief fund or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;

15. Notification dated 23rd June 2020 issued by Ministry of Corporate Affairs

The Central Government hereby makes the following further amendments in Schedule VII to the said Act, namely:— In the said Schedule, in item (vi), after the words "war widows and their dependents", the words "Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows;" shall be inserted.

It can be read as: Measures for the benefit of armed forces veterans, war widows and their dependents, Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows;

16. Notification dated 24th August 2020 issued by Ministry of Corporate Affairs

The Central Government hereby makes the following further amendments in Schedule VII to the said Act, namely:-

In the said Schedule, for item (ix) and the entries thereto, **the following item and entries shall be substituted**, namely:-

"(ix) (a) Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government; and

(b) Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defense Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs)".

17. Amendment made in the Section 135 of the Companies Act, 2013 through the enforcement of the section 21 of **the Companies (Amendment) Act, 2019. Following is the amendment:**

MCA Vide Notification 324 (E) S.O. dated 22nd January, 2021 In exercise of the powers conferred by sub-section (3) of section 1 of the Companies (Amendment) Act, 2019, the Central Government hereby appoints the 22nd day of January, 2021 as the date on which the provisions of section 21 of the said Act shall come into force.	In **section 135** of the principal Act,— (a) **in sub-section (5),** — (i) after the words "three immediately preceding financial years,", the words "or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years," shall be inserted; (ii) in the second proviso, after the words "reasons for not spending the amount" occurring at the end, the words, brackets, figure and letters "and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year" shall be inserted; (b) **after sub-section (5),** the following sub-sections shall be inserted, namely:— "(6) Any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in persuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social

	Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year. (7) If a company contravenes the provisions of sub-section (5) or sub-section (6), the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees ,or with both. **(**8) The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions.".

18. Amendments vide the Companies (Amendment) Act, 2020

Ministry of Law and Justice on 28th September 2020 enacted the Companies (Amendment) Act, 2020. This was an Act further to amend the Companies Act, 2013. According to this amendment Act, different dates may be appointed for enforcement of different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Relevant Notifications	Amendment in Relevant Sections of the Companies Act, 2013 (which may called as Principal Act)
MCA vide Notification S.O. 4646(E) dated 21st December, 2020, hereby appoints the 21st day of December, 2020 as the date on which the following provisions of the said Amendment Act shall come into force.	**In section 128** of the principal Act, in **sub-section (*6*),—** (a) the words "with imprisonment for a term which may extend to one year or" shall be omitted; (b) the words "or with both" shall be omitted. **In section 134** of the principal Act, **for sub-section (*8*),** the following sub-section shall be substituted, namely:— "(*8*) If a company is in default in complying with the provisions of this section, the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.". **In section 137** of the principal Act, **in sub-section (*3*)**,—

	(a) for the words "one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees", the words "ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees," shall be substituted; (b) for the words "one lakh rupees", the words "ten thousand rupees" shall besubstituted; (c) for the words "five lakh rupees", the words "fifty thousand rupees" shall besubstituted. In **section 140 of** the principal Act, in sub-section (*3*), for the words "five lakh rupees", the words "two lakh rupees" shall be substituted. **In section 143** of the principal Act, for sub-section (*15*), the following sub-section shall be substituted, namely:— "(*15*) If any auditor, cost accountant, or company secretary in practice does not comply with the provisions of sub-section (*12*), he shall,— (a) in case of a listed company, be liable to a penalty of five lakh rupees; and (b) in case of any other company, be liable to a penalty of one lakh rupees.". **In section 147** of the principal Act,—(*a*) in sub-section (*1*),— (i) the words "with imprisonment for a term which may extend to one yearor" shall be omitted; (ii) for the words "one lakh rupees, or with both", the words "one lakh rupees" shall be substituted; (*b*) in sub-section (*2*), the word and figures, "section 143" shall be omitted.
MCA Vide Notification 325(E) dated 22nd January, 2021, the Central Government hereby appoints the 22nd day of January, 2021 as the date on which the mentioned provisions of the	**After section 129** of the principal Act, the following section shall be inserted, namely:— **"129A**. The Central Government may, require such class or classes of unlisted companies, as may be prescribed,— (a) to prepare the financial results of the company on such periodical basis and in such form as may be prescribed; (b) to obtain approval of the Board of Directors and complete audit o rlimited review of such periodical financial results in such manner as may be prescribed; and

said Act shall come into force.	(c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.". In **section 135** of the principal Act,— (a) in sub-section (*5*), after the second proviso, the following proviso shall be inserted, namely:— "Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed."; (b) for sub-section (*7*), the following sub-section shall be substituted, namely:— "(*7*) If a company is in default in complying with the provisions of sub-section (*5*) or sub-section (*6*), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less."; (c) after sub-section (*8*), the following sub-section shall be inserted, namely:— "(*9*) Where the amount to be spent by a company under sub-section (*5*) does not exceed fifty lakh rupees, the requirement under sub-section (*1*) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company."

19. Vide General Circular No. 01/2021, of Ministry of Corporate Affairs, have made a clarification on spending of CSR funds for Awareness and public outreach on COVID-19 Vaccination programme .

This Circular is in continuation to this Ministry's General Circular No. 10/2020 dated 23.03.2020 wherein it was clarified that spending of CSR funds for COVID19 is an eligible CSR activity , it is further clarified that spending of CSR funds for carrying out awareness campaigns/ programmes or public outreach campaigns on COVID-19 Vaccination programme is an eligible CSR activity under item no. (i),(ii) and (xii) of Schedule VII of the Companies Act, 2013 relating

to promotion of health care, including preventive health care and sanitization, promoting education, and, disaster management respectively.

The companies may undertake the aforesaid activities subject to fulfillment of Companies (CSR Policy) Rules, 2014 and the circulars related to CSR, issued by this ministry from time to time.

20. **The Ministry of Corporate Affairs Vide NOTIFICATION G.S.R. 40(E)**, dated 22nd January, 2021, in exercise of the powers conferred by section 135 and sub-sections (1) and (2) of section 469 of the Companies Act, 2013, the Central Government hereby makes the following rules further to amend the **Companies (Corporate Social Responsibility Policy) Rules, 2014**, namely:-

1. **Short title and commencement.** - (1) These rules may be called the **Companies (Corporate Social Responsibility Policy)** Amendment Rules, 2021.

2. **Short title and commencement.** - (1) These rules may be called the **Companies (Corporate Social Responsibility Policy)** Amendment Rules, 2021.

   (2) They shall come into force on the date of their publication in the Official Gazette unless explicitly provided elsewhere in this notification.

3. In the **Companies (Corporate Social Responsibility Policy) Rules, 2014 (hereinafter referred to as the said rules), for rule 2, the following rule shall be substituted, namely:-**

   "2. Definitions. - (1) In these rules, unless the context otherwise requires,-

   (a) "Act" means the Companies Act, 2013 (18 of 2013);

   (b) "Administrative overheads" means the expenses incurred by the company for 'general management and administration' of Corporate Social Responsibility functions in the company but shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular Corporate Social Responsibility project or programme;

   (c) "Annexure" means the Annexure appended to these rules;

   (d) "Corporate Social Responsibility (CSR)" means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Act in accordance with the provisions contained in these rules, but shall not include the following, namely:-

   (i) activities undertaken in pursuance of normal course of business of the company:

   Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that-

(a) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act;

(b) details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report;

(ii) any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level;

(iii) contribution of any amount directly or indirectly to any political party under section 182 of the Act;

(iv) activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019 (29 of 2019);

(v) activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services;

(vi) activities carried out for fulfilment of any other statutory obligations under any law in force in India;

(e) "CSR Committee" means the Corporate Social Responsibility Committee of the Board referred to in section 135 of the Act;

(f) "CSR Policy" means a statement containing the approach and direction given by the board of a company, taking into account the recommendations of its CSR Committee, and includes guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan;

(g) "International Organisation" means an organisation notified by the Central Government as an international organisation under section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply;

(h) "Net profit" means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely: -

(i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and

(ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act:

Provided that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381, read with section 198 of the Act;

(i) "Ongoing Project" means a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification;

(j) "Public Authority" means 'Public Authority' as defined in clause (h) of section 2 of the Right to Information Act, 2005 (22 of 2005);

(k) "section" means a section of the Act.

(2) Words and expressions used and not defined in these rules but defined in the Act shall have the same meanings respectively assigned to them in the Act. ".

3. In the said rules, in **rule 3, in sub-rule (2), in clause (b)**, for the words, brackets and figure "sub-section (2) to (5)", the words, brackets and figure "sub-section (2) to (6)" shall be substituted.

4. In the said rules, for **rule 4**, the following rule shall be substituted, namely:-

"**4. CSR Implementation**. – (1) The Board shall ensure that the CSR activities are undertaken by the company itself or through -

(a) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or along with any other company, or

(b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or

(c) any entity established under an Act of Parliament or a State legislature; or

(d) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

(2) (a) Every entity, covered under sub-rule (1), who intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the **01st day of April 2021:**

Provided that the provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to the **01st day of April 2021.**

(b) Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.

(c) On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.

(3) A company may engage international organisations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.

(4) A company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with these rules.

(5) The Board of a company shall satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management shall certify to the effect.

(6) In case of ongoing project, the Board of a Company shall monitor the implementation of the project with reference to the approved timelines and year-wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period. ".

5. In the said rules, **in rule 5, for sub-rule (2),** the following sub-rule shall be substituted, namely:-

"(2) The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following, namely:-

(a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;

(b) the manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4;

(c) the modalities of utilisation of funds and implementation schedules for the projects or programmes;

(d) monitoring and reporting mechanism for the projects or programmes; and

(e) details of need and impact assessment, if any, for the projects undertaken by the company:

Provided that Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect. ".

6. In the said rules, rule 6 shall be omitted.

7. In the said rules, for rule 7, the following rule shall be substituted, namely:-

"7.CSR Expenditure. - (1) The board shall ensure that the administrative overheads shall not exceed five percent of total CSR expenditure of the company for the financial year.

(2) Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

(3) Where a company spends an amount in excess of requirement provided under sub-section (5) of section 135 , such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding three financial years subject to the conditions that –

(i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule.

(ii) the Board of the company shall pass a resolution to that effect.

(4) The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by -

(a) a company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number under sub-rule (2) of rule 4; or (b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or (c) a public authority:

Provided that any capital asset created by a company prior to the commencement of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, shall within a period of one hundred and eighty days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than ninety days with the approval of the Board based on reasonable justification.

8. In the said rules, **for rule 8,** the following rule shall be substituted, namely:-

"8. CSR Reporting .- (1) The Board's Report of a company covered under these rules pertaining to any financial year shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.

(2) In case of a foreign company, the balance sheet filed under clause (b) of sub-section (1) of section 381 of the Act, shall contain an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.

(3) (a) Every company having average CSR obligation of ten crore rupees or more in pursuance of subsection (5) of section 135 of the Act, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.

(b) The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.

(c) A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed five percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is less. ".

9. In the said rules, for rule 9, the following rules shall be substituted, namely:-

"9. Display of CSR activities on its website. - The Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access.

10. Transfer of unspent CSR amount. – Until a fund is specified in Schedule VII for the purposes of subsection (5) and(6) of section 135 of the Act, the unspent CSR amount, if any, shall be transferred by the company to any fund included in schedule VII of the Act.".

21. Vide General Circular No. 05/2021, dated 22nd April, 2021, a clarification has been issued on spending of CSR funds for setting up makeshift hospitals and temporary COVID Care facilities.

In continuation to this Ministry's General Circular No. 10/2020 dated 23.03.2020 wherein it was clarified that spending of CSR funds for COVID-19 is an eligible CSR activity, it is further clarified that spending of CSR funds for 'setting up makeshift hospitals and temporary COVID Care facilities ' is an eligible CSR activity under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively.

22. The Ministry of Corporate Affairs, Vide Notification G.S.R. 205(E), dated 24th March, 2021 amended **the Companies (Accounts) Rules, 2014**, namely:-

1. Short title and commencement.- These rules may be called the **Companies (Accounts) Amendment Rules, 2021**.They shall come into force with effect from the 1st day of April, 2021.

2. In the Companies (Accounts) Rules, 2014,-

(1) in **rule 3, in sub-rule (1),** the following proviso shall be inserted, namely:-

"Provided that for the financial year commencing on or after the 1st day of April, 2021, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled."

(2) in **rule 8, in sub-rule (5),** after clause (x), the following clauses shall be inserted namely:-

"(xi) the details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) during the year alongwith their status as at the end of the financial year.

(xii) the details of difference between amount of the valuation done at the time of one time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof."

23. **Ministry of Corporate Affairs Vide Notification G.S.R. 247(E), dated** 1st April, 2021 amended the Companies (Accounts) Rules, 2014, through the enforcement of **the Companies (Accounts) Second Amendment Rules, 2021** w.e.f. 1st day of April, 2021.

In the Companies (Accounts) Rules, 2014, **in proviso to sub-rule (1) of rule 3,** for the figures, letters and words "1st day of April, 2021", the figures, letters and words "1st day of April, 2022" shall be substituted.

24. **Ministry of Corporate Affairs Vide Notification G.S.R. 206(E) dated** 24th March, 2021, amended the Companies (Audit and Auditors) Rules, 2014 through the enforcement of **the Companies (Audit and Auditors) Amendment Rules, 2021**with effect from the 1st day of April, 2021.

In the Companies (Audit and Auditors) Rules, 2014, in rule 11,-

(1) clause (d) shall be omitted.

(2) after clause (d), the following clauses shall be inserted, namely:-

"(e) (i) Whether the management has represented that, to the best of it's knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities ("Intermediaries"), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;

(ii) Whether the management has represented, that, to the best of it's knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been received by the company from any person(s) or entity(ies), including foreign entities ("Funding Parties"), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and

(iii) Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them

to believe that the representations under sub-clause (i) and (ii) contain any material mis-statement.

(f) Whether the dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013.

(g) **Whether the company** has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software and the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention.".

25. The Ministry of Corporate Affairs Vide Notification G.S.R. 248(E), dated 1st April, 2021 amended the Companies (Audit and Auditors) Rules, 2014, through the enforcement of **the Companies (Audit and Auditors) Second Amendment Rules, 2021,**with effect from the 1stday of April, 2021.

In the Companies (Audit and Auditors) Rules, 2014, **in rule 11, in clause (g),** for the words "Whether the company", the words, figures and letters "Whether the company, in respect of financial years commencing on or after the 1st April, 2022," shall be substituted.

CHAPTER 3: APPOINTMENT AND QUALIFATION OF DIRECTORS

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

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

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

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

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

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

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

"(2) The Central Government or Regional Director (Northern Region), or any officer authorised by the Central Government or Regional Director (Northern Region) shall, deactivate the Director Identification Number (DIN), of an individual who

does not intimate his particulars in e-form DIR-3-KYC within stipulated time in accordance with Rule 12A.

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

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

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

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

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

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

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

(i) in the proviso to **rule 12A** i.e., Directors KYC, for the words and numbers "DIR-3 KYC on or before 31st August, 2018, the words and numbers "DIR-3 KYC on or before 15th September, 2018" shall be substituted.

(ii) in the Annexure, for Form No.DIR-3 KYC, a new Form shall be substituted.

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

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

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

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

Relevant sections	**Amendment**
Amendment of **section 149**	In section 149 of the principal Act,—

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

	(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (*i*), (*ii*) or (*iii*);"; (*c*) in clause (*e*), in sub-clause (*i*), the following proviso shall be inserted, namely:— "Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.".
Amendment of **Section 157** (Company to inform DIN to registrar)	In section 157 of the principal Act,— (i) in **sub-section (1),** the words and figures, "within the time specified under section 403" shall be omitted; (ii) **in sub-section (2),** the words and figures, "before the expiry of the period specified under section 403 with additional fee", shall be omitted.
Amendment of **section 164** (Disqualifications for appointment of director")	In section 164 of the principal Act,— (i) **in sub-section (2),** the following proviso shall be inserted, namely:— "Provided that where a person is appointed as a director of a company which is in default of clause (*a*) or clause (*b*), he shall not incur the disqualification for a period of six months from the date of his appointment." (ii) in **sub-section (3),** for the proviso, the following proviso shall be substituted, namely:— "Provided that the disqualifications referred to in clauses (*d*), (*e*) and (*g*) of sub-section (*1*) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification."
Amendment of **section 167** (Vacations of office of director).	In section 167 of the principal Act, in **sub-section (1),—** (i) in clause (a), the following proviso shall be inserted, namely:— "Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section."; (ii) in clause (f), for the proviso the following proviso shall be substituted, namely,—

	"Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)— (a) for thirty days from the date of conviction or order of disqualification; (b) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or (iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of."
Amendment of **Section 168** (Resignation of Director)	In section 168 of the principal Act, in **sub-section (1),** in the proviso, for the words, "director shall also forward", the words "director may also forward" shall be substituted.

6. Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of enforcement
Amendment of **section 157.**	In section 157 of the principal Act, for **sub-section (2),** the following sub-section shall be substituted, namely:— "(2) If any company fails to furnish the Director Identification Number under sub-section (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which	**2nd November, 2018**

	such failure continues, subject to a maximum of one lakh rupees."	
Substitution of new section for **section 159.**	For section 159 of the principal Act, the following **Substitution of section** shall be substituted, namely: **Penalty for default of certain provisions.** "159.If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues."	**2nd November, 2018**
Amendment of **section 164.**	In section 164 of the principal Act, in **sub-section (1),** after clause (h), the following clause shall be inserted, namely:— "(i) he has not complied with the provisions of sub-section (1) of section 165."	**2nd November, 2018**
Amendment of **section 165.**	In section 165 of the principal Act, in **sub-section (6),** for the portion beginning with "punishable with fine" and ending with "contravention continues", the words "liable to a penalty of five thousand rupees for each day after the first during which such contravention continues" shall be substituted.	**2nd November, 2018**

7. Enforcement of the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019 via G.S.R. 528(E) dated 25th July, 2019

The Central Government makes the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019 to amend Companies (Appointment and Qualification of Directors) Rules, 2014.

In Companies (Appointment and Qualification of Directors) Rules, 2014, in **rule 12A,-**

(i) for the words "who has been allotted", the words "who holds" shall be substituted;

(ii) for the words, letters and figures "submit e-form DIR-3-KYC to the Central Government on or before 30th June of immediate next financial year", the words, letters and figures "submit e-form DIR-3-KYC for the said financial year to the Central Government on or before 30th September of immediate next financial year" shall be substituted;

(iii) after the proviso, the following provisos shall be inserted, namely:-

"Provided further that where an individual who has already submitted e-form DIR-3 KYC in relation to any previous financial year, submits web-form DIR-3 KYC-WEB through the web service in relation to any subsequent financial year it shall be deemed to be compliance of the provisions of this rule for the said financial year:

Provided also that in case an individual desires to update his personal mobile number or the e-mail address, as the case may be, he shall update the same by submitting e-form DIR-3 KYC only.

Provided also that fee for filing e-form DIR-3 KYC or web-form DIR-3 KYC-WEB through the web service, as the case may be, shall be payable as provided in Companies (Registration Offices and Fees) Rules, 2014.".

8. The Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019 notified by MCA vide notification no. G.S.R. 804(E), dated **22nd October, 2019 w.e.f. 1st day of December, 2019**. This amended rule is further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014.

For Rule 6, the following rule shall be substituted, namely: –

"6. **Compliances required by a person eligible and willing to be appointed as an independent director.—**

(1) Every individual –

(a) who has been appointed as an independent director in a company, **on the date of commencement** of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall within a period of three months from such commencement; or

(b) who intends to get appointed as an independent director in a company **after**

such commencement, shall before such appointment, apply online to the institute for inclusion of his name in the data bank for a period of one year or five years or for his life-time, and from time to time take steps as specified in sub-rule (2), till he continues to hold the office of an independent director in any company.

Provided that any individual, including an individual not having DIN, may voluntarily apply to the institute for inclusion of his name in the data bank.

(2) Every individual whose name has been so included in the data bank shall file an application for renewal for a further period of one year or five years or for his life-time, within a period of thirty days from the date of expiry of the period upto which the name of the individual was applied for inclusion in the data bank, failing which, the name of such individual shall stand removed from the data bank of the institute:

Provided that no application for renewal shall be filed by an individual who has paid life-time fees for inclusion of his name in the data bank.

(3) Every independent director shall submit a declaration of compliance of sub-rule (1) and sub-rule (2) to the Board, each time he submits the declaration required under sub-section (7) of section 149 of the Act.

(4) Every individual whose name is so included in the data bank under sub-rule (1) shall pass an online proficiency self-assessment test conducted by the institute within a period of one year from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the institute:

Provided that the individual who has served for a period of not less than ten years as on the date of inclusion of his name in the databank as director or key managerial personnel in a listed public company or in an unlisted public company having a paid-up share capital of rupees ten crore or more shall not be required to pass the online proficiency self-assessment test:

Provided further that for the purpose of calculation of the period of ten years referred to in the first proviso, any period during which an individual was acting as a director or as a key managerial personnel in two or more companies at the same time shall be counted only once.

Explanation: For the purposes of this rule,-

(a) the expression “institute” means the ‘Indian Institute of Corporate Affairs at Manesar’ notified under sub-section (1) of section 150 of the Companies Act, 2013 as the institute for the creation and maintenance of data bank of Independent Directors;

(b) an individual who has obtained a score of not less than sixty percent. in

aggregate in the online proficiency self-assessment test shall be deemed to have passed such test;

(c) there shall be no limit on the number of attempts an individual may take for passing the online proficiency self-assessment test."

9. The Companies (Appointment and Qualification of Directors) Amendment Rules, 2020

MCA vide Notification G.S.R. 145(E) dated **28th February, 2020** notified the Companies (Appointment and Qualification of Directors) Amendment Rules, 2020 further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014 w.e.f. the date of their publication in the Official Gazette.

[1]In the Companies (Appointment and Qualification of Directors) Rules, 2014, in rule 6:

(i) in sub-rule (1), in clause (a), for the words "**three months",** the words **"five months"** shall be substituted,

(ii) in sub-rule (4),- For the first Proviso, following proviso shall be substituted-

"Provided that an individual shall not be required to pass the online proficiency self-assessment test, when he has served as a director or key managerial personnel, for a total period of not less than ten years, as on the date of inclusion of his name in the databank, in one or more of the following, namely:-

(a) listed public company; or

(b) unlisted public company having a paid-up share capital of rupees ten crore or more; or

(c) body corporate listed on a recognized stock exchange:"

(iii) in sub-rule (4),- in the second proviso, for the word "companies", the words "companies or bodies corporate" shall be substituted.

10. The Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2020

Vide Notification G.S.R. 268 (E), dated 29th April, 2020, the Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2020 came into enforcement from the date of their publication in the Official Gazette further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014.

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[1] Vide notification no. G.S.R. 804(E), dated 22nd October, 2019 w.e.f. 1st day of December, 2019, Rule 6 have been amended. The amended Rule 6 is given in Point no. I., the above para. This Rule have been further amended by the Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2020, w.e.f. 29-3-2020 and Companies (Appointment and Qualification of Directors) Amendment Rules, 2020, w.e.f. 8-2-2020.

In rule 6 in sub-rule (1), in clause (a), for the words "**five months",** the words **"seven months"** shall be substituted.

11. Amendment in Rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014 vide Notification dated G.S.R. 774(E) dated 18th December, 2020.

Said Rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014 was completely replaced by the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, vide Notification dated 22nd October 2019 w.e.f 1st day of December 2019. Further this rule was regularly amended through various notifications in following order:

Through series of Notifications i.e., the Companies (Appointment and Qualification of Directors) Amendment Rules, 2020, dated 28.02.2020, the Companies (Appointment and Qualification of Directors) Second Amendment Rules 2020,dated 29.04.2020, the Companies (Appointment and Qualification of Directors) Third Amendment Rules,2020,dated 23.06.2020, the Companies (Appointment and Qualification of Directors) Fourth Amendment Rules,2020, dated 28.09.2020, and through the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2020, w.e.f. 18.12.2020.

Revised Rule 6 in line with these amendments are as follows:

6. Compliances required by a person eligible and willing to be appointed as an independent director.

(1) Every individual –

(a) who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall within a period of thirteen months from such commencement; or

(b) who intends to get appointed as an independent director in a company after such commencement, shall before such appointment,

apply online to the institute for inclusion of his name in the data bank for a period of one year or five years or for his life-time, and from time to time take steps as specified in sub-rule (2), till he continues to hold the office of an independent director in any company:

Provided that any individual, including an individual not having DIN, may voluntarily apply to the institute for inclusion of his name in the data bank.

(2) Every individual whose name has been so included in the data bank shall file an application for renewal for a further period of one year or five years or for his life-time, within a period of thirty days from the date of expiry of the period upto which the name of the individual was applied for inclusion in the data bank, failing which, the name of such individual shall stand removed from the data bank of the institute:

Provided that no application for renewal shall be filed by an individual who has paid life-time fees for inclusion of his name in the data bank.

(3) Every independent director shall submit a declaration of compliance of sub-rule (1) and sub-rule (2) to the Board, each time he submits the declaration required under sub-section (7) of section 149 of the Act.

(4) Every individual whose name is so included in the data bank under sub-rule (1) shall pass an online proficiency self-assessment test conducted by the institute within a period of Two years from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the institute:

Provided that an individual shall not be required to pass the online proficiency self-assessment test when he has served for a total period of not less than three years as on the date of inclusion of his name in the data bank,-

(A) as a director or key managerial personnel, as on the date of inclusion of his name in the databank, in one or more of the following, namely:-

(a) listed public company; or

(b) unlisted public company having a paid-up share capital of rupees ten crore or more; or

(c) body corporate listed on any recognized stock exchange or in a country which is a member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions; or

(d) bodies corporate incorporated outside India having a paid-up share capital of US$ 2 million or more; or

(e) statutory corporations set up under an Act of Parliament or any State Legislature carrying on commercial activities; or

(B) in the pay scale of Director or above in the Ministry of Corporate Affairs or the Ministry of Finance or Ministry of Commerce and Industry or the Ministry of Heavy Industries and Public Enterprises and having experience in handling the matters relating to corporate laws or securities laws or economic laws; or

(C) in the pay scale of Chief General Manager or above in the Securities and Exchange Board or the Reserve Bank of India or the Insurance Regulatory and Exchange Board or the Reserve Bank of India or the Insurance Regulatory and Development Authority of India or the Pension Fund Regulatory and Development Authority and having experience in handling the matters relating to corporate laws or securities laws or economic laws :

Provided further that for the purpose of calculation of the period of three years referred to in the first proviso, any period during which an individual was acting as a director or as a key managerial personnel in two or more companies or bodies corporate or statutory corporations at the same time shall be counted only once.

Explanation: For the purposes of this rule,-

(a) the expression "institute" means the 'Indian Institute of Corporate Affairs at Manesar' notified under sub-section (1) of section 150 of the Companies Act, 2013 as the institute for the creation and maintenance of data bank of Independent Directors;

(b) an individual who has obtained a score of not less than fifty percent in aggregate in the online proficiency self-assessment test shall be deemed to have passed such test;

(c) there shall be no limit on the number of attempts an individual may take for passing the online proficiency self-assessment test.

CHAPTER 4: APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

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

The Central Government makes the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018 to amend the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014. This amendment has omitted the requirement of approval of the Central Government for making payment of remuneration to the Managerial personnel (in case of inadequacy of profit) and accordingly e-form MR-2 has also been amended.

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

(i) in **rule 6** which deals with the Parameters for consideration of remuneration, following are the amendments:

  (a) for the heading 'application to the Central Government' the heading 'Parameters for consideration of remuneration' shall be substituted.

  (b) the words 'Central Government' shall be omitted.

(ii) in **rule 7** i.e., related to Fees, sub-rule (2) shall be omitted

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

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

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

Relevant Sections	Amendment
Amendment of section **196** (Appointment of MD, WTD, Manager)	In section 196 of the principal Act,— (a) in **sub-section (3),** in clause (a), after the proviso, the following proviso shall be inserted, namely:— "Provided further that where no such special resolution is passed but votes cast in favour of the motion exceed the

	votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made."; (b) in **sub-section (4),** for the words "specified in that Schedule", the words "specified in Part I of that Schedule" shall be substituted.
Amendment of Section **197** (Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits)	In section 197 of the principal Act,— (a) in **sub-section (1),—** (i) in the first proviso, the words "with the approval of the Central Government," shall be omitted; (ii) in the second proviso, after the words "general meeting,", the words "by a special resolution," shall be inserted; (iii) after the second proviso, the following proviso shall be inserted, namely:— "Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting."; (b) in **sub-section (3),** the words "and if it is not able to comply with such provisions, with the previous approval of the Central Government" shall be omitted; (c) for **sub-section (9),** the following sub-section shall be substituted, namely:— "(9) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company."; (d) in **sub-section (10),—** (i) for the words "permitted by the Central

	Government", the words "approved by the company by special resolution within two years from the date the sum becomes refundable" shall be substituted; (ii) the following proviso shall be inserted, namely:— "Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver."; (e) in **sub-section (11),** the words "and if such conditions are not being complied, the approval of the Central Government had been obtained" shall be omitted; (f) after **sub-section (15),** the following sub-sections shall be inserted, namely:— "(16) The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed. (17) On and from the commencement of the Companies (Amendment) Act, 2017, any application made to the Central Government under the provisions of this section [as it stood before such commencement], which is pending with that Government shall abate, and the company shall, within one year of such commencement, obtain the approval in accordance with the provisions of this section, as so amended."
Amendment of Section **198** (Calculations of Profits)	In section 198 of the principal Act,— (i) in **sub-section (3),—** (a) in clause (a), after the words “sold by the company”, the words, letter, brackets and figures “unless the company is an investment company as referred to in clause (a) of the Explanation to section 186” shall be inserted;

	(b) after clause (e), the following clause (f) shall be inserted, namely:— "(f) any amount representing unrealised gains, notional gains or revaluation of assets."; (ii) in **sub-section (4),** in clause (l), the words "which begins at or after the commencement of this Act" shall be omitted.
Amendment of section **200** (Central Government or company to fix limit with regard to remuneration).	In section 200 of the principal Act, the words "the Central Government or" appearing at both the places shall be omitted.
Amendment of section **201** (Forms of, and procedure in relation to, certain applications).	In section 201 of the principal Act,— (a) in **sub-section (1),** for the words "this Chapter", the word and figures "section 196" shall be substituted; (b) in **sub-section (2),** in clause (*a*), for the words "any of the sections aforesaid", the word and figures "section 196" shall be substituted.

4. Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of enforcement
Amendment of section **197.**	In section 197 of the principal Act (a) **sub-section (7)** shall be omitted; (b) for **sub-section (15),** the following sub-section shall be substituted, namely:— "(15) If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.".	**2nd November, 2018**
Amendment of section **203.**	In section 203 of the principal Act,	**2nd November, 2018**

	for sub-section (5), the following sub-section shall be substituted, namely:— "(5) If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.".	

5. The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020

Vide Notification G.S.R. 13(E) dated **3rd January, 2020,** the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 has been amended with the enforcement of this amended rules 2020. It shall be applicable in respect of financial years commencing on or after 1st April, 2020.

Sl. No.	Amended law
1.	For **rule 8A**, the following shall be substituted as under:- "8A. Every private company which has a paid up share capital of ten crore rupees or more shall have a whole-time company secretary."
2.	in **rule 9, in sub-rule (1),** (i) after clause (b), at the end, the word "or" shall be inserted. (ii) after clause (b), the following clause (c) shall be inserted, namely:- "(c) every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more.". (iii) following Explanation inserted, namely:- "Explanation :- For the purposes of this sub-rule, it is hereby clarified that the paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement shall be taken into account."

6. Ministry of Corporate Affairs vide Notification S.O. 1256(E), dated 18th March, 2021 hereby amends Schedule V of the Companies Act 2013, as follows:—

In Schedule V of the Companies Act, 2013, in PART II, under the heading —REMUNERATION

A. in Section I, in the first para, after the words —managerial person or persons, the words —or other director or directors shall be inserted;

B. in Section II,--

(i) after the words —managerial person, wherever occurred, the words —or other director shall be inserted;

(ii) for Table (A):, the following shall be substituted, namely.-

—(A):

	(1)	(2)	(3)
Sl. No.	**Where the effective capital (in rupees) is**	**Limit of yearly remuneration payable shall not exceed (in Rupees) in case of a managerial person**	**Limit of yearly remuneration payable shall not exceed (in rupees) in case of other director**
(i)	Negative or less than 5 crores.	60 lakhs	12 Lakhs
(ii)	5 crores and above but less than 100 crores.	84 lakhs	17 Lakhs
(iii)	100 crores and above but less than 250 crores.	120 lakhs	24 Lakhs
(iv)	250 crores and above.	120 lakhs plus 0.01% of the effective capital in excess of ₹250 crores:	24 Lakhs plus 0.01% of the effective capital in excess of ₹250 crores:

C. in Section III, –

(i) after the words —managerial person, wherever occurred, except in clause (i) of the proviso, the words —or other director shall be inserted;

(ii) after the words —managerial persons, wherever occurred, the words —or other directors shall be inserted;

(iii) following explanation shall be inserted at the end, namely:-

"Explanation.– For the purposes of Section I, Section II and Section III, the term —or other director shall mean a non-executive director or an independent director.

CHAPTER 5: MEETING OF BOARD AND ITS POWERS

1. Enforcement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2018 vide Notification G.S.R. 429 (E) dated 7th May, 2018

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

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

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

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

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

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

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

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

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

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

Amendment of section **177** (Audit Committee).	In section 177 of the principal Act,— (i) in **sub-section (1),** for the words "every listed company", the words "every listed public company" shall be substituted; (ii) in **sub-section (4),** in clause (iv), after the proviso, the following provisos shall be inserted, namely:— "Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board: Provided also that in case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it: Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company."
Amendment of Section **178** (Nomination and Remuneration Committee and stake holders Relationship committee)	In section 178 of the principal Act,— (i) in **sub-section (1),** for the words "every listed company", the words "every listed public company" shall be substituted; (ii) in **sub-section (2),** for the words "shall carry out evaluation of every director's performance", the words "shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance" shall be substituted; (iii) in **sub-section (4),** in clause (*c*), for the proviso, the following proviso shall be substituted, namely:— "Provided that such policy shall be placed on the website of the company, if any, and the salient features of the policy

	and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report."; (iv) in **sub-section (8),** in the proviso, for the words "non-consideration of resolution of any grievance", the words "inability to resolve or consider any grievance" shall be substituted.
Substitution of new section for section **185**. (Loan to Directors)	For **section 185** of the principal Act, the following section shall be substituted, namely:— '185. (1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,— (a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or (b) any firm in which any such director or relative is a partner. (2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that— (a) a special resolution is passed by the company in general meeting: Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and (b) the loans are utilised by the borrowing company for its principal business activities. *Explanation.*—For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means— (a) any private company of which any such director is a director or member; (b) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may

	be exercised or controlled by any such director, or by two or more such directors, together; or (c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company. (3) Nothing contained in sub-sections (*1*) and (*2*) shall apply to— (a) the giving of any loan to a managing or whole-time director— (i) as a part of the conditions of service extended by the company to all its employees; or (ii) pursuant to any scheme approved by the members by a special resolution; or (b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or (c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or (d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company: Provided that the loans made under clauses (c) and (d) are utilized by the subsidiary company for its principal business activities. (4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,— (i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; (ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be

	less than five lakh rupees but which may extend to twenty-five lakh rupees; and (iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.'
Amendment of section **186** (Loan and investment by company).	In section 186 of the principal Act,— (i) in **sub-section (2),** the following Explanation shall be inserted, namely:— *'Explanation.*—For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company'; (ii) for **sub-section (3),** the following sub-section shall be substituted, namely:— '(3) Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under sub-section (*2*), no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting: Provided that where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply: Provided further that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (4).". (iii) for **sub-section (11),** the following sub-section shall be substituted, namely:— "(11) Nothing contained in this section, except sub-section (1), shall apply— (a) to any loan made, any guarantee given or any security provided or any investment made by a banking company, or an insurance company, or a housing finance company in the

	ordinary course of its business, or a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities; (b) to any investment— (i) made by an investment company; (ii) made in shares allotted in pursuance of clause (a) of sub-section (1) of section 62 or in shares allotted in pursuance of rights issues made by a body corporate; (iii) made, in respect of investment or lending activities, by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities."; (iv) **in the *Explanation***, in **clause (a),** after the words "other securities" the following shall be inserted, namely:— "and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent. of its total assets, or if its income derived from investment business constitutes not less than fifty per cent. as a proportion of its gross income."

3. Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of enforcement
Amendment of section 191	In section 191 of the principal Act, for **sub-section (5),** the following sub-section shall be substituted, namely:— "(5) If a director of the company makes any default in complying with the provisions of this section, such director shall be liable to a penalty of one lakh rupees.".	**2nd November, 2018**

4. Enforcement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2019 dated 11th October, 2019

The Central Government makes the Companies (Meetings of Board and its Powers) Amendment Rules, 2019to amend the Companies (Meetings of Board and its Powers) Rules, 2014.

In the Companies (Meetings of Board and its Powers) Rules, 2014, in **rule 11**, in sub-rule (2), for the words "business of financing of companies", the words "business of financing industrial enterprises" shall be substituted.

5. The Companies (Meetings of Board and its Powers) Second Amendment Rules, 2019

Vide Notification G.S.R. 857(E) dated **18th November, 2019,** the Central Government hereby makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014 to be enforced from the date of their publication in the Official Gazette.

Sl. No.	Amended law
1.	In rule 15, in sub-rule (3), in clause (a),- (a) in sub-clauses (i) and (ii), the words "**or rupees one hundred crore, whichever is lower",** shall be **omitted**
2.	In rule 15, in sub-rule (3), in clause (a),- (a) in sub-clause (iii), for the words "amounting to ten per cent or more of the net worth of the company or ten per cent or more of turnover of the company or rupees one hundred crore, whichever is lower", the words "**amounting to ten per cent or more of the turnover of the company"** shall be substituted;
3.	In rule 15, in sub-rule (3), in clause (a),- (a) in sub-clause (iv), the words **"or rupees fifty crore, whichever is lower",** shall be **omitted**

6. The Companies (Meetings of Board and its Powers) Amendment Rules, 2020

Vide notification G.S.R. 186(E) dated **19th March, 2020**, the Central Government hereby amended the Companies (Meetings of Board and its Powers) Rules, 2014 through the enforcement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 from the date of their publication in the Official Gazette.

In the Companies (Meetings of Board and its Powers) Rules, 2014, rule 4 shall be renumbered as sub-rule (1) thereof and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted, namely:-

"(2) For the period beginning from the commencement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 and ending on the 30th June, 2020, the meetings on matters referred to in sub-rule (1) may be held through video conferencing or other audio visual means in accordance with rule 3."

7. Further exemptions to Government company: Vide Notification G.S.R. 151(E) dated **2nd March, 2020**, the Central Government, in the public interest, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Corporate Affairs, number G.S.R. 463(E), dated the 5th June, 2015 which dealt with the exemptions to Government Companies:

Sl. No.	Amended law
1.	Chapter XII, **first and second proviso to sub-section (1) of section 188,** Shall not apply to – (a) a Government company in respect of contracts or arrangements entered into by it with any other Government company, or with Central Government or any State Government or any combination thereof; (b) a Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before entering into such contract or arrangement.".

CHAPTER 6: INSPECTION, INQUIRY AND INVESTIGATION

Amendments through the Companies (Amendment) Act, 2019

Relevant Section	Amendment in law	Date of Enforcement
Amendment of Section 212	(a) in **sub-section (*8*),** for the words "**If the Director, Additional Director or Assistant Director"** the words **"If any officer not below the rank of Assistant Director"** shall be substituted; (b) in **sub-section (*9*),** for the portion beginning with the words "**The Director" and ending with the word, brackets and figure "sub-section (*8*)**", the words, brackets and figure **"The officer authorised under sub-section (*8*) shall, immediately after arrest of such person under such sub-section"** shall be substituted; (c) in **sub-section (*10*),—** (i) for the words **"Judicial Magistrate",** the words "**Special Court or Judicial Magistrate"** shall be substituted; (ii) in the proviso, for the words **"Magistrate's court",** "**Special Court or Magistrate's court**" shall be substituted; (d) **New sub-section 14A inserted** after sub-section 14, namely:— **"(*14A*)** Where the report under sub-section (*11*) or sub-section (*12*) states that fraud has taken place in a	**15th August, 2019**

	company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability."	

CHAPTER 7: COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

1. Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of Enforcement
section 238	In section 238 of the principal Act, in **sub-section (3),** for the words "punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees", the words "liable to a penalty of one lakh rupees" shall be substituted.	**2nd November, 2018**

2. Clarification under Section 232(6) of the Companies Act, 2013

A clarification has been issued by the MCA **on 21st August, 2019** regarding section 232(6). According to the clarification,

(a) The provision of section 232(6) of the Act enables the companies in question to choose and state in the scheme an 'appointed date'. This date may be a specific calendar date or may be tied to the occurrence of an event such as grant of license by a competent authority or fulfilment of any preconditions agreed upon by the parties, or meeting any other requirement as agreed upon between the parties, etc., which are relevant to the scheme.

(b) The 'appointed date' identified under the scheme shall also be deemed to be the 'acquisition date' and date of transfer of control for the purpose of conforming to accounting standards (including Ind-AS 103 Business Combinations).

(c) Where the 'appointed date' is chosen as a specific calendar date, it may precede the date of filing of the application for scheme of merger/amalgamation in NCLT. However, if the 'appointed date' is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest.

(d) The scheme may identify the 'appointed date' based on the occurrence of a trigger event which is key to the proposed scheme and agreed upon by the parties to the scheme. This event would have to be indicated in the scheme itself upon occurrence of which the scheme would become effective. However, in case of such event based date being a date subsequent to the date of filing the order with the Registrar under section 232(5), the company shall file an intimation of the same with the Registrar within 30 days of such scheme coming into force.

3. **Enforcement of section 230(11) and 230(12):** Government of India through Ministry of Corporate Affairs vide notification dated **3rd February, 2020**, appoints 3rd day of February, 2020 as the date on which the provisions of sub-sections (11) and (12) of section 230 of the said Act shall come into force.

CHAPTER 8: PREVENTION OF OPPRESSION AND MISMANAGEMENT

1. **Enforcement of the National Company Law Tribunal (Second Amendment) Rules, 2019 vide Notification G.S.R. 351(E) dated 8th May, 2019**

The Central Government makes the National Company Law Tribunal (Second Amendment) Rules, 2019 to amend the National Company Law Tribunal Rules, 2016.

In National Company Law Tribunal Rules, 2016,

In **rule 84**, after **sub-rule (2)**, the following sub-rules shall be inserted, namely: –

"(3) In case of a company having a share capital, the requisite number of member or members to file an application under sub-section (1) of section 245 shall be -

(i) (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

(ii) (a) member or members holding not less than five per cent. of the issued share capital of the company, in case of an unlisted company;

(b) member or members holding not less than two per cent. of the issued share capital of the company, in case of a listed company.

(4) The requisite number of depositor or depositors to file an application under sub-section (1) of section 245 shall be -

(i) (a) at least five per cent. of the total number of depositors of the company; or

(b) one hundred depositors of the company,

whichever is less; or

(ii) depositor or depositors to whom the company owes five per cent. of total deposits of the company."

2. Amendments through the Companies (Amendment) Act, 2019

Relevant Section	Amendment	Date of Enforcement
Amendment of Section **241**	(a) **in sub-section (*2*),** the following proviso is inserted, namely:— "Provided that the applications under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench."; (b) New insertion of sub-sections (3),(4) & (5) after **sub-section (*2*),** namely:— **"(*3*)** Where in the opinion of the Central Government there exist circumstances suggesting that— (a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust; (b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices; (c) a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or (d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest, the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to	**15th August, 2019**

	whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company. **(4)** The person against whom a case is referred to the Tribunal under sub-section (*3*), shall be joined as a respondent to the application. **(5)** Every application under sub-section (*3*)— (a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and (b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.".	
Amendment of Section **242**	New insertion **sub-section 4A** After sub-section (*4*), , namely:— **"(*4A*)** At the conclusion of the hearing of the case in respect of sub-section (*3*) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.".	**15th August, 2019**
Amendment of Section **243**	(a) new insertion of **sub-section 1A & 1B** after sub-section (1)**,** shall be inserted,:— **"(1A)** The person who is not a fit and proper person pursuant to sub-section (*4A*) of section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision: Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.	**15th August, 2019**

	(1B) Notwithstanding anything contained in any other provision of this Act, or any other law for the time being in force, or any contract, memorandum or articles, on the removal of a person from the office of a director or any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office."; (b) in **sub-section (*2*),** after the word, brackets and figure "sub-section (*1*)", the words, brackets, figure and letter "**or sub-section (*1A*)"** shall be inserted.	

CHAPTER 10: WINDING UP

Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of Enforcement
Amendment of Section 272	In **sub-section (*3*),** for the words, brackets and letter "**or clause (*e*) of that sub-section"**, the words **"of that section"** shall be substituted.	**15th August, 2019**

CHAPTER 16: SPECIAL COURTS

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

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

	who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.".
Amendment of section **438** (Application of Code to proceedings before Special court)	In section 438 of the principal Act, for the words "deemed to be a Court of Session", the words "deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be," shall be substituted.
Amendment of section **439** (Offences to be non-cognizable).	In section 439 of the principal Act, in sub-section (2), after the words "a shareholder", the words "or a member" shall be inserted.
Amendment of section **440** (Transitional provisions).	In section 440 of the principal Act, for the words "Court of Session", at both the places, the words "Court of Session or the Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be" shall be substituted.

2. Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of Enforcement
Amendment of section **446B.**	In section 446B of the principal Act, for the portion beginning with "punishable with fine" and ending with "specified in such sections", the words "liable to a penalty which shall not be more than one half of the penalty specified in such sections" shall be substituted.	2nd November, 2018

CHAPTER 17: MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

(i) in **rule 11** i.e., related to **Transitional Arrangement,** for the figures, letters and word "30thSeptember, 2018" occurring at both the places, the figures, letters and word "31st January, 2019" shall be substituted.

(ii) In the said **rules, in rule 14** i.e., related to **Conditions of Recognition**, in clause (f), for the words "one year", the words "two years" shall be substituted.

3. Enforcement of the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018 vide Notification G.S.R.1108 (E) dated 13th November 2018

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

In the Companies (Registered Valuers and Valuation) Rules, 2017 (hereinafter referred to as "the said rules")

(i) **in rule 1, -**

(a) for the marginal heading, the following marginal heading shall be substituted, namely:-

"Short title, commencement and application";

(b) after sub-rule (2), the following sub-rule shall be inserted, namely:-

"(3) These rules shall apply for valuation in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provision of the Act or these rules.

Explanation.- It is hereby clarified that conduct of valuation under any other law other than the Act or these rules by any person shall not be affected by virtue of coming into effect of these rules.".

(ii) **In the said rules, in rule 3, in sub-rule (2), -**

(a) in clause (a), the word "not" shall be omitted;

(b) in clause (c), after the brackets and letter "(e)", the brackets and letter "(f)," shall be inserted.

(iii) **In the said rules, in rule 4,-**

(a) in clause (c), the words, brackets and letters "and having qualification mentioned at clause (a) or (b)" shall be omitted;

(b) in Explanation II, the words "and examination or training" shall be omitted;

(c) after Explanation II, the following Explanation shall be inserted, namely :-

"Explanation III.— For the purposes of this rule and Annexure IV, 'equivalent' shall mean professional and technical qualifications which are recognised by the Ministry of Human Resources and Development as equivalent to professional and technical degree.".

(iv) In the said rules, **in rule 10**, the words "and he may conduct valuation as per these rules if required under any other law or by any other regulatory authority" shall be omitted.

(v) In the said rules, in **rule 12**, in sub-rule (1), in clause (ii), for the words "a professional institute", the words "it is a professional institute" shall be substituted.

4. Enforcement of the Companies (Adjudication of Penalties) Amendment Rules, 2019 vide Notification G.S.R. 131(E) dated 19th February, 2019

The Central Government makes the **Companies (Adjudication of Penalties) Amendment Rules, 2019** to amend the Companies (Adjudication of Penalties) Rules, 2014.

In the Companies (Adjudication of Penalties) Rules, 2014, for Rule 3, the following rule shall be substituted:

"3. Adjudication of Penalties. - (1) The Central Government may appoint any of its officers, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of the Act.

(2) Before adjudging penalty, the adjudicating officer shall issue a written notice in the specified manner, to the company, the officer 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 15 days and more than 30 days from the date of service thereon), why the penalty should not be imposed on it or him.

(3) Every notice issued under sub-rule (2), shall clearly indicate the nature of non-compliance or default under the Act alleged to have been committed or made by such company, officer in default, or any other person, the company, and each of the officers in default, or the other person. as the case may be and also draw attention to the relevant penal provisions of the Act and the maximum penalty which can be imposed on the company, and each of the officers in default, or the other person.

(4) The reply to such notice shall be filed in electronic mode only within the period as specified in the notice.

However, the adjudicating officer may, for reasons to be recorded in writing, extend the period referred to above by a further period not exceeding 15 days, if the company or officer in default or any person as the case may be, satisfies the adjudicating officer that it or he has sufficient cause for not responding to the notice within the stipulated period or the adjudicating officer has reason to believe that the company or the officer or the person has received a shorter notice and did not have reasonable time to give reply.

(5) If, after considering the reply submitted by such company, its officer, or any other person, as the case may be, the adjudicating officer is of the opinion that physical appearance is required, he shall issue a notice, within a period of 10 working days from the date of receipt of reply fixing a date for the appearance of such company, through its authorised representative, or officer of such company, or any other person, whether personally or through his authorised representative.

If any person, to whom a notice is issued under sub-rule (2), desires to make an oral representation, whether personally or through his authorised representative and has indicated the same while submitting his reply in electronic mode, the adjudicating officer shall allow such person to make such representation after fixing a date of appearance.

(6) On the date fixed for hearing and after giving a reasonable opportunity of being heard to the person concerned, the adjudicating officer may, subject to reasons to be recorded in writing, pass any order in writing as he thinks fit including an order for adjournment:

Provided that after hearing, adjudicating officer may require the concerned person to submit his reply in writing on certain other issues related to the notice under sub-rule (2), relevant for determination of the default.

(7) The adjudicating officer shall pass an order,-

(a) within 30 days of the expiry of the period referred in sub-rule (2) or of such extended period as referred therein, where physical appearance was not required under sub-rule (5);

(b) within 90 days of the date of issue of notice under sub-rule (2), where any person appeared before the adjudicating officer under sub-rule (5):

Provided that in case an order is passed after the aforementioned duration, the reasons of the delay shall be recorded by the adjudicating officer and no such order shall be invalid merely because of its passing after the expiry of such 30 days or 90 days as the case may be.

(8) Every order of the adjudicating officer shall be duly dated and signed by him and shall clearly state the reasons for requiring the physical appearance under sub-rule (5).

(9) The adjudicating officer shall send a copy of the order passed by him to the concerned company, officer who is in default or any other person or all of them and to the Central Government and a copy of the order shall also be uploaded on the website.

(10) For the purposes of this rule, the adjudicating officer shall exercise the following powers, namely:-

(a) to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case after recording reasons in writing;

(b) to order for evidence or to produce any document, which in the opinion of the adjudicating officer, may be relevant to the subject matter.

(11) If any person fails to reply or neglects or refuses to appear as required under sub-rule (5) or sub-rule (10) before the adjudicating officer, the adjudicating officer may pass an order imposing the penalty, in the absence of such person after recording the reasons for doing so.

(12) While adjudging quantum of penalty, the adjudicating officer shall have due regard to the following factors, namely:-

(a) size of the company;

(b) nature of business carried on by the company;

(c) injury to public interest;

(d) nature of the default;

(e) repetition of the default;

(f) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; and

(g) the amount of loss caused to an investor or group of investors or creditors as a result of the default:

However, in no case, the penalty imposed shall be less than the minimum penalty prescribed, if any, under the relevant section of the Act.

(13) In case a fixed sum of penalty is provided for default of a provision, the adjudicating officer shall impose that fixed sum, in case of any default therein.

(14) Penalty shall be paid through Ministry of Corporate Affairs portal only.

(15) All sums realised by way of penalties under the Act shall be credited to the Consolidated Fund of India.

5. Amendments through the Companies (Amendment) Act, 2019

Relevant sections	Amendment	Date of Enforcement
Amendment of section **248**	In section 248 of the principal Act, in **sub-section (1),—** (i) in clause (c), for the word and figures "section 455,", the words and figures "section 455; or" shall be substituted; (ii) after clause (c) and before the long line, the following clauses shall be inserted, namely:— "(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or (e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.".	**2nd November, 2018**
Amendment of section **447.**	In section 447 of the principal Act, in the second proviso, for the words "twenty lakh rupees", the words "fifty lakh rupees" shall be substituted.	**2nd November, 2018**
Amendment of section **454**	In section 454 of the principal Act, — (i) for **sub-section (3),** the following sub-section shall be substituted, namely: — "(3) The adjudicating officer may, by an order (a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default	**2nd November, 2018**

	under the relevant provisions of this Act; and (b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit."; (ii) in **sub-section (4),** for the words "such company and the officer who is in default", the words "such company, the officer who is in default or any other person" shall be substituted; (iii) in **sub-section (8),—** (a) in clause (i), for the words "does not pay the penalty imposed by the adjudicating officer or the Regional Director", the words, brackets and figures "fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be," shall be substituted; (b) in clause (ii)— (i) for the words "Where an officer of a company", the words "Where an officer of a company or any other person" shall be substituted; (ii) for the words "does not pay the penalty", the words, brackets and figures "fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be," shall be substituted.	
Insertion of new section **454A.**	After section 454 of the principal Act, the following section shall be inserted, namely: **Penalty for repeated default.** "454A. Where a company or an officer of a company or any other person having already been subjected to penalty for	**2nd November, 2018**

	default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act.".	

6. Amendment in Section 406: Section 406 has been substituted by the Companies (Amendment) Act, 2017, with effect from **15th August, 2019**

Section 406: (1) In this section, "Nidhi" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be.

(2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification—

(a) shall not apply to any Nidhi or Mutual Benefit Society; or

(b) shall apply to any Nidhi or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.

(3) A copy of every notification proposed to be issued under sub-section (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

(4) In reckoning any such period of thirty days as is referred to in sub-section (3), no account shall be taken of any period during which the House referred to in sub-section (3) is prorogued or adjourned for more than four consecutive days.

(5) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.

7. Enforcement of the Nidhi (Amendment) Rules, 2019 via G.S.R. 467(E) dated 15th August, 2019

The Central Government makes the Nidhi (Amendment) Rules, 2019 to amend Nidhi Rules, 2014. In the Nidhi rules, 2014 (hereinafter referred to as "said rules"):

Sl. No.	Nidhi rules, 2014	Amendment vide Nidhi (Amendment) Rules, 2019
1.	In **rule 2**, after clause (c)	Insertion of clause (d), namely:- "(d) every company declared as Nidhi or Mutual Benefit Society under sub-section (1) of section 406 of the Act".
2.	In **rule 3,** after clause (d)	Following clause (da) is inserted:- '(da) "*Nidhi*" means a company which has been incorporated as a *Nidhi* with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with the rules made by the Central Government for regulation of such class of companies.'
3.	**After rule 3**	New rule 3A is inserted:- "3A. Declaration of Nidhis.— The Central Government, on receipt of application (in Form NDH-4 along with fee thereon) of a public company for declaring it as Nidhi and on being satisfied that the company meets the requirements under these rules, shall notify the company as a Nidhi in the Official Gazette: Provided that a Nidhi incorporated under the Act on or after the commencement of the Nidhi (Amendment) Rules, 2019 shall file Form NDH-4 within sixty days from the date of expiry of:- (a) one year from the date of its incorporation; or (b) the period up to which extension of time has been granted by the Regional Director under sub-rule (3) of rule 5: Provided further that nothing in the first proviso shall prevent a Nidhi from filing Form NDH-4 before the period referred therein: Provided also that that in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment)."

4.	**In rule 4**	(i) in sub-rule (1), the words, **"to be incorporated under the Act"** shall be omitted; (ii) in sub-rule (5), the words **"Company incorporated as a"** shall be omitted.
5.	**In rule 5** (i) in sub-rule (1), for the words **"from the commencement of these rules"**, (ii) in sub-rule (3), **before the Explanation,** (iii) in sub-rule (4), after the words, brackets and figure **"contained in sub-rule (1)",**	(i) the words **"from the date of its incorporation"** shall be substituted; (ii) the following **proviso** shall be inserted, namely:- "Provided that the Regional Director may extend the period upto one year from the date of receipt of application.". (iii) the words, brackets and figures "and gets itself declared under sub-section (1) of section 406" shall be inserted.
6.	In **rule 7,** in sub-rule (1), after the words "**shall issue"**	the words **"fully paid up"** shall be inserted.
7.	In **rule 12** (i) in sub-rule (1) after clause (b) (ii) in sub-rule (2), in clause (a), for the words **"Registrar of Companies",**	(i) the following **clause (ba) shall be inserted** namely:- "(ba) The date of declaration or notification as Nidhi";"; (ii) the **words "Bench of the National Company Law Tribunal"** shall be substituted.
8.	In the said rules, in **rule 23**, in sub-rule (2),- (i) for the words **"concerned Regional Director",** (ii) for the words **"such Regional Director",**	(i) the words, **"Central Government"** shall be substituted; (ii) the words, **"Central Government"** shall be substituted;

	(iii) in the proviso, for the words **"Regional Director",**	(iii) the words, **"Central Government"** shall be substituted.
9.	**After rule 23**	following rules 23A & 23B shall be inserted, namely:- **23A. Compliance with rule 3A by certain Nidhis**:- Every company referred to in clause (b) of rule 2 and every Nidhi incorporated under the Act, before the commencement of Nidhi (Amendment) Rules, 2019, shall also get itself declared as such in accordance with rule 3A within a period of one year from the date of its incorporation or within a period of six months from the date of commencement of Nidhi (Amendment) Rules, 2019, whichever is later: Provided that in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment). **23B. Companies declared as Nidhis under previous company law to file Form NDH-4:-** Every company referred in clause (a) of rule 2 shall file Form NDH-4 along with fees as per the Companies (Registration Offices and Fees) Rules, 2014 for updating its status: Provided that no fees shall be charged under this rule for filing Form NDH-4, in case it is filed within six month of the commencement of Nidhi (Amendment) Rules, 2019: Provided further that, in case a company does not comply with the requirements of this rule, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment).

8. The Nidhi (Second Amendment) Rules, 2020

Vide Notification G.S.R. 114(E) dated **14th February, 2020**, to further amend the Nidhi Rules, 2014, said Rule have come into force on the date of their publication in the Official Gazette.

Sl. No.	Nidhi rules, 2014	Amendment vide Nidhi (Amendment) Rules, 2019
1.	in rule 23A, for the words **"six months"**	the words **"nine months"** shall be substituted

9. Ministry of Corporate Affairs issued Corrigendum vide notification G.S.R. 150(E) dated 2nd March, 2020

W.r.t. to the notification [2]G.S.R. 114(E) of the Government of India, dated the 14th February, 2020, for "**rule 23A**" **read "rule 23A and first proviso to rule 23B"**.

CHAPTER 19: INSOLVENCY AND BANKRUPTCY CODE, 2016

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

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

Following are the relevant amendments:

(1) In **section 3(12),** in the Insolvency and Bankruptcy Code, 2016 (Principal Act), for the word "repaid", the word "paid" shall be substituted.

(2) In **section 5** of the principal Act,

(i) after clause (5) i.e., after the definition of Corporate applicant, the following **clause 5A** shall be inserted, namely:—

'(5A) "corporate guarantor" means a corporate person who is the surety in a contract of guarantee to a corporate debtor;'

(ii) in **clause (8)** prescribing the term **"Financial Debt"** in the Code, in sub-clause (f), the following Explanation shall be inserted, namely:—

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

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;

(iii) in **clause (12) i**.e., as to the **"Insolvency commencement date",** the following proviso shall be inserted, namely:—

[2] Given above in Point no. 8

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

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

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

(a) a person who is a relative of the individual or a relative of the spouse of the individual;

(b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;

(c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;

(d) a private company in which the individual is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) a public company in which the individual is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

(f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;

(g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;

(h) a person on whose advice, directions or instructions, the individual is accustomed to act;

(i) a company, where the individual or the individual along with its related party, own more than fifty per cent. of the share capital of the company or controls the appointment of the board of directors of the company.

Explanation.—For the purposes of this clause,—

(a) "relative", with reference to any person, means anyone who is related to another, in the following manner, namely:—

(i) members of a Hindu Undivided Family,

(ii) husband,

(iii) wife,

(iv) father,

(v) mother,

(vi) son,

(vii) daughter,

(viii) son's daughter and son,

(ix) daughter's daughter and son,

(x) grandson's daughter and son,

(xi) granddaughter's daughter and son,

(xii) brother,

(xiii) sister,

(xiv) brother's son and daughter,

(xv) sister's son and daughter,

(xvi) father's father and mother,

(xvii) mother's father and mother,

(xviii) father's brother and sister,

(xix) mother's brother and sister, and

(b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included;'

(3) In **section 7(1)** of the principal Act which deals with the initiation of CIRP by financial creditor, for the words "other financial creditors", the words "other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government," shall be substituted.

(4) In **section 8(2)** of the principal Act which deals with the Insolvency resolution by operational creditor, following are the amendments—

(i) in **clause (a),** for the words "if any, and", the words "if any, or" shall be substituted;

(ii) in **clause (b),** for the word "repayment", the word "payment" shall be substituted;

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

(5) In **section 9(3)** of the principal Act, which states of the provision related to the filing of an application for initiation of corporate insolvency resolution process by operational creditor—

(i) in **clause (c),** for the words "by the corporate debtor; and", the words "by the corporate debtor, if available;" shall be substituted;

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

"(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.";

(6) in **section 9(5)** of the principle Code which deals with the provision related to the filing of an application for initiation of corporate insolvency resolution process by operational creditor —

(a) in **clause (i), in sub-clause (b),** for the word "repayment", the word "payment" shall be substituted;

(b) in **clause (ii), in sub-clause (b),** for the word "repayment", the word "payment" shall be substituted.

(7) **Section 10 (3)** of the principal Act, deals with the initiation of corporate insolvency resolution process by corporate applicant, shall be substituted with the following-

"(3) The corporate applicant shall, along with the application, furnish—

(a) the information relating to its books of account and such other documents for such period as may be specified;

(b) the information relating to the resolution professional proposed to be appointed as an interim resolution professional; and

(c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.";

(8) In **Section 10 (4)** related to the initiation of corporate insolvency resolution process by corporate applicant**,** following amendments have been made—

(i) in **clause (a),** after the words "if it is complete", the words "and no disciplinary proceeding is pending against the proposed resolution professional" shall be inserted;

(ii) in **clause (b),** after the words "if it is incomplete", the words "or any disciplinary proceeding is pending against the proposed resolution professional" shall be inserted.

(9) In **section 12(2)** of the principal Act, related to the time limit for completion of corporate insolvency resolution process, for the word "seventy-five", the word "sixty-six" shall be substituted.

(10) **After section 12** of the principal Act, the section 12A shall be inserted-

"**12A. Withdrawal of application admitted under section 7, 9, or 10:** The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified."

(11) S**ection 14(3)** of the principal Act which deals with the moratorium, shall be substituted, with the following—

"(3) The provisions of **sub-section (1)** shall not apply to—

(a) such transaction as may be notified by the Central Government in consultation with any financial regulator;

(b) a surety in a contract of guarantee to a corporate debtor.".

(12) In **section 15(1)(c)** of the principal Act which deals with the provisions related to the public announcement, for the word "claims", the words "claims, as may be specified" shall be substituted.

(13) In **section 16(5)** of the principal Act which is related to the appointment and tenure of interim resolution professional, for the words "shall not exceed thirty days from date of his appointment", the words and figures "shall continue till the date of appointment of the resolution professional under section 22" shall be substituted.

(14) In **section 17(2)(d)** of the principal Act which deals with the management of affairs of corporate debtor by IRP, for the words "may be specified.", the words "may be specified; and" shall be substituted;

(15) **After section 17(2)(d)** which deals with the management of affairs of corporate debtor by IRP**,** the following **section 17(2)(e),** shall be inserted,

"(*e*) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor."

(16) In **section 21** of the principal Act, which deals with the committee of creditors, following are the relevant amendments —

(i) **in sub-section (2), — in the proviso**, for the words "related party to whom a corporate debtor owes a financial debt", the words, brackets, figures and letter "financial creditor or the authorised representative of the financial creditor referred to in sub-section (*6*) or sub-section (*6A*) or sub-section (*5*) of section 24, if it is a related party of the corporate debtor," shall be substituted;

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

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

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

"(6A) Where a financial debt—

(a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;

(b) is owed to a class of creditors exceeding the number as maybe specified, other than the creditors covered under clause (*a*) or sub-section (*6*), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;

(c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors,

and such authorised representative under clause (*a*) or clause (*b*) or clause (*c*) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

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

(i) under clauses (*a*) and (*c*) of sub-section (*6A*), if any, shall be as per the terms of the financial debt or the relevant documentation; and

(ii) under clause (*b*) of sub-section (*6A*) shall be as specified which shall form part of the insolvency resolution process costs.";

(iv) for **sub-sections (7) and (8),** the following sub-sections shall be substituted, namely:—

"(7) The Board may specify the manner of voting and the determining of the voting share in respect of financial debts covered under sub-sections (*6*) and (6A).

(8) Save as otherwise provided in this Code, all decisions of the committee of creditors shall be taken by a vote of not less than fifty-one per cent. of voting share of the financial creditors:

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

(17) In **section 22(2)** of the principal Act, for the word, "seventy-five", the word "sixty-six" shall be substituted;

(18) In **section 23(1)** of the principal Act, the following proviso shall be inserted-

"Provided that the resolution professional shall, if the resolution plan under sub-section (*6*) of section 30 has been submitted, continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period until an order is passed by the Adjudicating Authority under section 31."

(19) In **section 24(3)** of the principal Act, in clause (*a*), for the words "Committee of creditors", the words, brackets, figures and letter "committee of creditors, including the authorised representatives referred to in sub-sections (*6*) and (*6A*) of section 21 and sub-section (*5*)" shall be substituted;

(20) **Insertion of new section 25A** which deals with the Rights and duties of authorised representative of financial creditors.

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

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

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

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

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

To ensure recording of instruction by IRP/RP: The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.

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

"The committee of creditors may, at a meeting, by a vote of sixty-six per cent. of voting shares, resolve to replace the resolution professional appointed under section 22 with

another resolution professional, subject to a written consent from the proposed resolution professional in the specified form."

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

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

(i) in clause (c),—

(a) for the words "has an account,", the words "at the time of submission of the resolution plan has an account," shall be substituted;

(b) after the words and figures "the Banking Regulation Act, 1949", the words "or the guidelines of a financial sector regulator issued under any other law for the time being in force," shall be inserted;

(c) after the proviso, the following shall be inserted, namely:—'Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

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

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

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

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

(i) for two years or more under any Act specified under the Twelfth Schedule; or

(ii) for seven years or more under any other law for the time being in force:

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

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

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

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

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

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

(v) in clause (h), —

(a) for the words "an enforceable guarantee", the words "a guarantee" shall be substituted;

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

(vi) in clause (i), for the words "has been", the word "is" shall be substituted;

(vii) the Explanation occurring after clause (j) shall be numbered as *Explanation* I*,* and in *Explanation* I as so numbered, for the proviso, the following provisos shall be substituted, namely:—

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

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

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

'Explanation II—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central

Government may, in consultation with the financial sector regulator, notify in this behalf, namely:—

(a) a scheduled bank;

(b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;

(c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999.

(d) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(e) an Alternate Investment Fund registered with the Securities and Exchange Board of India;

(f) such categories of persons as may be notified by the Central Government.'.

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

(i) in **sub-section (1),** after the words "resolution plan", the words, figures and letter "along with an affidavit stating that he is eligible under section 29A" shall be inserted;

(ii) in **sub-section (2),—**

(a) in clauses (*a*) and (*b*), for the word "repayment" at both the places where it occurs, the word "payment" shall be substituted;

(b) after clause (*f*), the following *Explanation* shall be inserted, namely:—

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

(iii) in **sub-section (4),—**

(a) for the word "seventy-five", the word "sixty-six" shall be substituted;

(b) after the third proviso, the following proviso shall be inserted,

namely:—

"Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018."

25. **Amendment in section 31** of the principal Act, which deals with the approval of resolution plan—

(a) in **sub-section (1)**, the following proviso shall be inserted, namely:—

"Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation."

(b) after **sub-section (3)**, the following sub-section shall be inserted namely:—

"(*4*) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (*1*), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (*1*) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors."

26. Amendment made in **section 33(2)** of the principal Act. This section deals with the initiation of liquidation process. Amendments made is that after the words "decision of the committee of creditors", the words "approved by not less than sixty-six per cent. of the voting share" shall be inserted.

27. In **section 34** of the principal Act, which states of appointment of liquidator and fee to be paid, following amendments are made—

a. in **sub-section (1)**, for the words and figures "Chapter II shall", the words and figures "Chapter II shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form," shall be substituted;

b. in **sub-section (4)**,—

i. in clause (*b*), for the words "in writing", the words "in writing; or" shall be substituted;

ii. after clause (*b*), the following clause shall be inserted, namely:—

"(*c*) the resolution professional fails to submit written consent under sub-section (*1*).";

c. in **sub-section (*5*),** for the word, brackets and letter "clause (*a*)", the words, brackets and letters "clauses (*a*) and (*c*)" shall be substituted;

d. in **sub-section (6),** after the words "another insolvency professional", the words "along with written consent from the insolvency professional in the specified form," shall be inserted.

28. In **section 42** of the principal Act, which deals with the provisions related to the appeal against the decision of liquidator, after the words "of the liquidator", the words "accepting or" shall be inserted.

29. In **section 45(1)** of the principal Act, which deals with the Avoidance of undervalued transactions, the words and figures "of section 43" shall be omitted.

(II) Usage of the word **"any other person on behalf of the financial creditor**, as may be notified by the Central Government" **under section 7(1)** of the IBC has been clarified by notification issued by Ministry of Corporate Affairs. **Vide Notification S.O. 1091(E), dated 27th February, 2019**, the Central Government hereby notifies following persons who may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority, on behalf of the financial creditor: -

(i) a guardian;

(ii) an executor or administrator of an estate of a financial creditor;

(iii) a trustee (including a debenture trustee); and

(v) a person duly authorised by the Board of Directors of a Company.

(III) The Insolvency and Bankruptcy Code (Amendment) Act, 2019

Ministry of Corporate Affairs vide Notification S.O. 2953(E) dated **16th August, 2019**, in exercise of the powers conferred by sub-section (2) of section 1 of **the Insolvency and Bankruptcy Code (Amendment) Act, 2019**, the Central Government hereby appoints the date of publication of this notification in the Official Gazette as the date on which the provisions of the said Act shall come into force.

Following are the relevant amendments:

(i) In **section 5(26)** pertaining to the definition "resolution plan", following explanation is added.

"Explanation.—For the removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger;"

(ii) **In section 7(4)** of the Code, following proviso shall be inserted:

"Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same."

(iii) In section 12which deals with the Time-limit for completion of insolvency resolution process. – Following provisos have been added after the proviso to section 3:

"Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor:

Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019".

(iv) **In section 25A** after sub-section 3, following sub-section shall be added:

"(3A) Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent, of the voting share of the financial creditors he represents, who have cast their vote:

Provided that for a vote to be cast in respect of an application under section 12 A, the authorised representative shall cast his vote in accordance with the provisions of sub-section (3).**"**

(v) **In section 30(2)(b),** the following shall be substituted:

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than—

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (7) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.—For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.—For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor—

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;"

(vi) **In section 31(1)** of the Code, after the words "members, creditors," the following words shall be inserted:

"including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,"

(vii) **In section 33(2),** following explanation shall be added:

"Explanation.—For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (7) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum."

IV. The Insolvency and Bankruptcy Code (Amendment) Act, 2020

Ministry of law and justice notified on 13th March, 2020, the Insolvency and Bankruptcy Code (Amendment) Act, 2020 w.e.f. **28th day of December, 2019**. With the enforcement of this Amendment Act, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019 was hereby repealed.

Following are the relevant amendments:

1. In **section 5** of the Insolvency and Bankruptcy Code, 2016 (here after referred to as the principal Act),—

Sl. No.	Amended Law
1.	in **clause (12),** the given proviso- [3]"Provided that where the interim resolution professional is not appointed

[3] Proviso was Ins. by Act No. 26 of 2018, sec. 3 (w.e.f. 6-6-2018)

	in the order admitting application under section 7, 9 or 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority" shall be omitted.
2.	in **clause (15),** after the words "during the insolvency resolution process period "occurring at the end the words "and such other debt as may be notified" shall be inserted.
3.	In **section 7** of the principal Act, in sub-section (*1*), before the *Explanation*, the following provisos inserted— "Provided that for the financial creditors, referred to in clauses (*a*) and (*b*) of sub-section (*6A*) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less: Provided further that for financial creditors who are allottees under real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less: Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission."
4.	In **section 11** of the principal Act, the *Explanation* shall be numbered as *Explanation* I and after *Explanation* I as so numbered, the following *Explanation* shall be inserted, namely:— "*Explanation* II—For the purposes of this section, it is hereby clarified that nothing in this section shall prevent a corporate debt or referred to in clauses (*a*) to(*d*) from initiating corporate insolvency resolution process against another corporate debtor."
5.	In **section 14** of the principal Act,— (a) in **sub-section (1**), the following Explanation inserted, namely:— "Explanation.—For the purposes of this sub-section, it is here by clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or

	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, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;"; (b) after **sub-section (2),** the following sub-section 2A shall be inserted, namely:— "(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified."; (c) in **sub-section (3),** for clause (a), namely- "(a) such transaction as may be notified by the Central Government in consultation with any financial regulator;" the following clause shall be substituted, namely:— "(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;"
6.	In **section 16 in sub-section (*1*),** for the words" within fourteen days from the insolvency commencement date" The words "on the insolvency commencement date" shall be substituted.
7.	In **section 21, in sub-section (*2*)**, in the second proviso, after the words "convertible into equity shares" the words "or completion of such transactions as may be prescribed," shall be inserted.
8.	In **section 29A** of the principal Act- (i) in clause (c), in the second proviso, in Explanation I, after the words, "convertible into equity shares", the words "or completion of such transactions as may be prescribed," shall be inserted; (ii) in clause (j), in Explanation I, in the second proviso, after the words "convertible into equity shares", the words "or completion of such transactions as may be prescribed," shall be inserted.

9.	After **section 32** of the principal Act, the following section 32A shall be inserted, namely:— "32A. **(*1*)** Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not— (a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or (b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court: **Provided that** if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled: **Provided further** that every person who was a "designated partner" as defined in clause(*j*) of section2 of the Limited Liability Partnership Act ,2008, or an "officer who is in default", as defined in clause (*60*) of section 2 of the Companies Act,2013, or was in any manner incharge of, or responsible to the corporate debt or for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section. **(2)** No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not—

	(i) A promoter or in the management or control of the corporate debtor or a related party of such a person; or (ii) A person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court. ***Explanation.***—For the purposes of this sub-section, it is hereby clarified that,— (i) An action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor; (ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable. **(3)** Subject to the provisions contained in sub-sections (*1*) and (*2*), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process."

V. Enhancement in the limit of amount of default: Ministry of Corporate Affairs vide notification S.O. 1205(E) dated 24th March, 2020, in exercise of the powers conferred by the proviso to section 4 of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby specifies one crore rupees as the minimum amount of default for the purposes of the said section.

VI. Ministry of Corporate Affairs Vide Notification S.O. 4126(E) dated **15th November, 2019**, in exercise of the powers conferred by sub-section (3) of section 1 of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby appoints the **1st day of December, 2019** as the date on which clause (e) of section 2 of the Code in so far as they relate to personal guarantors to corporate debtors, shall come into force.

VII. The Insolvency and Bankruptcy Code (Second Amendment) Act, 2020

This an Act further to amend the Insolvency and Bankruptcy Code, 2016 w.e.f. the 5th day of June, 2020. The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 is hereby repealed through the enforcement of this second amendment Act, 2020.

Insertion of Section 10A which deals Suspension of Initiation of Corporate Insolvency resolution process.

"10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months corporate insolvency or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation.—For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020."

VIII. Ministry of Corporate Affairs vide Notification dated 24th September, 2020 with notification No. S.O. 3265(E)., in exercise of the powers conferred by section 10A of the Insolvency and Bankruptcy Code, 2016 as inserted by section 2 of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2020, the Central Government hereby notifies further period of three months from the 25th September, 2020 for the purposes of the said section.

IX. The Insolvency and Bankruptcy Code (amendment) Ordinance, 2021

The President promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 on 4th April 2021. The Cabinet had approved on 31st March 2021 the proposal to make amendments in the Insolvency and Bankruptcy Code, 2016 (Code), through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021.

The amendments aims to provide an efficient alternative insolvency resolution framework for corporate persons classified as micro, small and medium enterprises (MSMEs) under the Code, for ensuring quicker, cost-effective and value maximising outcomes for all the stakeholders, in a manner which is least disruptive to the continuity of MSMEs businesses and which preserves jobs. The initiative is based on a trust model and the amendments honour the honest MSME owners by trying to ensure that the resolution happens and the company remains with them.

It is expected that the incorporation of Pre-Packaged insolvency resolution process for MSMEs in the Code will alleviate the distress faced by MSMEs due to the impact of the pandemic & the unique nature of their business, duly recognizing their importance in the economy. It provides an efficient alternative insolvency resolution framework for corporate

persons classified as MSMEs for timely, efficient & cost-effective resolution of distress thereby ensuring positive signal to debt market, employment preservation, ease of doing business and preservation of enterprise capital. Other expected impact and benefits of the amendment in Code are lesser burden on Adjudicating Authority, assured continuity of business operations for corporate debtor (CD), less process costs & maximum assets realization for financial creditors (FC) and assurance of continued business relation with CD and rights protection for operational Creditors (OC).

The Amendment Ordinance seeks to amend sections such as 4, 5, 11, 33, 34, 61, 65, 77, 208, 239, 240 & insert new sections such as 11A, 67A, 77A and a new chapter as IIIA on Pre-Packaged insolvency resolution process for MSMEs in the Code based on recommendations made by the Insolvency Law Committee (ILC).

Details of the amendments are given at under:

1. This Ordinance may be called the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021. It shall come into force at once.

2. Amendment of Section 4- Application of this Part II of the Code

After the given proviso in the said section, the following proviso shall be inserted, namely:—

"Provided further that the Central Government may, by notification, specify such minimum amount of default of higher value, which shall not be more than one crore rupees, for matters relating to the prepackaged insolvency resolution process of corporate debtors under Chapter III-A.".

3. Amendment of Section 5- Definitions covered under this part of the Code.

(i) after clause (2), the following clause shall be inserted, namely: —

'(2A) **"base resolution plan"** means a resolution plan provided by the corporate debtor under clause (c) of ub-section (4) of section 54A;';

(ii) in clause (5), in sub-clause (b), after the words "corporate insolvency resolution process", the words "or the pre-packaged insolvency resolution process, as the case may be," shall be inserted;

(iii) in clause (11), after the words "corporate insolvency resolution process", the words "or prepackaged insolvency resolution process, as the case may be" shall be inserted;

(iv) in clause (15), after the words, "process period", the words "or by the corporate debtor during the pre-packaged insolvency resolution process period, as the case may be," shall be inserted;

(v) in clause (19), after the words "for the purposes of", the words and figures "Chapter VI and" shall be inserted;

(vi) after clause (23), the following clauses shall be inserted, namely: —

(23A) "preliminary information memrandum" means a memorandum submitted by the corporate debtor under clause (b) of sub-section (1) of section 54G;

(23B)"pre-packaged insolvency commencement date" means the date of admission of an application for initiating the pre-packaged insolvency resolution process by the Adjudicating Authority under clause (a) of sub-section (4) of section 54C;

(23C) "pre-packaged insolvency resolution process costs" means—

(a) the amount of any interim finance and the costs incurred in raising such finance;

(b) the fees payable to any person acting as a resolution professional and any expenses incurred by him for conducting the pre-packaged insolvency resolution process during the prepackaged insolvency resolution process period, subject to sub-section (6) of section 54F;

(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern pursuant to an order under sub-section (2) of section 54J;

(d) any costs incurred at the expense of the Government to facilitate the pre-packaged insolvency resolution process; and

(e) any other costs as may be specified;

(23D) "pre-packaged insolvency resolution process period" means the period beginning from the pre-packaged insolvency commencement date and ending on the date on which an order under sub-section (1) of section 54L, or sub-section (1) of section 54N, or sub-section (2) of section 54-O, as the case may be, is passed by the Adjudicating Authority;';

(vii) in clause (25), after the words, brackets and figures "of sub-section (2) of section 25", the words, figures and letter "or pursuant to section 54K, as the case may be" shall be inserted;

(viii) in clause (27), after the words "corporate insolvency resolution process", the words "or the prepackaged insolvency resolution process (PPIRP), as the case may be," shall be inserted.

4. Amendment of section 11- Persons not entitled to make application.

(i) in clause (a), after the words "corporate insolvency resolution process", the words "or a prepackaged insolvency resolution process" shall be inserted;

(ii) after clause (a), the following clause shall be inserted, namely:—

"(aa) a financial creditor or an operational creditor of a corporate debtor undergoing a prepackaged insolvency resolution process; or";

(iii) after clause (b), the following clause shall be inserted, namely:—

"(ba) a corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A, twelve months preceding the date of making of the application; or".

5. After section 11 of the principal Act, following new **section 11A shall be inserted,.**

"**11A.** (1) Where an application filed under section 54C is pending, the Adjudicating Authority shall pass applications under section an order to admit or reject such application, before 54C and under considering any application filed under section 7 or section 7 or section 9 or section 10 during the pendency of such section 9 or application under section 54C, in respect of the same section 10. corporate debtor.

(2) Where an application under section 54C is filed within fourteen days of filing of any application under section 7 or section 9 or section 10, which is pending, in respect of the same corporate debtor, then, notwithstanding anything contained in sections 7, 9 and 10, the Adjudicating Authority shall first dispose of the application under section 54C.

(3) Where an application under section 54C is filed after fourteen days of the filing of any application under section 7 or section 9 or section 10, in respect of the same corporate debtor, the Adjudicating Authority shall first dispose of the application under sections 7, 9 or 10.

(4) The provisions of this section shall not apply where an application under section 7 or section 9 or section 10 is filed and pending as on the date of the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021.".

6. **In section 33** of the principal Act, which deals with the **initiation of liquidation**, in sub-section (3), after the words, "approved by the Adjudicating Authority", the words, figures, brackets and letter "under section 31 or under sub-section (1) of section 54L," shall be inserted.

7. **Amendment of section 34- Appointment of liquidator and fee to be paid.**

In section 34 of the principal Act, in sub-section (1), after the words and figures, "under Chapter II", the words, figures and letter "or for the pre-packaged insolvency resolution process under Chapter III-A" shall be inserted.

8. After Chapter III of the principal Act, the following **Chapter III-A**, shall be inserted, namely:—

'CHAPTER III-A

PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS

Corporate debtors eligible for pre-packaged insolvency resolution process.

54 A.(1) An application for initiating pre-packaged insolvency resolution process may be made in respect of a corporate debtor classified as a micro, small or medium enterprise under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development 27 of 2006. Act, 2006.

(2) Without prejudice to sub-section (1), an application for initiating pre-packaged insolvency resolution process may be made in respect of a corporate debtor, who commits a default referred to in section 4, subject to the following conditions, that—

(a) it has not undergone pre-packaged insolvency resolution process or completed corporate insolvency resolution process, as the case may be, during the period of three years preceding the initiation date;

(b) it is not undergoing a corporate insolvency resolution process;

(c) no order requiring it to be liquidated is passed under section 33;

(d) it is eligible to submit a resolution plan under section 29A;

(e) the financial creditors of the corporate debtor, not being its related parties, representing such number and such manner as may be specified, have proposed the name of the insolvency professional to be appointed as resolution professional for conducting the pre-packaged insolvency resolution process of the corporate debtor, and the financial creditors of the corporate debtor, not being its related parties, representing not less than sixty-six per cent. in value of the financial debt due to such creditors, have approved such proposal in such form as may be specified:

Provided that where a corporate debtor does not have any financial creditors, not being its related parties, the proposal and approval under this clause shall be provided by such persons as may be specified;

(f) the majority of the directors or partners of the corporate debtor, as the case may be, have made a declaration, in such form as may be specified, stating, *inter alia,* —

i that the corporate debtor shall file an application for initiating pre-packaged insolvency resolution process within a definite time period not exceeding ninety days;

ii that the pre-packaged insolvency resolution process is not being initiated to defraud any person; and

iii the name of the insolvency professional proposed and approved to be appointed as resolution professional under clause (e);

(g) the members of the corporate debtor have passed a special resolution, or at least three-fourth of the total number of partners, as the case may be, of the corporate debtor have passed a resolution, approving the filing of an application for initiating pre-packaged insolvency resolution process.

(3) The corporate debtor shall obtain an approval from its financial creditors, not being its related parties, representing not less than sixty-six per cent. in value of the financial debt due to such creditors, for the filing of an application for initiating pre-packaged insolvency resolution process, in such form as may be specified:

Provided that where a corporate debtor does not have any financial creditors, not being its related parties, the approval under this sub-section shall be provided by such persons as may be specified.

(4) Prior to seeking approval from financial creditors under sub-section (3), the corporate debtor shall provide such financial creditors with —

(a) the declaration referred to in clause (f) of sub- section (2);

(b) the special resolution or resolution referred to in clause (g) of sub- section (2);

(c) a base resolution plan which conforms to the requirements referred to in section 54K, and such other conditions as m ay be specified; and

(d) such other information and documents as may be specified.

Duties of resolution professional before initiation of pre-packaged insolvency resolution process.

54B. (1) The insolvency professional, proposed to be appointed as the resolution professional, shall have the following duties commencing from the date of the approval under clause (e) of sub-section (2) of section 54A, namely:—

(a) prepare a report in such form as may be specified, confirming whether the corporate debtor meets the requirements of section 54A, and the base resolution plan conforms to the requirements referred to in clause (c) of sub-section (4) of section 54A;

(b) file such reports and other documents, with the Board, as may be specified; and

(c) perform such other duties as may be specified.

(2) The duties of the insolvency professional under sub-section (1) shall cease, if, —

(a) the corporate debtor fails to file an application for initiating pre-packaged insolvency resolution process within the time period as stated under the declaration referred to in clause (f) of subsection (2) of section 54A; or

(b) the application for initiating pre-packaged insolvency resolution process is admitted or rejected by the Adjudicating Authority, as the case may be.

(3) The fees payable to the insolvency professional in relation to the duties performed under sub-section (1) shall be determined and borne in such manner as may be specified and such fees shall form part of the prepackaged insolvency resolution process costs, if the application for initiation of pre-packaged insolvency resolution process is admitted.

Application to initiate pre-packaged insolvency resolution process.

54C. (1) Where a corporate debtor meets the requirements of section 54A, a corporate applicant thereof may file an application with the Adjudicating insolvency Authority for initiating pre-packaged insolvency resolution resolution process.

(2) The application under sub-section (1) shall be filed in such form, containing such particulars, in such manner and accompanied with such fee as may be prescribed.

(3) The corporate applicant shall, along with the application, furnish—

(a) the declaration, special resolution or resolution, as the case may be, and the approval of financial creditors for initiating pre-packaged insolvency resolution process in terms of section 54A;

(b) the name and written consent, in such form as may be specified, of the insolvency professional proposed to be appointed as resolution professional, as approved under clause (e) of sub-section (2) of section 54A, and his report as referred to in clause (a) of sub-section (1) of section 54B;

(c) a declaration regarding the existence of any transactions of the corporate debtor that may be within the scope of provisions in respect of avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, in such form as may be specified;

(d) information relating to books of account of the corporate debtor and such other documents relating to such period as may be specified.

(4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order,—

(a) admit the application, if it is complete; or

(b) reject the application, if it is incomplete:

Provided that the Adjudicating Authority shall, before rejecting an application, give notice to the applicant to rectify the defect in the application within seven days from the date of receipt of such notice from the Adjudicating Authority.

(5) The pre-packaged insolvency resolution process shall commence from the date of admission of the application under clause (a) of sub-section (4).

Time-limit for completion of pre-packaged insolvency resolution process.

54D. (1) The pre-packaged insolvency resolution process shall be completed within a period of one hundred and twenty days from the pre-packaged insolvency commencement date.

(2) Without prejudice to sub-section (1), the resolution professional shall submit the resolution plan, as approved by the committee of creditors, to the Adjudicating Authority under sub-section (4) or subsection (12), as the case may be, of section 54K, within a period of ninety days from the pre-packaged insolvency commencement date.

(3) Where no resolution plan is approved by the committee of creditors within the time period referred to in sub-section (2), the resolution professional shall, on the day after the expiry of such time period, file an application with the Adjudicating Authority for termination of the pre-packaged insolvency resolution process in such form and manner as may be

specified.

Declaration of moratorium and public announcement during prepackaged insolvency resolution process

54E. (1) The Adjudicating Authority shall, on the pre-packaged insolvency commencement date, along with the order of admission under section 54C —

(a) declare a moratorium for the purposes referred to in sub-section (1) read with sub-section (3) of section 14, which shall, *mutatis mutandis* apply, to the proceedings under this Chapter;

(b) appoint a resolution professional —

(i) as named in the application, if no disciplinary proceeding is pending against him; or

(ii) based on the recommendation made by the Board, if any disciplinary proceeding is pending against the insolvency professional named in the application.

(c) cause a public announcement of the initiation of the pre-packaged insolvency resolution process to be made by the resolution professional, in such form and manner as may be specified, immediately after his appointment.

(2) The order of moratorium shall have effect from the date of such order till the date on which the prepackaged insolvency resolution process period comes to an end.

Duties and powers of resolution professional during pre-packaged insolvency resolution process.

54F. (1) The resolution professional shall conduct the pre-packaged insolvency resolution process of a corporate debtor during the pre-packaged insolvency resolution process period.

(2) The resolution professional shall perform the following duties, namely:—

(a) **confirm the list of claims submitted by the corporate debtor under section 54G, in such manner as may be specified;**

(b) **inform creditors regarding their claims as confirmed under clause (a), in such manner as may be specified;**

(c) maintain an updated list of claims, in such manner as may be specified;

(d) monitor management of the affairs of the corporate debtor;

(e) inform the committee of creditors in the event of breach of any of the obligations of the Board of Directors or partners, as the case may be, of the corporate debtor, under the provisions of this Chapter and the rules and regulations made thereunder;

(f) **constitute the committee of creditors and convene and attend all its meetings;**

(g) **prepare the information memorandum on the basis of the preliminary information memorandum submitted under section 54G and any other relevant information, in such form and manner as may be specified;**

(h) **file applications for avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, if any; and**

(i) **such other duties as may be specified.**

(3) The resolution professional shall exercise the following powers, namely:—

(a) access all books of accounts, records and information available with the corporate debtor;

(b) access the electronic records of the corporate debtor from an information utility having financial information of the corporate debtor;

(c) access the books of accounts, records and other relevant documents of the corporate debtor available with Government authorities, statutory auditors, accountants and such other persons as may be specified;

(d) attend meetings of members, Board of Directors and committee of directors, or partners, as the case may be, of the corporate debtor;

(e) appoint accountants, legal or other professionals in such manner as may be specified;

(f) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor and the existence of any transactions that may be within the scope of provisions relating to avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, including information relating to —

(i) business operations for the previous two years from the date of pre-packaged insolvency commencement date;

(ii) financial and operational payments for the previous two years from the date of prepackaged insolvency commencement date;

(iii) list of assets and liabilities as on the initiation date; and

(iv) such other matters as may be specified;

(g) take such other actions in such manner as may be specified.

(4) From the date of appointment of the resolution professional, the financial institutions maintaining accounts of the corporate debtor shall furnish all information relating to the corporate debtor available with them to the resolution professional, as and when required by him.

(5) The personnel of the corporate debtor, its promoters and any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the resolution professional as may be required by him to perform his duties and exercise his powers, and for such purposes, the provisions of sub-sections (2) and (3) of section 19 shall, *mutatis mutandis* apply, in relation to the proceedings under this Chapter.

(6) The fees of the resolution professional and any expenses incurred by him for conducting the prepackaged insolvency resolution process shall be determined in such manner as may be specified:

Provided that the committee of creditors may impose limits and conditions on such fees and expenses:

Provided further that the fees and expenses for the period prior to the constitution of the committee of creditors shall be subject to ratification by it.

(7) The fees and expenses referred to in sub-section (6) shall be borne in such manner as may be specified.

List of claims and preliminary information memorandum.

54G. (1) The corporate debtor shall, within two days of the pre-packaged insolvency commencement date, submit to the resolution professional the following information, updated as on that date, in such form and manner as may be specified, namely:—

(a) a list of claims, along with details of the respective creditors, their security interests and guarantees, if any; and

(b) a preliminary information memorandum containing information relevant for formulating a resolution plan.

(2) Where any person has sustained any loss or damage as a consequence of the omission of any material information or inclusion of any misleading information in the list of claims or the preliminary information memorandum submitted by the corporate debtor, every person who—

(a) is a promoter or director or partner of the corporate debtor, as the case may be, at the time of submission of the list of claims or the preliminary information memorandum by the corporate debtor; or

(b) has authorised the submission of the list of claims or the preliminary information memorandum by the corporate debtor,

shall, without prejudice to section 77A, be liable to pay compensation to every person who has sustained such loss or damage.

(3) No person shall be liable under sub-section (2), if the list of claims or the preliminary information memorandum was submitted by the corporate debtor without his knowledge or consent.

(4) Subject to section 54E, any person, who sustained any loss or damage as a consequence of omission of material information or inclusion of any misleading information in the list of claims or the preliminary information memorandum shall be entitled to move a court having jurisdiction for seeking compensation for such loss or damage.

Management of affairs of corporate debtor

54H. During the pre-packaged insolvency resolution process period,—

(a) the management of the affairs of the corporate debtor shall continue to vest in the Board of Directors or the partners, as the case may be, of the corporate debtor, subject to such conditions as may be specified;

(b) the Board of Directors or the partners, as the case may be, of the corporate debtor, shall make every endeavour to protect and preserve the value of the property of the corporate debtor, and manage its operations as a going concern; and

(c) the promoters, members, personnel and partners, as the case may be, of the corporate debtor, shall exercise and discharge their contractual or statutory rights and obligations in relation to the corporate debtor, subject to the provisions of this Chapter and such other conditions and restrictions as may be prescribed.

Committee of creditors

54-I. (1) The resolution professional shall, within seven days of the pre-packaged insolvency commencement date, constitute a committee of creditors, based on the list of claims confirmed under clause (a) of sub-section (2) of section 54F:

Provided that the composition of the committee of creditors shall be altered on the basis of the updated list of claims, in such manner as may be specified, and any such alteration shall not affect the validity of any past decision of the committee of creditors.

(2) The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

(3) Provisions of section 21, except sub-section (1) thereof, shall, *mutatis mutandis* apply, in relation to the committee of creditors under this Chapter:

Provided that for the purposes of this sub-section, references to the "resolution professional" under subsections (9) and (10) of section 21, shall be construed as references to "corporate debtor or the resolution professional".

Vesting management of corporate debtor with resolution professional

54J. (1) Where the committee of creditors, at any time during the pre-packaged insolvency resolution corporate process, by a vote of not less than sixty-six per cent. of the voting shares, resolves to vest the management of the corporate debtor with the resolution professional, the resolution professional shall make an application for this purpose to the Adjudicating Authority, in such form and manner as may be specified.

(2) On an application made under sub-section (1), if the Adjudicating Authority is of the opinion that

during the pre-packaged insolvency resolution process—

(a) the affairs of the corporate debtor have been conducted in a fraudulent manner; or

(b) there has been gross mismanagement of the affairs of the corporate debtor,

it shall pass an order vesting the management of the corporate debtor with the resolution professional.

(3) Notwithstanding anything to the contrary contained in this Chapter, the provisions of —

(a) sub-sections (2) and (2A) of section 14;

(b) section 17;

(c) clauses (e) to (g) of section 18;

(d) sections 19 and 20;

(e) sub-section (1) of section 25;

(f) clauses (a) to (c) and clause (k) of sub- section (2) of section 25; and

(g) section 28,

shall, *mutatis mutandis* apply, to the proceedings under this Chapter, from the date of the order under subsection (2), until the pre-packaged insolvency resolution process period comes to an end.

Consideration and approval of resolution plan

54K. (1) The corporate debtor shall submit the base resolution plan, referred to in clause (c) of sub-section (4) of section 54A, to the resolution professional within two days of the pre-packaged insolvency commencement date, and the resolution professional shall present it to the committee of creditors.

(2) The committee of creditors may provide the corporate debtor an opportunity to revise the base resolution plan prior to its approval under sub-section (4) or invitation of prospective resolution applicants under sub-section (5), as the case may be.

(3) The resolution plans and the base resolution plan, submitted under this section shall conform to the requirements referred to in sub-sections (1) and (2) of section 30, and the provisions of sub-sections (1), (2) and (5) of section 30 shall, *mutatis mutandis* apply, to the proceedings under this Chapter.

(4) The committee of creditors may approve the base resolution plan for submission to the Adjudicating Authority if it does not impair any claims owed by the corporate debtor to the operational creditors.

(5) Where —

(a) the committee of creditors does not approve the base resolution plan under sub-section (4); or

(b) the base resolution plan impairs any claims owed by the corporate debtor to the operational creditors, the resolution professional shall invite prospective

resolution applicants to submit a resolution plan or plans, to compete with the base resolution plan, in such manner as may be specified.

(6) The resolution applicants submitting resolution plans pursuant to invitation under sub-section (5), shall fulfil such criteria as may be laid down by the resolution professional with the approval of the committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified.

(7) The resolution professional shall provide to the resolution applicants, —

(a) the basis for evaluation of resolution plans for the purposes of sub-section (9), as approved by the committee of creditors subject to such conditions as may be specified; and

(b) the relevant information referred to in section 29, which shall, *mutatis mutandis* apply, to the proceedings under this Chapter, in such manner as may be specified.

(8) The resolution professional shall present to the committee of creditors, for its evaluation, resolution plans which conform to the requirements referred to in sub-section (2) of section 30.

(9) The committee of creditors shall evaluate the resolution plans presented by the resolution professional and select a resolution plan from amongst them.

(10) Where, on the basis of such criteria as may be laid down by it, the committee of creditors decides that the resolution plan selected under sub-section (9) is significantly better than the base resolution plan, such resolution plan may be selected for approval under subsection (12):

Provided that the criteria laid down by the committee of creditors under this sub-section shall be subject to such conditions as may be specified.

(11) Where the resolution plan selected under sub-section (9) is not considered for approval or does not fulfil the requirements of sub-section (10), it shall compete with the base resolution plan, in such manner and subject to such conditions as may be specified, and one of them shall be selected for approval under subsection (12).

(12) The resolution plan selected for approval under sub-section (10) or sub-section (11), as the case may be, may be approved by the committee of creditors for submission to the Adjudicating Authority:

Provided that where the resolution plan selected for approval under sub-section (11) is not approved by the committee of creditors, the resolution professional shall file an application for termination of the pre-packaged insolvency resolution process in such form and manner as may be specified.

(13) The approval of the resolution plan under sub-section (4) or sub-section (12), as the case may be, by the committee of creditors, shall be by a vote of not less than sixty-six per cent. of the voting shares, after considering its feasibility and viability, the manner of distribution proposed, taking into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified.

(14) While considering the feasibility and viability of a resolution plan, where the resolution plan submitted by the corporate debtor provides for impairment of any claims owed by the corporate debtor, the committee of creditors may require the promoters of the corporate debtor to dilute their shareholding or voting or control rights in the corporate debtor:

Provided that where the resolution plan does not provide for such dilution, the committee of creditors shall, prior to the approval of such resolution plan under sub-section (4) or sub-section (12), as the case may be, record reasons for its approval.

(15) The resolution professional shall submit the resolution plan as approved by the committee of creditors under sub-section (4) or sub-section (12), as the case may be, to the Adjudicating Authority.

Explanation I.—For the removal of doubts, it is

hereby clarified that, the corporate debtor being a resolution applicant under clause (25) of section 5, may submit the base resolution plan either individually or jointly with any other person.

Explanation II.—For the purposes of sub-

sections (4) and (14), claims shall be considered to be impaired where the resolution plan does not provide for the full payment of the confirmed claims as per the updated list of claims maintained by the resolution professional.

Approval of resolution plan

54L. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) or sub-section (12) of section 54K, as the case may be, subject to the conditions provided therein, meets the requirements as referred to in sub-section (2) of section 30, it shall, within thirty days of the receipt of such resolution plan, by order approve the resolution plan:

Provided that the Adjudicating Authority shall, before passing an order for approval of a resolution plan under this sub-section, satisfy itself that the resolution plan has provisions for its effective implementation.

(2) The order of approval under sub-section (1) shall have such effect as provided under sub-sections (1), (3) and (4) of section 31, which shall, *mutatis mutandis* apply, to the proceedings under this Chapter.

(3) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, within thirty days of the receipt of such resolution plan, by an order, reject the resolution plan and pass an order under section 54N.

(4) Notwithstanding anything to the contrary contained in this section, where the Adjudicating Authority has passed an order under sub-section (2) of section 54J and the resolution plan approved by the committee of creditors under sub-section (4) or subsection (12), as the case may be, of section 54K, does not result in the change in the management or control of the corporate debtor to a person who was not a promoter or in the management or control of the corporate debtor, the Adjudicating Authority shall pass an order —

(a) rejecting such resolution plan;

(b) terminating the pre-packaged insolvency resolution process and passing a liquidation order in respect of the corporate debtor as referred to in subclauses (i), (ii) and (iii) of clause (b) of sub-section (1) of section 33; and

(c) declaring that the pre-packaged insolvency resolution process costs, if any, shall be included as part of the liquidation costs for the purposes of liquidation of the corporate debtor.

Appeal against order under section 54L

54M. Any appeal from an order approving the resolution plan under sub-section (1) of section 54L, shall be on the grounds laid down in sub-section (3) of section 61.

Termination of pre-packaged insolvency resolution process.

54N. (1) Where the resolution professional files an application with the Adjudicating Authority, —

(a) under the proviso to sub-section (12) of section 54K; or

(b) under sub-section (3) of section 54D, the Adjudicating Authority shall, within thirty days of the date of such application, by an order, —

(i) terminate the pre-packaged insolvency resolution process; and

(ii) provide for the manner of continuation of proceedings initiated for avoidance of transactions under Chapter III or proceedings initiated under section 66 and section 67A, if any.

(2) Where the resolution professional, at any time after the pre-packaged insolvency commencement date, but before the approval of resolution plan under subsection (4) or sub-section (12), as the case may be, of section 54K, intimates the Adjudicating Authority of the decision of the committee of creditors, approved by a vote of sixty-six per cent. of the voting shares, to terminate the pre-packaged insolvency resolution process, the Adjudicating Authority shall pass an order under sub-section (1).

(3) Where the Adjudicating Authority passes an order under sub-section (1), the corporate debtor shall bear the pre-packaged insolvency resolution process costs, if any.

(4) Notwithstanding anything to the contrary contained in this section, where the Adjudicating Authority has passed an order under sub-section (2) of section 54J and the pre-packaged insolvency resolution process is required to be terminated under sub-section (1), the Adjudicating Authority shall pass an order —

(a) of liquidation in respect of the corporate debtor as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of section 33; and

(b) declare that the pre-packaged insolvency resolution process costs, if any, shall be included as part of the liquidation costs for the purposes of liquidation of the corporate debtor.

Initiation of corporate insolvency resolution process.

54-O. (1) The committee of creditors, at any time after the pre-packaged insolvency commencement date but before the approval of resolution plan under sub-section (4) or sub-section (12), as the case may be, of section 54K, by a vote of sixty-six per cent. of the voting shares, may resolve to initiate a corporate insolvency resolution process in respect of the corporate debtor, if such corporate debtor is eligible for corporate insolvency resolution process under Chapter II.

(2) Notwithstanding anything to the contrary contained in Chapter II, where the resolution professional intimates the Adjudicating Authority of the decision of the committee of creditors under

sub-section (1), the Adjudicating Authority shall, within thirty days of the date of such intimation, pass an order to —

a. terminate the pre-packaged insolvency

resolution process and initiate corporate insolvency resolution process under Chapter II in respect of the corporate debtor;

b. appoint the resolution professional referred

to in under clause (b) of sub-section (1) of section 54E as the interim resolution professional, subject to submission of written consent by such resolution professional to the Adjudicatory Authority in such form as may be specified; and

c. declare that the pre-packaged insolvency

resolution process costs, if any, shall be included as part of insolvency resolution process costs for the purposes of the corporate insolvency resolution process of the corporate debtor.

(3) Where the resolution professional fails to submit written consent under clause (b) of sub-section (2), the Adjudicating Authority shall appoint an interim resolution professional by making a reference to the Board for recommendation, in the manner as provided under section 16.

(4) Where the Adjudicating Authority passes an order under sub-section (2) —

(a) such order shall be deemed to be an order of

admission of an application under section 7 and shall have the same effect;

(b) the corporate insolvency resolution process shall commence from the date of such order;

(c) the proceedings initiated for avoidance of

transactions under Chapter III or proceedings initiated under section 66 and section 67A, if any, shall continue during the corporate insolvency resolution process;

(d) for the purposes of sections 43, 46 and 50, references to "insolvency commencement date" shall mean "pre-packaged insolvency commencement date"; and

(e) in computing the relevant time or the period for avoidable transactions, the time-period for the duration of the pre-packaged insolvency resolution process shall also be included, notwithstanding anything to the contrary contained in sections 43, 46 and 50.

Application of provisions of Chapters II, III, VI, and VII to this Chapter

54P. (1) Save as provided under this Chapter, sections 24, 25A, 26, 27, 28, 29A, 32A, 43 to 51, and the provisions of Chapters VI and VII of this VI, and VII to Part shall, *mutatis mutandis* apply, to the pre-packaged insolvency resolution process, subject to the following, namely:—

(a) reference to "members of the suspended Board of Directors or the partners" under clause (b) of sub-section (3) of section 24 shall be construed as reference to "members of the Board of Directors or the partners, unless an order has been passed by the Adjudicating Authority under section 54J";

(b) reference to "clause (j) of sub-section (2) of section 25" under section 26 shall be construed as reference to "clause (h) of sub-section (2) of section 54F";

(c) reference to "section 16" under section 27 shall be construed as reference to "section 54E";

(d) reference to "resolution professional" in sub-sections (1) and (4) of section 28 shall be construed as "corporate debtor";

(e) reference to "section 31" under sub-section (3) of section 61 shall be construed as reference to "sub-section (1) of section 54L";

(f) reference to "section 14" in sub-sections (1) and (2) of section 74 shall be construed as reference to "clause (a) of sub-section (1) of section 54E";

(g) reference to "section 31" in sub-section (3) of section 74 shall be construed as" reference to "sub-section (1) of section 54L".

(2) Without prejudice to the provisions of this Chapter and unless the context otherwise requires, where the provisions of Chapters II, III, VI and VII are applied to the proceedings under this Chapter, references to —

(a) "insolvency commencement date" shall be construed as references to "pre-packaged insolvency commencement date";

(b) "resolution professional" or "interim resolution professional", as the case may be, shall be construed as references to the resolution professional appointed under this Chapter;

(c) "corporate insolvency resolution process" shall be construed as references to "pre-packaged insolvency resolution process"; and

(d) "insolvency resolution process period" shall be construed as references to "pre-packaged insolvency resolution process period.".'.

X. Vide Notification S.O. 4638 (E) [F. NO. 30/33/2020-INSOLVENCY], dated 22-12-2020

In exercise of the powers conferred by section 10A of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby extended the period of suspension of insolvency proceedings by further period of three months from the 25th December, 2020, for the purposes of the said section.

XI. Vide MCA Notification S.O. 1543(E) dated 9th April, 2021, in exercise of the powers conferred by the second proviso to section 4 of the Insolvency and **Bankruptcy Code, 2016** as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021, the Central Government hereby specifies ten lakh rupees as the minimum amount of default for the matters relating to the pre-packaged insolvency resolution process of corporate debtor under Chapter III-A of the Code.

PART II: ALLIED LAWS

CHAPTER 20: SEBI ACT, 1992

1. Enforcement of the Banning of Unregulated Deposit Schemes Ordinance, 2019

Banning of Unregulated Deposit Schemes Ordinance, 2019 dated **21st February, 2019** has substituted Clause (e) of sub-section (4) of Section 11 of the SEBI Act, 1992 which is as follows:

(e) 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 there under:

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.

2. Amendments through Finance Act, 2018 w.e.f. 8.3.2019

1. In the Securities And Exchange Board of India Act, 1992 (hereafter in this Part referred to as the principal Act), **in section 11** which deals with the Functions of Board,—

   (i) **after sub-section (4),** the following sub-section shall be inserted, namely:—

   "(4A) Without prejudice to the provisions contained in sub-sections (1), (2), (2A), (3) and (4), section 11B and section 15-I, 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.";

   (ii) **in sub-section (5),** after the words and figures "the Depositories Act, 1996", the words, figures, letters and brackets shall be inserted, namely:—

   "or under a settlement made under section 15JB or section 23JA of the Securities Contracts (Regulation) Act, 1956 or section 19-IA of the Depositories Act, 1996,".

2. **In section 11B**, of the principal Act,—

   (a) in the marginal heading, after the word ''directions'', the words ''and levy penalty'' shall be inserted;

(b) **section 11B** shall be numbered as sub-section (1) thereof and after subsection (1) as so renumbered, the following sub-section shall be inserted, namely:—

"(2) Without prejudice to the provisions contained in sub-section (1), sub-section (4A) of section 11 and section 15-I, 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.''.

3. In the principal Act, in **section 15A** which deals with the Penalty for failure to furnish information, return, etc.,—

(i) **in clause (a),** after the words "fails to furnish the same", the words "or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents" shall be inserted;

(ii) **in clause (b),** after the words "furnish the same within the time specified therefor in the regulations", the words "or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents" shall be inserted.

4. In the principal Act**, after section 15E**, the following sections shall be inserted, namely:—

"15EA. Where any person fails to comply with the regulations made by the Board in respect of alternative investment funds, infrastructure investment trusts and real estate investment trusts or fails to comply with the directions issued by the Board, such person shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees or three times the amount of gains made out of such failure, whichever is higher.

15EB. Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.".

5. In the principal Act, in **section 15F** which deals with the Penalty for default in case of stock brokers, in **clause (b),** for the words "he sponsors or carries on any such collective investment scheme including mutual funds", the words "such failure continues" shall be substituted.

6. In the principal Act, in **section 15-I** which deals with the Power to adjudicate, in sub-section (1),—

   (i) after the figures and letter "15E,", the figures and letters "15EA, 15EB," shall be inserted;

   (ii) for the word "shall" the word "may" shall be substituted.

7. In the principal Act, in **section 15J**,—

   (a) for the marginal heading, the following marginal heading shall be substituted, namely:— "Factors to be taken into account while adjudging quantum of penalty.";

   (b) after the words, figures and letter "section 15-I, the adjudicating officer", the figures, letters and words "15-I or section 11 or section 11B, the Board or the adjudicating officer" shall be substituted;

   (c) in the Explanation, the words "of an adjudicating officer" shall be omitted.

8. In the principal Act, in **section 15JB** which deals with the Settlement of administrative and civil proceedings, after sub-section (4), the following subsection shall be inserted, namely:—

   "(5) All settlement amounts, excluding the disgorgement amount and legal costs, realised under this Act shall be credited to the Consolidated Fund of India.".

9. In the principal Act, in **section 24** which states about the Offences,—

   (i) after the words "adjudicating officer" at both the places where they occur, the words "or the Board" shall be inserted;

   (ii) in sub-section (2), the words "of his" shall be omitted.

10. In the principal Act, in **section 27** which deals with the Contravention by companies,—

   (i) for the marginal heading, the following marginal heading shall be substituted, namely:— "Contravention by companies.";

   (ii) in sub-section (1), for the words "an offence under this Act,", the words "a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder" shall be substituted;

   (iii) for the word "offence", wherever it occurs, the word "contravention" shall be substituted. 189. In the principal Act, in section 28A, in sub-section (1), for the words "by the adjudicating officer", the words "under this Act" shall be substituted.

11. In the principal Act, **after section 28A** which deals with recovery of money, the following section shall be inserted, namely:—

'28B. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased: Provided that, in case of any penalty payable under this Act, a legal representative shall be liable only in case the penalty has been imposed before the death of the deceased person.

(2) For the purposes of sub-section (1),—

(a) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, initiated against the deceased before his death, shall be deemed to have been initiated against the legal representative, and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased and all the provisions of this Act shall apply accordingly;

(b) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, which could have been initiated against the deceased if he had survived, may be initiated against the legal representative and all the provisions of this Act shall apply accordingly.

(3) Every legal representative shall be personally liable for any sum payable by him in his capacity as legal representative if, while his liability for such sum remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with. Amendment of section 15JB. Amendment of section 24. Amendment of section 27. Amendment of section 28A. Insertion of new section 28B. Continuance of proceedings.

(4) The liability of a legal representative under this section shall be limited to the extent to which the estate of the deceased is capable of meeting the liability. Explanation.—For the purposes of this section "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.'.

3. Inserted by Finance (No. 2) Act, 2019, w.e.f. 20-1-2020.

(i) In **section 15C** of the principal Act, which deals with the Penalty for failure to redress investors' grievances after the words "after having been called upon by the Board in writing", the words "including by any means of electronic communication" shall be inserted.

(ii) In **section 15F** of the principal Act, which deals with the Penalty for default in case of stock brokers in sub-clause (*a*), after the words "one lakh rupees but which may extend to", the words "one crore rupees" shall be inserted.

(iii) After **section 15HA** of the principal Act, the following section shall be inserted, namely:—

'**15HAA**. Penalty for alteration destruction, etc., of records and failure to protect the electronic database of Board

Any person, who—

(a) knowingly alters, destroys, mutilates, conceals, falsifies, or makes a false entry in any information, record, document (including electronic records), which is required under this Act or any rules or regulations made thereunder, so as to impede, obstruct, or influence the investigation, inquiry, audit, inspection or proper administration of any matter within the jurisdiction of the Board.

Explanation.—For the purposes of this clause, a person shall be deemed to have altered, concealed or destroyed such information, record or document, in case he knowingly fails to immediately report the matter to the Board or fails to preserve the same till such information continues to be relevant to any

investigation, inquiry, audit, inspection or proceeding, which may be initiated by the Board and conclusion thereof;

(b) without being authorised to do so, access or tries to access, or denies of access or modifies access parameters, to the regulatory data in the database;

(c) without being authorised to do so, downloads, extracts, copies, or reproduces in any form the regulatory data maintained in the system database;

(d) knowingly introduces any computer virus or other computer contaminant into the system database and brings out a trading halt;

(e) without authorisation disrupts the functioning of system database;

(f) knowingly damages, destroys, deletes, alters, diminishes in value or utility, or affects by any means, the regulatory data in the system database; or

(g) knowingly provides any assistance to or causes any other person to do any of the acts specified in clauses (a) to (f), shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to ten crore rupees or three times the amount of profits made out of such act, whichever is higher.

Explanation.—In this section, the expressions "computer contaminant", "computer virus" and "damage" shall have the meanings respectively assigned to them under section 43 of the Information Technology Act, 2000.

4. Through **Finance Act, 2021 w.e.f 1st April, 2021, in section 12**, the below provision has been added after 1(B):

(1C) No person shall sponsor or cause to be sponsored or carry on or cause to be carried on the activity of an alternative investment fund or a business trust as defined in clause (13A) of section 2 of the Income-tax Act, 1961, unless a certificate of registration is granted by the Board in accordance with the regulations made under this Act.

CHAPTER 22: The Foreign Exchange and Management Act, 1999

(1) Foreign Exchange Management (Permissible Capital Account Transactions) (Amendment) Regulations, 2019

Reserve Bank of India makes the amendment in the FEM (Permissible Capital Account Transactions) Regulations, 2000 through the enforcement of **the Foreign Exchange Management (Permissible Capital Account Transactions) (Amendment) Regulations, 2019** w.e.f. **26-2-2019**. Following are the relevant amendments -

(i) In the Para 2 (Definitions) – After the clause (d), clause (da) is added:

"(da) 'Derivative' means a financial contract, to be settled at a future date, whose value is derived from one or more financial, or non-financial variables."

(ii) **In schedule I** (classes of capital account transactions of persons resident in India) of FEM (Permissible Capital Account Transactions) Regulations, 2000, for the existing clause (k), the following shall be substituted:

"(k) Undertake derivative contracts"

(iii) **In the schedule II** (classes of capital account transactions of persons resident outside India) of FEM (Permissible Capital Account Transactions) Regulations, 2000, after the existing clause (g), the following shall be added:

"(**h) Undertake derivative contracts**"

(2) Amendment in Section 6 of the Foreign Exchange Management Act, 1999 vide Finance Act, 2015 w.e.f 15.10.2019.

(1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.

(2) The Reserve Bank may, in consultation with the Central Government, specify—

(a) any class or classes of capital account transactions, involving debt instruments, which are permissible;

(b) the limit up to which foreign exchange shall be admissible for such transactions;

(c) any conditions which may be placed on such transactions:

[Provided that the Reserve Bank or the Central Government shall not impose any restrictions on the drawal of foreign exchange for payment due on account of amortisation of loans or for depreciation of direct investments in the ordinary course of business.

(2A) The Central Government may, in consultation with the Reserve Bank, prescribe—

(a) any class or classes of capital account transactions, not involving debt instruments, which are permissible;

(b) the limit up to which foreign exchange shall be admissible for such transactions; and

(c) any conditions which may be placed on such transactions.

(3) [***]

(4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

(5) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

(6) Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

(7) For the purposes of this section, the term "debt instruments" shall mean, such instruments as may be determined by the Central Government in consultation with the Reserve Bank.

(3) Amendments in External Commercial Borrowings

Vide FED Master Direction No.5/2018-19, amendments have been made in the Transactions on account of External Commercial Borrowings (ECB) . **Here is the updated master direction –external commercial borrowings.**

Within the contours of the Regulations, Reserve Bank of India also issues directions to Authorised Persons under Section 11 of the Foreign Exchange Management Act (FEMA), 1999. These directions lay down the modalities as to how the foreign exchange business has to be conducted by the Authorised Persons with their customers/constituents with a view to implementing the regulations framed.

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Introduction: External Commercial Borrowings are commercial loans raised by eligible resident entities from recognised non-resident entities and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc. The parameters given below apply in totality and not on a standalone basis.

2.1. ECB Framework: The framework for raising loans through ECB (hereinafter referred to as the ECB Framework) comprises the following two options:

Sr. No.	Parameters	FCY denominated ECB	INR denominated ECB
i	Currency of borrowing	Any freely convertible Foreign Currency	Indian Rupee (INR)
ii	Forms of ECB	Loans including bank loans; floating/ fixed rate notes/ bonds/ debentures (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; FCCBs; FCEBs and Financial Lease.	Loans including bank loans; floating/ fixed rate notes/bonds/ debentures/ preference shares (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; and Financial Lease. Also, plain vanilla Rupee denominated bonds issued overseas, which can be either placed privately or listed on exchanges as per host country regulations.
iii	Eligible borrowers	All entities eligible to receive FDI. Further, the following entities are also eligible to raise ECB: i. Port Trusts; ii. Units in SEZ; iii. SIDBI; and iv. EXIM Bank of India.	(a) All entities eligible to raise FCY ECB; and (b) Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/ trusts/cooperatives and Non-Government Organisations.
iv	Recognised lenders	The lender should be resident of FATF or IOSCO compliant country, including on transfer of ECB. However, (a) Multilateral and Regional Financial Institutions where India is a member country will also be considered as recognised lenders; (b) Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad; and (c) Foreign branches / subsidiaries of Indian banks are permitted as recognised lenders only for FCY ECB (except FCCBs and FCEBs).	

<table>
<tr><td></td><td></td><td>Foreign branches / subsidiaries of Indian banks, subject to applicable prudential norms, can participate as arrangers/underwriters/market-makers/traders for Rupee denominated Bonds issued overseas. However, underwriting by foreign branches/subsidiaries of Indian banks for issuances by Indian banks will not be allowed.</td></tr>
<tr><td>V</td><td>Minimum Average Maturity Period (MAMP)</td><td>MAMP for ECB will be 3 years. Call and put options, if any, shall not be exercisable prior to completion of minimum average maturity. However, for the specific categories mentioned below, the MAMP will be as prescribed therein:
<table>
<tr><th>Sr.No.</th><th>Category</th><th>MAMP</th></tr>
<tr><td>(a)</td><td>ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year.</td><td>1 year</td></tr>
<tr><td>(b)</td><td>ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans</td><td>5 years</td></tr>
<tr><td>[4](c)</td><td>ECB raised for
(i) working capital purposes or general corporate purposes
(ii) on-lending by NBFCs for working capital purposes or general corporate purposes</td><td>10 years</td></tr>
<tr><td>(d)</td><td>ECB raised for
(i) repayment of Rupee loans availed domestically for capital expenditure
(ii) on-lending by NBFCs for the same purpose</td><td>7 years</td></tr>
<tr><td>(e)</td><td>ECB raised for
(i) repayment of Rupee loans availed domestically for purposes other than capital expenditure</td><td>10 years</td></tr>
</table></td></tr>
</table>

[4]Inserted vide A.P.(DIR Series) Circular No. 04 dated July 30, 2019.

		(ii) on-lending by NBFCs for the same purpose	
		for the categories mentioned at (b) to (e) – (i) ECB cannot be raised from foreign branches / subsidiaries of Indian banks (ii) the prescribed MAMP will have to be strictly complied with under all circumstances.	
vi	All-in-cost ceiling per annum	Benchmark rate plus 450 bps spread.	
vii	Other costs	Prepayment charge/ Penal interest, if any, for default or breach of covenants, should not be more than 2 per cent over and above the	
		contracted rate of interest on the outstanding principal amount and will be outside the all-in-cost ceiling.	
Viii	End-uses (Negative list)	The negative list, for which the ECB proceeds cannot be utilised, would include the following: (a) Real estate activities. (b) Investment in capital market. (c) Equity investment. (d) [5]Working capital purposes, except in case of ECB mentioned at v(b) and v(c) above. (e) General corporate purposes, except in case of ECB mentioned at v(b) and v(c) above. (f) Repayment of Rupee loans, except in case of ECB mentioned at v(d) and v(e) above. (g) On-lending to entities for the above activities, except in case of ECB raised by NBFCs as given at v(c), v(d) and v(e) above.	
ix	Exchange rate	Change of currency of FCY ECB into INR ECB can be at the exchange rate prevailing on the date of the agreement	For conversion to Rupee, the exchange rate shall be the rate prevailing on the date of settlement.

[5] Substituted vide A.P.(DIR Series) Circular No. 04 dated July 30, 2019. Prior to substitution it read as below:

(a) Working capital purposes except from foreign equity holder.

(b) General corporate purposes except from foreign equity holder.

(c) Repayment of Rupee loans except from foreign equity holder.

(d) On-lending to entities for the above activities.

		for such change between the parties concerned or at an exchange rate, which is less than the rate prevailing on the date of the agreement, if consented to by the ECB lender.	
x	Hedging provision	The entities raising ECB are required to follow the guidelines for hedging issued, if any, by the concerned sectoral or prudential regulator in respect of foreign currency exposure. Infrastructure space companies shall have a Board approved risk management policy. Further, such companies are required to mandatorily hedge 70 per cent of their ECB exposure in case the average maturity of the ECB is	Overseas investors are eligible to hedge their exposure in Rupee through permitted derivative products with AD Category I banks in India. The investors can also access the domestic market through branches / subsidiaries of Indian banks abroad or branches of foreign banks with Indian presence on a back to back basis.
		less than 5 years. The designated AD Category-I bank shall verify that 70 per cent hedging requirement is complied with during the currency of the ECB and report the position to RBI through Form ECB 2. The following operational aspects with respect to hedging should be ensured: **a. Coverage:** The ECB borrower will be required to cover the principal as well as the coupon through financial hedges. The financial hedge for all exposures on account of ECB should start from the	

		time of each such exposure (i.e. the day the liability is created in the books of the borrower). **b. Tenor and rollover:** A minimum tenor of one year for the financial hedge would be required with periodic rollover, duly ensuring that the exposure on account of ECB is not unhedged at any point during the currency of the ECB. **c. Natural Hedge:** Natural hedge, in lieu of financial hedge, will be considered only to the extent of offsetting projected cash flows / revenues in matching currency, net of all other projected outflows. For this purpose, an ECB may be considered naturally hedged if the offsetting exposure has the maturity/cash flow within the same accounting. Any other arrangements/ structures, where revenues are indexed to foreign currency will not be considered as a natural hedge.	
xi	Change of currency of borrowing	Change of currency of ECB from one freely convertible foreign currency to any other freely convertible foreign currency as well as to INR is freely permitted.	Change of currency from INR to any freely convertible foreign currency is not permitted.

Note: The ECB framework is not applicable in respect of investments in Non-Convertible Debentures in India made by Registered Foreign Portfolio Investors. [6]Lending and

[6] Inserted vide A.P. (DIR Series) Circular No. 17 dated January 16, 2019.

borrowing under the ECB framework by Indian banks and their branches/subsidiaries outside India will be subject to prudential guidelines issued by the Department of Banking Regulation of the Reserve Bank. Further, other entities raising ECB are required to follow the guidelines issued, if any, by the concerned sectoral or prudential regulator.

2.2. Limit and leverage: Under the aforesaid framework, all eligible borrowers can raise ECB up to USD 750 million or equivalent per financial year under the automatic route. Further, in case of FCY denominated ECB raised from direct foreign equity holder, ECB liability-equity ratio for ECB raised under the automatic route cannot exceed 7:1. However, this ratio will not be applicable if the outstanding amount of all ECB, including the proposed one, is up to USD 5 million or its equivalent. Further, the borrowing entities will also be governed by the guidelines on debt equity ratio, issued, if any, by the sectoral or prudential regulator concerned.

3. Issuance of Guarantee, etc. by Indian banks and Financial Institutions: Issuance of any type of guarantee by Indian banks, All India Financial Institutions and NBFCs relating to ECB is not permitted. Further, financial intermediaries (viz., Indian banks, All India Financial Institutions, or NBFCs) shall not invest in FCCBs/ FCEBs in any manner whatsoever.

4. Parking of ECB proceeds: ECB proceeds are permitted to be parked abroad as well as domestically in the manner given below:

4.1 Parking of ECB proceeds abroad: ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilisation. Till utilisation, these funds can be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's; (b) Treasury bills and other monetary instruments of one-year maturity having minimum rating as indicated above and (c) deposits with foreign branches/subsidiaries of Indian banks abroad.

4.2 Parking of ECB proceeds domestically: ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months cumulatively. These term deposits should be kept in unencumbered position.

5. Procedure of raising ECB: All ECB can be raised under the automatic route if they conform to the parameters prescribed under this framework. For approval route cases, the borrowers may approach the RBI with an application in prescribed format (Form ECB) for examination through their AD Category I bank. Such cases shall be considered keeping in view the overall guidelines, macroeconomic situation and merits of the specific proposals. ECB proposals received in the Reserve Bank above certain threshold limit (refixed from time to time) would be placed before the Empowered Committee set up by the Reserve Bank. The Empowered Committee will have external as well as internal members and the Reserve Bank will take a final decision in the cases taking into account recommendation

of the Empowered Committee. Entities desirous to raise ECB under the automatic route may approach an AD Category I bank with their proposal along with duly filled in Form ECB.

6. Reporting Requirements: Borrowings under ECB Framework are subject to following reporting requirements apart from any other specific reporting required under the framework:

6.1 Loan Registration Number (LRN): Any draw-down in respect of an ECB should happen only after obtaining the LRN from the Reserve Bank. To obtain the LRN, borrowers are required to submit duly certified Form ECB, which also contains terms and conditions of the ECB, in duplicate to the designated AD Category I bank. In turn, the AD Category I bank will forward one copy to the Director, Reserve Bank of India, Department of Statistics and Information Management, External Commercial Borrowings Division, Bandra-Kurla Complex, Mumbai – 400 051 (Contact numbers 022-26572513 and 022-26573612). Copies of loan agreement for raising ECB are not required to be submitted to the Reserve Bank.

6.2 Changes in terms and conditions of ECB: Changes in ECB parameters in consonance with the ECB norms, including reduced repayment by mutual agreement between the lender and borrower, should be reported to the DSIM through revised Form ECB at the earliest, in any case not later than 7 days from the changes effected. While submitting revised Form ECB the changes should be specifically mentioned in the communication.

6.3 Monthly Reporting of actual transactions: The borrowers are required to report actual ECB transactions through Form ECB 2 Return through the AD Category I bank on monthly basis so as to reach DSIM within seven working days from the close of month to which it relates.

Changes, if any, in ECB parameters should also be incorporated in Form ECB 2 Return.

6.4 Late Submission Fee (LSF) for delay in reporting:

6.4.1 Any borrower, who is otherwise in compliance of ECB guidelines, can regularise the delay in reporting of drawdown of ECB proceeds before obtaining LRN or delay in submission of Form ECB 2 returns, by payment of late submission fees as detailed in the following matrix:

Sr. No.	Type of Return/Form	Period of delay	Applicable LSF
1	Form ECB 2	Up to 30 calendar days from due date of submission	INR 5,000
2	Form ECB 2/Form ECB	Up to three years from due date of submission/date of drawdown	INR 50,000 per year

3	Form ECB 2/Form ECB	Beyond three years from due date of submission/date of drawdown	INR 100,000 per year

6.4.2 The borrower, through its AD bank, may pay the LSF by way of demand draft in favour of "Reserve Bank of India" or any other mode specified by the Reserve Bank. Such payment should be accompanied with the requisite return(s). Form ECB and Form ECB 2 returns reporting contraventions will be treated separately. Non-payment of LSF will be treated as contravention of reporting provision and shall be subject to compounding or adjudication as provided in FEMA 1999 or regulations/rules framed thereunder.

6.5 Standard Operating Procedure (SOP) for Untraceable Entities: The following SOP has to be followed by designated AD Category-I banks in case of untraceable entities who are found to be in contravention of reporting provisions for ECB by failing to submit prescribed return(s) under the ECB framework, either physically or electronically, for past eight quarters or more.

i. Definition: Any borrower who has raised ECB will be treated as 'untraceable entity', if entity/ auditor(s)/ director(s)/ promoter(s) of entity are not reachable/ responsive/ reply in negative over email/letters/phone for a period of not less than two quarters with documented communication/ reminders numbering 6 or more and it fulfills both of the following conditions:

(a) Entity not found to be operative at the registered office address as per records available with the AD Bank or not found to be operative during the visit by the officials of the AD Bank or any other agencies authorised by the AD bank for the purpose;

(b) Entities have not submitted Statutory Auditor's Certificate for last two years or more;

ii. Action: The followings actions are to be undertaken in respect of 'untraceable entities':

(a) File Revised Form ECB, if required, and last Form ECB 2 Return without certification from company with 'UNTRACEABLE ENTITY' written in bold on top. The outstanding amount will be treated as written-off from external debt liability of the country but may be retained by the lender in its books for recovery through judicial/ non-judicial means;

(b) No fresh ECB application by the entity should be examined/processed by the AD bank;

(c) Directorate of Enforcement should be informed whenever any entity is designated

(d) 'UNTRACEABLE ENTITY'; and

(e) No inward remittance or debt servicing will be permitted under auto route.

7. Powers delegated to AD Category I banks to deal with ECB cases: The designated AD Category I banks can approve any requests from the borrowers for changes in respect of ECB, except for FCCBs/FCEBs, duly ensuring that the changed conditions, including change in name of borrower/lender, transfer of ECB and any other parameters, comply with extant ECB norms and are with the consent of lender(s). Further, the following can also be undertaken under the automatic route:

7.1 Change of the AD Category I bank: AD Category I bank can be changed subject to obtaining no objection certificate from the existing AD Category I bank.

7.2 Cancellation of LRN: The designated AD Category I banks may directly approach DSIM for cancellation of LRN for ECB contracted, subject to ensuring that no draw down against the said LRN has taken place and the monthly ECB-2 returns till date in respect of the allotted LRN have been submitted to DSIM.

7.3 Refinancing of existing ECB: Refinancing of existing ECB by fresh ECB provided the outstanding maturity of the original borrowing (weighted outstanding maturity in case of multiple borrowings) is not reduced and all-in-cost of fresh ECB is lower than the all-in-cost (weighted average cost in case of multiple borrowings) of existing ECB. Further, refinancing of ECB raised under the previous ECB frameworks may also be permitted, subject to additionally ensuring that the borrower is eligible to raise ECB under the extant framework. Raising of fresh ECB to part refinance the existing ECB is also permitted subject to same conditions. Indian banks are permitted to participate in refinancing of existing ECB, only for highly rated corporate (AAA) and for Maharatna/ Navratna public sector undertakings.

7.4 Conversion of ECB into equity: Conversion of ECB, including those which are matured but unpaid, into equity is permitted subject to the following conditions:

(i) The activity of the borrowing company is covered under the automatic route for FDI or Government approval is received, wherever applicable, for foreign equity participation as per extant FDI policy.

(ii) The conversion, which should be with the lender's consent and without any additional cost, should not result in contravention of eligibility and breach of applicable sector cap on the foreign equity holding under FDI policy;

(iii) Applicable pricing guidelines for shares are complied with; iv. In case of partial or full conversion of ECB into equity, the reporting to the Reserve Bank will be as under:

(a) For partial conversion, the converted portion is to be reported in Form FC-GPR prescribed for reporting of FDI flows, while monthly reporting to DSIM in Form ECB 2 Return will be with suitable remarks, viz., "ECB partially converted to equity".

(b) For full conversion, the entire portion is to be reported in Form FC-GPR, while reporting to DSIM in Form ECB 2 Return should be done with remarks "ECB fully converted to equity". Subsequent filing of Form ECB 2 Return is not required.

(c) For conversion of ECB into equity in phases, reporting through Form FC-GPR and Form ECB 2 Return will also be in phases.

(iv) If the borrower concerned has availed of other credit facilities from the Indian banking system, including foreign branches/subsidiaries of Indian banks, the applicable prudential guidelines issued by the Department of Banking Regulation of Reserve Bank, including guidelines on restructuring are complied with;

(v) Consent of other lenders, if any, to the same borrower is available or atleast information regarding conversions is exchanged with other lenders of the borrower.

(vi) For conversion of ECB dues into equity, the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion or any lesser rate can be applied with a mutual agreement with the ECB lender. It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only.

7.5. Security for raising ECB: AD Category I banks are permitted to allow creation/cancellation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised/ raised by the borrower, subject to satisfying themselves that:

i. the underlying ECB is in compliance with the extant ECB guidelines,

ii. there exists a security clause in the Loan Agreement requiring the ECB borrower to create/cancel charge, in favour of overseas lender/security trustee, on immovable assets/movable assets/financial securities/issuance of corporate and/or personal guarantee, and

iii. No objection certificate, as applicable, from the existing lenders in India has been obtained in case of creation of charge.

Once the aforesaid stipulations are met, the AD Category I bank may permit creation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees, during the currency of the ECB with security co-terminating with underlying ECB, subject to the following:

iv **Creation of Charge on Immovable Assets:** The arrangement shall be subject to the following:

(a) Such security shall be subject to provisions contained in the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2017, as amended from time to time.

(b) The permission should not be construed as a permission to acquire immovable asset (property) in India, by the overseas lender/ security trustee.

(c) In the event of enforcement / invocation of the charge, the immovable asset/ property will have to be sold only to a person resident in India and the sale proceeds shall be repatriated to liquidate the outstanding ECB.

v **Creation of Charge on Movable Assets:** In the event of enforcement/ invocation of the charge, the claim of the lender, whether the lender takes over the movable asset or otherwise, will be restricted to the outstanding claim against the ECB. Encumbered movable assets may also be taken out of the country subject to getting 'No Objection Certificate' from domestic lender/s, if any.

vi **Creation of Charge over Financial Securities:** The arrangements may be permitted subject to the following:

(a) Pledge of shares of the borrowing company held by the promoters as well as in domestic associate companies of the borrower is permitted. Pledge on other financial securities, viz. bonds and debentures, Government Securities, Government Savings Certificates, deposit receipts of securities and units of the Unit Trust of India or of any mutual funds, standing in the name of ECB borrower/promoter, is also permitted.

(b) In addition, security interest over all current and future loan assets and all current assets including cash and cash equivalents, including Rupee accounts of the borrower with ADs in India, standing in the name of the borrower/promoter, can be used as security for ECB. The Rupee accounts of the borrower/promoter can also be in the form of escrow arrangement or debt service reserve account.

(c) In case of invocation of pledge, transfer of financial securities shall be in accordance with the extant FDI/FII policy including provisions relating to sectoral cap and pricing as applicable read with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017, as amended from time to time.

vii **Issue of Corporate or Personal Guarantee:** The arrangement shall be subject to the following:

(a) A copy of Board Resolution for the issue of corporate guarantee for the company issuing such guarantee, specifying name of the officials authorised to execute such guarantees on behalf of the company or in individual capacity should be obtained.

(b) Specific requests from individuals to issue personal guarantee indicating details of the ECB should be obtained.

(c) Such security shall be subject to provisions contained in the Foreign Exchange Management (Guarantees) Regulations, 2000, as amended from time to time.

(d) ECB can be credit enhanced / guaranteed / insured by overseas party/ parties only if it/ they fulfil/s the criteria of recognised lender under extant ECB guidelines.

7.6. Additional Requirements: While exercising the delegated powers, the AD Category I banks should ensure that:

i. The changes permitted are in conformity with the applicable ceilings / guidelines and the ECB continues to be in compliance with applicable guidelines. It should also be ensured that if the ECB borrower has availed of credit facilities from the Indian banking system, including foreign branches/subsidiaries of Indian banks, any extension of tenure of ECB (whether matured or not) shall be subject to applicable prudential guidelines issued by Department of Banking Regulation of Reserve Bank including guidelines on restructuring.

ii. The changes in the terms and conditions of ECB allowed by the ADs under the powers delegated and / or changes approved by the Reserve Bank should be reported to the DSIM as given at paragraph 6.2 above. Further, these changes should also get reflected in the Form ECB 2 returns appropriately.

8. Special Dispensations under the ECB framework:

8.1 ECB facility for Oil Marketing Companies: Notwithstanding the provisions contained in paragraph 2.1 (viii), 2.1 (x) and 2.2 above, Public Sector Oil Marketing Companies (OMCs) can raise ECB for working capital purposes with minimum average maturity period of 3 years from all recognised lenders under the automatic route without mandatory hedging and individual limit requirements. The overall ceiling for such ECB shall be USD 10 billion or equivalent. However, OMCs should have a Board approved forex mark to market procedure and prudent risk management policy, for such ECB. All other provisions under the ECB framework will be applicable to such ECB.

8.2 ECB facility for Startups: AD Category-I banks are permitted to allow Startups to raise ECB under the automatic route as per the following framework:

i. Eligibility: An entity recognised as a Startup by the Central Government as on date of raising ECB.

ii. Maturity: Minimum average maturity period will be 3 years.

iii. Recognised lender: Lender / investor shall be a resident of a FATF compliant country. However, foreign branches/subsidiaries of Indian banks and overseas entity in which Indian entity has made overseas direct investment as per the extant Overseas Direct Investment Policy will not be considered as recognised lenders under this framework.

iv Forms: The borrowing can be in form of loans or non-convertible, optionally convertible or partially convertible preference shares.

v **Currency:** The borrowing should be denominated in any freely convertible currency or in Indian Rupees (INR) or a combination thereof. In case of borrowing in INR, the nonresident lender, should mobilise INR through swaps/outright sale undertaken through an AD Category-I bank in India.

vi **Amount:** The borrowing per Startup will be limited to USD 3 million or equivalent per financial year either in INR or any convertible foreign currency or a combination of both.

vii **All-in-cost:** Shall be mutually agreed between the borrower and the lender.

viii **End uses:** For any expenditure in connection with the business of the borrower.

ix **Conversion into equity:** Conversion into equity is freely permitted subject to Regulations applicable for foreign investment in Startups.

x **Security:** The choice of security to be provided to the lender is left to the borrowing entity. Security can be in the nature of movable, immovable, intangible assets (including patents, intellectual property rights), financial securities, etc. and shall comply with foreign direct investment / foreign portfolio investment / or any other norms applicable for foreign lenders / entities holding such securities. Further, issuance of corporate or personal guarantee is allowed. Guarantee issued by a nonresident(s) is allowed only if such parties qualify as lender under ECB for Startups. However, issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by Indian banks, all India Financial Institutions and NBFCs is not permitted.

xi **Hedging:** The overseas lender, in case of INR denominated ECB, will be eligible to hedge its INR exposure through permitted derivative products with AD Category – I banks in India. The lender can also access the domestic market through branches/ subsidiaries of Indian banks abroad or branches of foreign bank with Indian presence on a back to back basis.

Note: Startups raising ECB in foreign currency, whether having natural hedge or not, are exposed to currency risk due to exchange rate movements and hence are advised to ensure that they have an appropriate risk management policy to manage potential risk arising out of ECB.

xii **Conversion rate:** In case of borrowing in INR, the foreign currency - INR conversion will be at the market rate as on the date of agreement.

xiii **Other Provisions:** Other provisions like parking of ECB proceeds, reporting arrangements, powers delegated to AD banks, borrowing by entities under investigation, conversion of ECB into equity will be as included in the ECB framework. However, provisions on leverage ratio and ECB liability: Equity ratio will not be applicable. Further, the Start-ups as defined above [8.2. (i)] as well as other start-ups which do not comply with the aforesaid definition but are eligible to receive FDI, can also raise ECB under the general ECB route/framework.

9. **Borrowing by Entities under Investigation:** All entities against which investigation / adjudication / appeal by the law enforcing agencies for violation of any of the provisions of the Regulations under FEMA pending, may raise ECB as per the applicable norms, if they are otherwise eligible, notwithstanding the pending investigations / adjudications / appeals, without prejudice to the outcome of such investigations / adjudications / appeals. The borrowing entity shall inform about pendency of such investigation / adjudication / appeal to the AD Category-I bank / RBI as the case may be. Accordingly, in case of all applications where the borrowing entity has indicated about the pending investigations / adjudications/ appeals, the AD Category I Banks / Reserve Bank while approving the proposal shall intimate the agencies concerned by endorsing a copy of the approval letter.

10. **ECB by entities under restructuring/ ECB facility for refinancing stressed assets:**

10.1 An entity which is under a restructuring scheme/ corporate insolvency resolution process can raise ECB only if specifically permitted under the resolution plan.

10.2 [7]Eligible corporate borrowers who have availed Rupee loans domestically for capital expenditure in manufacturing and infrastructure sector and which have been classified as SMA-2 or NPA can avail ECB for repayment of these loans under any one time settlement with lenders. Lender banks are also permitted to sell, through assignment, such loans to eligible ECB lenders, provided, the resultant external commercial borrowing complies with all-in-cost, minimum average maturity period and other relevant norms of the ECB framework. Foreign branches/ overseas subsidiaries of Indian banks are not eligible to lend for the above purposes. The applicable MAMP will have to be strictly complied with under all circumstances.

10.3 Eligible borrowers under the ECB framework, who are participating in the Corporate Insolvency Resolution Process under Insolvency and Bankruptcy Code, 2016 as resolution applicants, can raise ECB from all recognised lenders, except foreign branches/subsidiaries of Indian banks, for repayment of Rupee term loans of the target company. Such ECB will be considered under the approval route, procedure of which is given at paragraph No. 5 above.

11. **Dissemination of information:** For providing greater transparency, information with regard to the name of the borrower, amount, purpose and maturity of ECB under both Automatic and Approval routes are put on the RBI's website, on a monthly basis, with a lag of one month to which it relates.

12. **Compliance with the guidelines:** The primary responsibility for ensuring that the borrowing is in compliance with the applicable guidelines is that of the borrower concerned. Any contravention of the applicable provisions of ECB guidelines will invite penal action

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[7] Inserted vide A.P.(DIR Series) Circular No. 04 dated July 30, 2019.

under the FEMA. The designated AD Category I bank is also expected to ensure compliance with applicable ECB guidelines by their constituents.

4. Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2019

Vide Notification No. FEMA 23(R)/(2)/2019-RB dated **December 09, 2019**, the Reserve Bank of India makes the following amendments in the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015 ('the Principal Regulations'), namely:

In the Principal Regulations, in **regulation 4**, after sub-regulation (e), the following shall be inserted, namely :-

"(ea) re-export of leased aircraft/ helicopter and/or engines/auxiliary power units (APUs) re-possessed by overseas lessor and duly de-registered by the Directorate General of Civil Aviation (DGCA) on the request of Irrevocable Deregistration and Export Request Authorisation (IDERA) holder under 'Cape Town Convention' subject to permission by DGCA/Ministry of Civil Aviation for such export/s."

5. Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2020

Vide Notification No. FEMA 23(R)/(3)/2020-RB dated **March 31, 2020**, the Reserve Bank of India makes the following amendments in the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015 ('the Principal Regulations'), namely:

- In the Principal Regulations, in regulation 9, in sub-regulation (1) and sub-regulation (2)(a), for the words **"nine months**", the words "**nine months or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time"** shall be substituted.
- Similarly, in sub-regulation (1) (a), for the words **"fifteen months",** the **words "fifteen months or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time"** shall be substituted.
- In Regulation 9 (1)(b), for the words "**period of nine months or fifteen months, as the case may be"**, the words **"said period"** shall be substituted.
- In proviso to Regulation 9 (2)(a), for the words "**period of nine months**", the words **"said period"** shall be substituted.

6. Vide Notification No. FEMA 23(R)/(4)/2021-RB , dated January 08, 2021, the Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021 has been enacted,

In exercise of the powers conferred by clause (a) of sub-section (1), sub-section (3) of section 7 and clause (b) of sub-section (2) of section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India makes the following amendments in the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015 through the enforcement of the Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021.

In the Principal Regulations, **in regulation 4, for sub-regulation (ea),** the following shall be substituted, namely:-

"(ea) re-export of leased aircraft/helicopter and/or engines/auxiliary power units (APUs), either completely or in partially knocked down condition repossessed by overseas lessor and duly de-registered by the Directorate General of Civil Aviation (DGCA) on the request of Irrevocable Deregistration and Export Request Authorisation (IDERA) holder under 'Cape Town Convention' or any other termination or cancellation of the lease agreement between the lessor and lessee subject to permission by DGCA/Ministry of Civil Aviation for such export/s."

CHAPTER 23: THE COMPETITION ACT, 2002

The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2019, 13th August, 2019

Vide notification no. F.No. CCI/CD/Amend/Comb. Regl./2019, the Competition Commission of India hereby makes the following regulations further to amend the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, namely:—

(1) These regulations may be called the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2019 w.e.f**. 15th day of August, 2019**.

(2) In **regulation 5** of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, the following regulation shall be inserted, namely:-

"5A. Notice for approval of combinations under Green Channel.-

(1) For the category of combination mentioned in Schedule III, the parties to such combination may, at their option, give notice in Form I pursuant to regulation 5 along with the declaration specified in Schedule IV.

(2) Upon filing of a notice under sub-regulation (1) and acknowledgement thereof, the proposed combination shall be deemed to have been approved by the Commission under sub-section (1) of section 31 of the Act:

Provided that where the Commission finds that the combination does not fall under Schedule III and/or the declaration filed pursuant to sub-regulation (1) is incorrect, the notice given and the approval granted under this regulation shall be void *ab initio* and the Commission shall deal with the combination in accordance with the provisions contained in the Act:

Provided further that the Commission shall give to the parties to the combination an opportunity of being heard before arriving at a finding that the combination does not fall under Schedule III and/or the declaration filed pursuant to sub-regulation (1) is incorrect.";

(3) in **regulation 13,** of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, following are the amendments-

(a) for sub-regulation (1A), the following sub-regulation shall be substituted, namely: -

"(1A) A summary of the combination, not containing any confidential information, in not more than 1000 words, comprising details regarding: (a) name of the parties to the combination; (b) the nature and purpose of the combination; (c) the products, services and business(es) of the parties to the combination; and (d) the respective markets in which the parties to the combination operate, shall be filed for the purpose of publishing the same on the website of the Commission.";

(b) sub-regulation (1B) shall be omitted;

Chapter 24 : Overview of Banking Regulation Act, 1949, the Insurance Act, 1938, IRDA Act, 1999

The Insurance Act, 1938

The Ministry of Law And Justice Vide Notification dated 25th March, 2021 enacted Insurance (Amendment) Act, 2021. This amendment Act is further to amend the Insurance Act, 1938.

1. This Act may be called the Insurance (Amendment) Act, 2021. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In the Insurance Act, 1938 (hereinafter referred to as the principal Act), in section 2,in clause (7A), for sub-clause (b), the following sub-clause shall be substituted, namely:—

"(b) in which the aggregate holdings of equity shares by foreign investors including portfolio investors, do not exceed seventy-four per cent. of the paid-up equity capital of such Indian insurance company, and the foreign investment in which shall be subject to such conditions and manner, as may be prescribed;"

CHAPTER 25: PREVENTION OF MONEY LAUNDERING ACT, 2002

(1) Amendment in section 8 vide Finance Act, 2019, w.r.e.f. 20-3-2019.

Sub-section (3) dealing with the computation of period of attachment/retention of property / record seized / frozen during investigation, is amended as follows:

(3) Where the Adjudicating Authority decides that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under section 5(1) or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—

(a) continue during investigation for a period not **exceeding three hundred and sixty-five days** or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court.

Explanation.—For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.

(2) Amendment in section 12 vide Aadhaar and Other Laws (Amendment) Act, 2019, w.e.f. 25-7-2019

Clause (c) & (d) of section 12(1) have been omitted by the Aadhaar and Other Laws (Amendment) Act, 2019, w.e.f. **25-7-2019**.

Prior to their omission, clauses (*c*) and (*d*) read as under:

"(c) verify the identity of its clients in such manner and subject to such conditions, as may be prescribed;

(d) identify the beneficial owner, if any, of such of its clients, as may be prescribed;"

(3) Insertion of Section 11A vide the Aadhaar and Other Laws (Amendment) Act, 2019, w.e.f. 25-7-2019

Verification of identity by reporting entity.

11A. (1) Every reporting entity shall verify the identity of its clients and the beneficial owner, by—

(a) authentication under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 if the reporting entity is a banking company; or

(b) offline verification under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016; or

(c) use of passport issued under section 4 of the Passports Act, 1967; or

(d) use of any other officially valid document or modes of identification as may be notified by the Central Government in this behalf:

Provided that the Central Government may, if satisfied that a reporting entity other than banking company, complies with such standards of privacy and security under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, and it is necessary and expedient to do so, by notification, permit such entity to perform authentication under clause (a):

Provided further that no notification under the first proviso shall be issued without consultation with the Unique Identification Authority of India established under sub-section (1) of section 11 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 and the appropriate regulator.

(2) If any reporting entity performs authentication under clause (a) of sub-section (1), to verify the identity of its client or the beneficial owner it shall make the other modes of identification under clauses (b), (c) and (d) of sub-section (1) also available to such client or the beneficial owner.

(3) The use of modes of identification under sub-section (1) shall be a voluntary choice of every client or beneficial owner who is sought to be identified and no client or beneficial owner shall be denied services for not having an Aadhaar number.

(4) If, for identification of a client or beneficial owner, authentication or offline verification under clause (a) or clause (b) of sub-section (1) is used, neither his core biometric information nor his Aadhaar number shall be stored.

(5) Nothing in this section shall prevent the Central Government from notifying additional safeguards on any reporting entity in respect of verification of the identity of its client or beneficial owner.

Explanation.—The expressions “Aadhaar number” and “core biometric information” shall have the same meanings as are respectively assigned to them in clauses (a) and (j) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.’.

(4) Vide Notification G.S.R. 798(E) [F. NO. P-12011/14/2020-ES CELL-DOR], **Dated 28-12-2020,i**n exercise of the powers conferred by sub-clause (*iv*) of clause (*sa*) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 , the Central Government hereby rescinds the notification of the Government of India, Ministry of Finance, Department of Revenue, No. 8/2017, dated 15 November, 2017, published in the Gazette of India, Part II, Section 3, Sub-section (*ii*), extraordinary, *vide* GSR 1423 (E) dated the 16 November 2017, except as respects things done or omitted to done before such recession and notifies the "Real Estate Agents", as a person engaged in providing services in relation to sale or purchase of real estate and having annual turnover of Rupees twenty lakhs or above, as "persons carrying on designated businesses or professions".

(5) Vide Notification G.S.R. 799(E) [F. NO. P-12011/14/2020-ES CELL-DOR], **Dated 28-12-2020, i**n exercise of the powers conferred by sub-clause (*iv*) of clause (*sa*) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 , the Central Government hereby notifies the dealers in precious metals, precious stones as persons carrying on designated businesses or professions - if they engage in any cash transactions with a customer equal to or above Rupees ten lakhs, carried out in a single operation or in several operations that appear to be linked.

(6) Vide Notification G.S.R. 59(E) [F. NO. P-12011/24/2017-ES CELL-DOR-PART(1)], Dated **28-1-2021, i**n exercise of the powers conferred by sub-section (1) of section 11A of the Prevention of Money-laundering Act, 2002 , the Central Government on being satisfied that the reporting entities mentioned below comply with standards of privacy and security under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016) and it is necessary and expedient to do so, and after consultation with the Unique Identification Authority of India established under sub-section (1) of section 11 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 and the regulatory authority, namely the Reserve Bank of India, hereby notifies the reporting entity specified below to undertake Aadhaar authentication service of the Unique Identification Authority of India under section 11A of the Prevention of Money-laundering Act, 2002, namely:—

"National Payments Corporation of India."

PART – II : QUESTIONS AND ANSWERS

CASE SCENARIO/ MULTIPLE CHOICE QUESTIONS

Case Scenario-1

Sukesh Web Developers Ltd. (for short SWD) is a public company, incorporated in December, 2018. Sukesh is the Managing Director of the company. The company is engaged in the business of developing Websites, Mobile App, providing of On-line Platform for conducting Business Meetings, Class Room Teachings and providing of pre-filled educational Tablets as per syllabus prescribed by the respective Central / State Boards, of Classes 6th to 12th.

At the time of incorporation, the company was formed by 7 members, who were actually classmates when they all were doing B.Tech (Electronics) from IIT, Mumbai. Initially they contributed the capital from their own resources and the paid up capital at the time of incorporation was ₹ 50 crore. Among the 7 members, 3 members occupied the position of director in the company. In addition to this, 2 other persons were also appointed as Independent Directors. One is a Professor (Finance) in IIM, Ahmedabad and another is an Advocate on Record at Supreme Court.

The popularity and user friendly features of On-Line Products, increased the demand, and the turnover of the company dramatically increased from ₹ 100 crore in March 2019 to ₹ 350 crore by the end of March 2020.

The Company Secretary in full time employment of the company, apprised the Board that, company should now appoint at least one woman director on the Board. The Board agreed and the name of Sudha (the wife of Sukesh) was proposed and approved in the General Meeting of the company. Sudha was appointed as woman director in the Board of the Company with effect from 10th April, 2020.

Now, the Board of SWD consists of the following persons:

S. No.	Name	Designation	Group
1.	Sukesh	Managing Director	Promoter
2.	Rahul	Director	Promoter
3.	Parmeshwar	Director	Promoter
4.	Kamal	Independent Director	Professor (Finance)
5.	Damodar	Independent Director	Advocate on Record at Supreme Court
6.	Sudha	Woman Director	Wife of MD

During this pandemic situation, Rahul, one of the member and director in the company passed away due to Corona in March 2021. Rahul was the key person in procuring new business relations and was having good connections with various schools, in which the company's pre-loaded educational Tablets were being supplied. It was a great set-back to the company.

However, the company went on doing business inspite of the fact that the minimum requirement of members in SWD reduced from 7 to 6. The Company Secretary apprised to the Board that Arundhati (the wife of deceased Rahul) has applied for transmission of shares in her name, which were held in the name of Rahul. The Board accepted the transmission request, and the Board Secretariat of the company entered the name of Arundhati as member of the company. Now again the minimum requirement of seven members of this public company fulfilled.

During the Financial Year 2020-21 the five meetings of the Board of Directors were held, but Sudha, being a woman director, never ever attended any meeting of the Board of Directors due to her shy nature and always sought leave of absence of the Board. The Company Secretary apprised in the Board Meeting held in April 2021, about the vacation of the post of woman director on account of continuous absence of Sudha in the Board Meetings held during the FY 2020-21 and requested the Board to again propose for the appointment of new woman director and also other director (in replacement of the demise of Rahul, Ex-Director). The Board accepted the recommendation of the Company Secretary and was advised to move ahead to complete the legal formalities.

Based on the above scenario, answer the following questions in the light of the Companies Act, 2013:

1. State the legal position w.r.t. appointment of woman director in the Board by the SWD:
   (a) It is not required to appoint any woman director, since the company is not a listed entity.
   (b) It is not required to appoint woman director, since the paid-up capital of the company is only ₹ 50 crore, which is below the threshold limit of ₹ 100 crore.
   (c) It is required to appoint at least one woman director, since the turnover of the company has crossed ₹ 300 crore, which is actually ₹ 350 crore as on 31st March, 2020.
   (d) If both the conditions i.e. paid-up capital of ₹ 100 crore or more; and turnover of ₹ 300 crore or more, are fulfilled, then SWD is required to have at least one woman director.
2. The company is not a listed entity, even then it has appointed two Independent Directors. Why?
   (a) By appointing independent director(s), the company is benefitted of their expertise and wisdom.
   (b) The company was required to appoint independent directors since its paid-up capital is ₹ 50 crore, (at the time of incorporation) which is above the threshold limit of ₹ 10 crore.
   (c) Appointing of Advocate on Records at Supreme Court as Independent director is beneficial to address the legal issues.

(d) The company was used to get the financial advice, hence it appointed a Financial Professional as an Independent Director.

3. In the above case, Sudha (the wife of Sukesh, Managing Director) was appointed to fill up the vacancy of woman director. Whether appointment of relative of Managing Director to fill up the vacancy of woman director is permissible?

   (a) Sudha is the wife of MD, and hence cannot be considered to be appointed as woman director. So her appointment is not valid.

   (b) There is no prohibition/ restriction in the Companies Act, 2013 to appoint any woman to fill up the vacancy of woman director even she is a relative of any of the director.

   (c) Woman director should be chosen only from the Databank maintained by the Indian Institute of Company Affairs (IICA), New Delhi.

   (d) Sudha should immediately break the relationship with her husband, who is MD in the company, if she want to continue as woman director, in order to maintain the independent status.

4. Sudha being a woman director did not attended any meeting during FY 2020-21. However she always sought leave of absence of the Board. Sudha argued that when leave of absence have been sought, she may continue to be on Board by holding the Office of Woman Director. What is your opinion?

   (a) No, a woman director is given a special treatment under the Law, so the post of woman director shall not be treated as vacant.

   (b) Since in the given she has sought leave of absence of the Board, so the office of woman director shall not be treated as vacant.

   (c) The office of a director shall become vacant in case he absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board.

   (d) In option (c) above, words used are 'he' and 'himself', which are used for a male person, so the intention of the law makers are very clear and the office of woman director cannot be treated as vacant. If the intention of the law maker would have been to include a woman director, the words in the above sentence [Option C] should have been used as 'she' and 'herself'.

Case scenario 2

Vivaan Contractors Limited, a public company incorporated under the Companies Act, 2013 is engaged in engineering and construction business. Over the past 2 years, the company has been struggling to pay dues to its various stakeholders such as lenders of working capital, suppliers of material, subcontractors, etc. The amount lend by the lenders for working capital is secured by first charge over current assets including receivables and stock and fixed assets are provided as collaterals. Mr. Ravi, CFO being an authorized person to make an application, files

for Corporate Insolvency Resolution Process (CIRP) to the Adjudicating Authority at Mumbai on 29th March 2020. The Adjudicating Authority admitted the application and passed an order for initiating CIRP under section 10 of the Insolvency and Bankruptcy Code (IBC) and accordingly declared moratorium under section 14 of the Code. The order passed by the Adjudicating Authority did not provide for the appointment of Interim Resolution Professional (IRP) and thus, Mr. Rahul was appointed as IRP by a separate order dated 30th April 2020. The said order copy was however received to Mr. Ravi on 3rd May 2020 and on the very same day Mr. Rahul was informed regarding his appointment. Subsequently, Mr. Rahul made a public announcement and took over the control of the assets of the Corporate Debtor.

5. As per the given facts in the case scenario, in which category the lenders for working capital would fall for the constitution of Committee of Creditors?
   (a) Financial Creditors
   (b) Secured Creditors
   (c) Either (a) or (b)
   (d) Both (a) and (b)
6. What amongst the following is necessary for filing an application for CIRP by the authorized representative of Vivaan Contractors Limited?
   (a) Resolution passed by all the directors approving the filing of application.
   (b) Special resolution passed by shareholders of Corporate Debtor approving the filing of application.
   (c) Resolution passed by all the directors followed by approval through special resolution of shareholders of the Corporate Debtor.
   (d) Ordinary resolution passed by shareholders of Corporate Debtor approving the filing of application.
7. Which date shall be considered as the insolvency commencement date for the purpose of computing the time period for Corporate Insolvency Resolution Process?
   (a) 29th March 2020
   (b) 30th April 2020
   (c) 3rd May 2020
   (d) 6th May 2020
8. Which date shall be the last date of the completion of the Corporate Insolvency Resolution Process including any extension granted under section 12 of the Code.
   (a) 21st February 2021
   (b) 25th March 2021
   (c) 24th September 2020

(d) 28th March 2020

9. Under the case scenario, by which date Mr. Rahul, Interim Resolution Professional should have the made the public announcement under section 15 of the Code.

(a) 3rd May 2020

(b) 30th April 2020

(c) 6th May 2020

(d) 5th May 2020

Independent Mcqs

10. 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 provide with 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 or have obtained the previous approval of the Regional Director having jurisdiction over such Nidhi.

(b) 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.

(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.

11. Adheera Limited, a company incorporated under the Companies Act, 2013, has not entered into significant accounting transaction during the last one financial year. Accordingly, the management of the company was thinking to obtain the status of the dormant company under section 455 of the Companies Act, 2013. The Registrar on the filings made during the last financial year found some irregularities and ordered inspection of the books of accounts under section 207 of the Companies Act, 2013. Now the management of the

Company consults you, to advise on the application to be made to Registrar for obtaining the status of the dormant company considering the provisions of the Companies Act, 2013.

(1) The company shall be able to obtain the status of the dormant company after passing special resolution to this effect in the general meeting of the company.

(2) The company shall not be able to obtain the status of the dormant company as company shall be inactive i.e. not carrying significant accounting transactions during the last 2 financial years.

(3) The company shall be able to obtain the status of the dormant company after issuing notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders in value.

(4) The company shall not be able to obtain the status of the dormant company as inspection u/s 207 of the Act is going on against the Company.

(a) Only (3)

(b) Either (2) or (4)

(c) Either (1) or (3)

(d) Both (2) and (4)

12. Kiara Limited holds 77% of the shares of Sunny Limited. Kiara Limited makes an application for merger of Holding and Subsidiary Company under section 233 – Fast Track Merger of the Companies Act, 2013. The legal counsel of Kiara Limited states that company cannot apply for merger under section 233 of the said Act. He further stated that company shall have to apply for merger as per section 232 of the Act i.e. Merger and Amalgamation of Companies. State the correct statement in terms of the validity of the difference in the opinion of the legal counsel.

(a) Opinion of the legal counsel of Kiara Limited is valid as the provisions given for fast track merger in section 233 can be made between only small companies.

(b) Opinion of the legal counsel of Kiara Limited is invalid as merger shall be possible only as per section 233 between Holding and Subsidiary Company.

(c) Opinion of the legal counsel of Kiara Limited is valid as the provisions given for fast track merger in section 233 can be made between Holding and wholly owned subsidiary.

(d) Opinion of the legal counsel of Kiara Limited is invalid as merger of Holding and Subsidiary company is possible under both section 232 and section 233.

13. Amount to be transferred to reserves out of profits before any declaration of dividend is :

(a) 5%

(b) 7.5%

(c) 10%

(d) at the discretion of the company.

14. A meeting of committee of creditors shall quorate if members of the CoC representing ----------are present either in person or by video/audio means:

(a) at least thirty three percent of the voting rights

(b) at least Fifty one percent of the voting rights

(c) at least sixty six percent of the voting rights

(d) at least seventy five percent of the voting rights

15. Vandana Operations Limited has reported a net profit of ₹ 2 crores for the half year ended 30th September 2020. During the previous financial year 2019-2020, the company has paid up share capital of ₹ 40 crore and outstanding loan from bank amounting to ₹ 80 crores on the date of last audited financial statement. Whether the company is required to appoint internal auditor for the current financial year ending on 31st March 2021?

(a) Yes, the company is required to appoint internal auditor for FY ending on March 2021 as the net profit of the company is more than ₹ 1 crore.

(b) Yes, the company is required to appoint internal auditor for FY ending on March 2021 as the outstanding loan during the previous year ending on March 2020 of twenty five crore rupees.

(c) Yes, the company is required to appoint internal auditor for FY ending on March 2021 as the paid up share capital of the company is more than 10 crore.

(d) No, the company is not required to appoint internal auditor for FY ended March 2021 as the paid up share capital of the company is less than ₹ 50 crore during the preceding financial year.

16. The Committee of Creditors (CoC) of Ashoka Cement Limited under the Corporate Insolvency Resolution Process (CIRP) have passed a resolution allowing the Resolution Professional (RP) of Company for initiating the process of liquidation before NCLT under section 33 of the Insolvency and Bankruptcy (Amendment) Code, 2019. Accordingly, the RP was appointed as liquidator of the Ashoka Cement Limited. While forming the liquidation estate, the liquidator was in dilemma regarding the inclusion and exclusion of the assets forming part of the liquidation estate. You as a Qualified Chartered Accountant are required to advise the liquidator regarding the issues faced by him with respect to the exclusion to be made in the liquidation estate of Ashoka Cement Limited as per the provisions of the Code.

1. Assets in security collateral held by financial service providers.

2. Any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest.

3. Assets owned by a third party which are in the possession of the corporate debtor.

4. Assets subject to the determination of ownership by the court or authority.

(a) Only (3)

(b) Both (2) and (4)

(c) Only (1)

(d) (1) and (3)

Descriptive Questions

17. ABC Ltd. is incorporated in December, 2010 under the Companies Act, 1956. For the year ended on 31st March, 2020 and 31st March, 2021, the financial and other relevant information of the company were as under:

(₹ in crores)

Particulars	31.03.2020	31.03.2021
(a) Paid-up capital	8	18#
(b) Reserves	16	6
(c) Turnover	75	98
(d) Borrowings from Banks /FIs (The sanctioned limit is 60 crores rupees)	50	45
(e) No. of directors	10	10
# Part amount of the Reserves was capitalised, by issue of Bonus shares during the FY 2020-21		

The Company Secretary apprised the Board, of requirement of appointment of Independent Director (ID). Few candidates were shortlisted, out of which 2 candidate were nominated and got approval of the shareholders in the General Meeting. The appointment of both the IDs were approved for a tenure of one year only.

Enumerate in the given situation, the following issues in the light of the Companies Act, 2013:

(A) Whether ABC Ltd. was required to appoint Independent Director (ID) based on the information as on 31st March, 2020.

(B) In the given case, the tenure of the appointment of both the IDs is for one year only. Comment upon the validity of the term of appointment of the Independent Directors.

18. Atlantic Garments Ltd., is a company engaged in the business of manufacturing of garments for all seasons. The company have in all 14 directors.

The first meeting of the Board was held on 15th February, 2020. Thereafter, the subsequent meetings of the Board were held on 29th February, 2020, 25th March, 2020, 30th August, 2020 and 25th December, 2020.

In these meetings, the full strength of the Board was present except in the meeting of 25th March, 2020. In this meeting only 4 persons were present.

Decide whether the Board meeting held on 25th March 2020 is valid in compliance with the legal requirements under the Companies Act, 2013. What shall be date of the meeting in case where if meeting could not be held because of quorum.

19. Surya Ltd., wants to reorganise the company' share capital by the consolidation of shares of different classes and passed a resolution to this effect in the Board meeting and thereafter made an application to the Tribunal. The Tribunal ordered that a meeting of the members be called. The company sent notices to all the members.

In the meeting, some of the members made objections to such arrangements. However, the majority of the members were interested in the resolution proposed by the company. Tribunal after scrutinising the minutes of the meeting, sanctioned the proposed arrangement.

Examine in the light of the given facts, that in order to give effect to the arrangement which prescribes the reorganisation of company' share capital by the consolidation of shares of different classes, mention the requirements on the execution of the said arrangement under the Companies Act, 2013.

20. Referring to the provisions of the Companies Act, 2013, examine the validity of the following:

(I) The Board of Directors of ABC Tractors Limited proposes to declare dividend at the rate of 20% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of this Act.

(II) The Income Tax Authorities in the current financial year 2020-21 observed, during the assessment proceedings, a need to re-open the accounts of Chetan Ltd. for the financial year 2009-10 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Chetan Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2009-10.

(III) Mr. Ayush, a Chartered Accountant, has been appointed as an auditor of X Ltd. in the Annual General Meeting of the company held in September 2018, in which he accepted the assignment. Subsequently, in January 2019 he joined B, as a partner in the consultancy firm of Mr. B. Mr. B is also working as a Finance Executive of X Ltd.

21. Jewar Ltd., a diamond manufacturing company, is undergoing Corporate Insolvency Resolution Process (CIRP). The CIRP had initiated on 1st January 2020. Mr. Shubh was acting as the Interim Resolution Professional who was later appointed as Resolution Professional by the Committee of Creditor. Mr. Shubh has been working hard since day 1 to get a resolution plan approved before the last day of the CIRP. However, due to external factors, as on 31st May, 2020, he realized that he is unable to decide as to which resolution plan can be taken to the committee of creditors for approval and also that he will need

another 3 months to get a resolution plan approved. You are his partner in an Insolvency Professional Entity. Advise as to:

1. The factors that need to be considered before taking the resolution plan to the committee of creditors
2. Whether Mr. Shubh can seek an extension for completion of the CIRP?

22. Sudip of Jaipur was posted as Tehsildar in a Tehsil Headquarter near Jaipur. After a year of his joining he purchased a ready built house in Jaipur in the name of his wife. He ostensibly shown the business income of his wife and availed loan of 90% of the value of house from a bank and also gave a guarantee of house loan.

The Bank in this case, did not ensured the business activity of his wife, (address of business place, Income tax Return filed, how long she is doing business etc.) and solely relying that Sudip is giving the guarantee, it sanctioned the loan.

After availing the loan, he continued to deposit some amount in the house loan account of his wife, regularly (apart from the EMI) and within a year, liquidated the loan account. One of the employee in his office made compliant to ED of taking of bribe/commission by him on regular basis and so liquidating the account in just a year.

Examine whether Sudip was involved in the money laundering activity in the light of the given facts.

23. Poly Ltd., (hereinafter referred to as "Seller"), manufacturer of footwears entered into an agreement with City Traders (hereinafter referred to as "purchaser"), for sale of its products. The agreement includes, among others, the following clauses:

(i) That the Purchaser shall not deal with goods, products, articles, by whatever name called, manufactured by any person other than the Seller.

(ii) That the Purchaser shall not sell the goods manufactured by the Seller outside the municipal limits of the city of Secunderabad.

(iii) That the Purchaser shall sell the goods manufactured by the Seller at the price as embossed on the price label of the footwear. However, the purchaser is allowed to sell the footwear at prices lower than those embossed on the price label.

You are required to examine with relevant provisions of the Competition Act 2002, the validity of the above clauses.

24. The Board of directors of VDV Ltd., a banking company incorporated in, India, for the accounting year ended 31-3-2020 transferred 15% of its net profit to its Reserve Fund. Certain shareholders of the company object to the above Act of the Board of Directors on the ground that it is violative of the provisions, of the Banking Regulation Act, 1949. Examine the provision of Banking Act and decide:

(i) Whether contention of the Shareholders is tenable.

(ii) Would your answer be still the same in case the Board of Directors transfer 30% of the company's net profits to Reserve Fund.

25. Tokushia Motors Ltd. was incorporated in Japan. Its share capital is held by the following persons-

Citizens of India – 10%

Indian Companies– 40%

The company has opened its representative office in Mumbai on 15th January, 2021, in order to receive orders from the Indian Market and make available the delivery of Japanese luxury cars to the Indian purchasers.

The company was not aware of the Indian Company Law, hence could not file the required documents to the Registrar. The company could file all the required documents only on 28th February, 2021.

Based on the above facts, answer the following questions:

(i) Whether the provisions of Chapter XXII of the Companies Act, 2013 are applicable on Tokushia Motors Ltd?

(ii) What documents are required to be filed by Tokushia Motors Ltd to the Registrar of Companies?

(iii) By what time all the requisite documents shall be filed?

26. Amar is a branch manager in Kismat Bank Ltd. During the course of recovery drive initiated by the Bank, Amar collected around 50 lakh rupees from the defaulters / non-performing accounts. He did not credited the amount so recovered, in the respective borrower's loan account, but kept with himself. Later he absconded along with amount so collected. A FIR was lodged by the Bank and the police, after making intensive search, caught and arrested him. Chargesheet was issued and case was submitted in the court.

Give the following answers in reference to the Companies Act, 2013:

(i) In which category, cognizance or non-cognizance, the embezzlement of cash by Amar shall be treated?

(ii) Non-cognizable offences are less serious than that of the cognizable offences. Do you agree? Substantiate your plea by differentiating between these two.

(iii) Which offences, Special Court cannot deal with? Whether the said case can be dealt by the Special court.

SUGGESTED ANSWERS

Case Scenario-1

1. (c)

2. (b)

3. (b)

4. (c)

Case scenario 2

5. (d)

6. (b)

7. (b)

8. (b)

9. (c)

Independent MCQs

10. (b)

11. (c)

12. (c)

13. (d)

14. (a)

15. (d)

16. (d)

Descriptive Questions

17. (A) As per Section 149 read with the Rule 4(1)(iii) of the Companies (Appointment and Qualifications of Directors) Rules, 2014, which provides that the following class or classes of companies shall have at least two directors as independent directors –

(i) the Public Companies having **paid-up share capital** of ten crore rupees or more; or

(ii) the Public Companies having **turnover** of one hundred crore rupees or more; or

(iii) "the Public Companies which have, in aggregate, outstanding **loans**, debentures and deposits, **exceeding fifty crore rupees**".

Here, the words used in the law is 'exceeding 50 crore rupees', whereas the banks borrowings in the given case is **only ₹ 50 crore** and **not exceeding ₹ 50 crore**. Hence, no need to appoint ID on the basis of information as on 31st March, 2020.

Further, the words used in the said Rule is '**Outstanding Loans' and not the 'Sanctioned limit'**. The limit is ₹ 60 crore, but the outstanding loans is only ₹ 50 crore.

Therefore, in line with the stated legal provision, there is no need to appoint Independent Directors as on 31/3/2020.

(B) According to Section 149(10) read as 'Subject to the provisions of section 152, an independent director shall hold office for a **term up to five consecutive years** on the Board of a company, and shall be eligible for re-appointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

Further, Vide MCA General Circular No. 14/ 2014 dated 9th June, 2014, under Para (iii) Section 149(10), it has been clarified that section 149(10) of the Act provides for a term of "**upto five consecutive years"** for an ID. As such while appointment of an ID for a term of less than five years would be permissible, appointment for any term (whether for five years or less) is to be treated as a one term under section 149(10).

Therefore, the tenure of the appointment of both the IDs for one year only, will be considered as valid.

18. As per given section 174(1) of the Companies Act, 2013 the quorum for a meeting of the Board of Directors of a company shall be **one third of its total strength or two directors, whichever is higher**, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.

Section 174(4) provides that where a meeting of the Board could not be held for want of quorum, then, unless the articles of the company otherwise provide, **the meeting shall automatically stand adjourned to the same day at the same time and place in the next week 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.**

Further explanation to section 174(4) provides that for the purposes of this section, (i) **any fraction of a number shall be rounded off as one;** (ii) "total strength" shall not include directors whose places are vacant.

Total Strength of directors =14

One-third of 14 = 4.67

Rounded off to = 5 (Five)

As in the meeting scheduled on 25th March 2020, only 4 persons were present, hence due to want of required minimum quorum, the meeting shall have to be adjourned to the same day at the same time and place in the next week 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.

The meeting of the Board was not valid as the required quorum was not present in the meeting. In this case, the adjourned meeting was to be held on 1st April, 2020.

19. Section 230(1) of the Companies Act, 2013 provides that where a compromise or arrangement is proposed—

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them,

The Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, "appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be," 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.

Here the term, **arrangement includes a reorganisation 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.

Any compromise or arrangement needs the order of sanction by the Tribunal and the Tribunal may on an application made by the company, order the company to call the meeting of the shareholders, pass such resolution in the meetings and then forward the minutes to the Tribunal for its order.

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.

The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent. value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.

20. (I) Section 123(6) of the Companies Act, 2013, specifically provides that a company which fails to comply with the provisions of section 73 (Prohibition of acceptance of deposits from public) and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares.

In the given instance, the Board of Directors of ABC Tractors Limited proposes to declare dividend at the rate of 20% to the equity shareholders, in spite of the fact that the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013. Hence, according to the above provision, declaration of dividend by the ABC Tractors Limited is not valid.

(II) As per section 130 of the Companies Act, 2013, a company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory body or authority or any person concerned and

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

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

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

However, no order shall be made in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year.

In the given instance, an application was filed for re-opening and re-casting of the financial statements of Chetan Ltd. for the financial year 2009-2010 which is beyond 8 financial years immediately preceding the current financial year, 2020-2021.

Though application filed by the Income Tax Authorities to NCLT is valid, its recommendation for reopening and recasting of financial statements for the period earlier than eight financial years immediately preceding the current financial year i.e. 2020-2021, is invalid.

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

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

21. 1. Mr. Shubh, the resolution profession will have to consider the following factors while examining the resolution plan before taking it to the Committee of Creditors for approval:

a. Whether the resolution plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor

b. Whether the resolution plan provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than higher of:

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

c. Whether the resolution plan provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

d. Whether the resolution plan provides for the implementation and supervision of the resolution plan

e. Whether the resolution plan contravene any of the provisions of the law for the time being in force

f. Whether the resolution plan confirms to such other requirements as may be specified by the Board.

2. Relevant Provision of the Insolvency and Bankruptcy Code for extension of period for completion of CIRP

As per Section 12, the corporate insolvency resolution process shall be completed within a period of 180 days from the date of admission of the application to initiate such process.

The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond 180 days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of 66% of the voting shares.

On receipt of the application, if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within 180 days, it may by order extend the duration of such process beyond 180 days by such further period as it thinks fit, but not exceeding 90 days.

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once

Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of 330 days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor.

In the given case, Mr. Shubh can seek an extension of maximum 90 days by making an application of the National Company Law Tribunal i.e. till 29th August, 2020.

22. As per the Section 3 of the Prevention of Money Laundering Act, whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its

concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

The process or activity connected with **proceeds of crime** is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

Section 2(1)(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a **scheduled offence** or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;

Section 2(1)(y) of the PML Act provides that –

"scheduled offence" means— (i) the offences specified under Part A of the Schedule;

Under Schedule -Part A - Paragraph 8: Offences under the Prevention of Corruption Act, 1988 specifies Section 7- Offence relating to public servant being bribed.

In the light of the above mentioned sections, act of Sudip is a case of money laundering i.e. converting of black income earned through bribe and efforts in converting it into white money and raising the house loan in the name of wife.

23. Provisions of section 3(1) of the Competition Act, 2002 prohibit any agreement for goods and/or services that may have an appreciable adverse effect on competition in India.

Provisions of section 3(2) of the said Act state that any agreement entered into in contravention of provision of section 3(1) of the said Act shall be void.

Sections 3(3) and 3(4) of the said Act enumerate the types of the agreements which are to be treated as contravening the provisions of the said section 3(1). According to section 3(4) of the said Act, any agreement among enterprises or persons at different stages of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services including the following shall be treated as agreements in contravention of the said section 3(1):

(a) tie-in-arrangement;

(b) exclusive supply agreement;

(c) exclusive distribution agreement;

(d) refusal to deal

(e) re-sale price maintenance

The clauses of the agreement given in the question are covered by above mentioned provisions Clause at Sr. No.(i) comes under exclusive supply agreement; Clause at Sr. No.(ii) comes under exclusive distribution agreement and Clause at Sr. No.(iii) is covered by re-sale price maintenance.

Explanations to said section 3(4) explains the above terms.

According to Explanation (b), exclusive supply agreement includes any agreement restricting in any manner, the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person.

According to Explanation (c), exclusive distribution agreement includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods.

According to Explanation (e), "resale price maintenance" includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the price stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

In view of the above provisions of the Competition Act, 2002, validity of the clauses of the agreement as given in the question can be determined as follows:

Clause (i) restricts the purchaser to deal in the goods of manufacturers other than the seller. Hence this is in contravention of the provisions of section 3(1) of the said Act.

Clause (ii) restricts the purchaser to sell the goods within a specified area. Hence this is in contravention of the provisions of section 3(1) of the said Act

Clause (iii) stipulates the resale price, but it allows the purchaser to sell the goods at lower prices than the stipulated prices. Hence this is a valid clause.

But, the law states that any such agreement containing any of the prohibited clause shall be void. Therefore, even if the agreement contains some valid clauses, it shall still be termed as void if it contains even one prohibited clause.

24. In accordance with the provisions of the Banking Regulation Act, 1949 as contained in section 17, every banking company incorporated in India must create a reserve fund and transfer a sum equal to not less than 20% of its net profits. However, Central Government is empowered to exempt from this requirement on the recommendation of the RBI. Such exemption will be allowed only:

1 when the amount in the reserve fund and the share premium account are equal to the paid-up share capital of the banking company.

2. when the Central Govt. feels that its paid-up share capital and reserves are adequate to safeguard the interest of the depositors.

If the banking company appropriates any sum from the Reserve Fund or the Share Premium account, it must be reported to RBI within 21 days explaining the circumstances leading to such appropriation.

Therefore, applying the above provisions:

1. Contention of shareholders shall be tenable since the % age of transfer of profits to Reserve Fund is lower than statutory limits, as provided in the Act.

2. In the second case the contention of shareholders shall not be tenable, since 30% is more than the minimum statutory limit of 20% of the net profits.

25. (i) Section 379(2) of the Companies Act, 2013, provides that where not less than fifty per cent of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

In the given case, although the company was incorporated in Japan, however its share capital of not less than 50% is held by the Indian citizens and Indian companies, hence **in terms of section 379(2) all the provisions pertaining to Chapter XXII of the Companies Act, 2013, shall be applicable on it.**

(ii) In terms of section 380(1) every foreign company shall, within **thirty days** of the establishment of its place of business in India, deliver to the Registrar for registration—

(a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;

(b) the full address of the registered or principal office of the company;

(c) a list of the directors and secretary of the company containing such particulars as may be prescribed;

(d) the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;

(e) the full address of the office of the company in India which is deemed to be its principal place of business in India;

(f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;

(g) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and

(h) any other information as may be prescribed.

Further its sub-section (3) provides that where any alteration is made or occurs in the documents delivered to the Registrar under this section, the foreign company shall, within thirty days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form.

(iii) In the given, case the company had established its representative office in India on 15.01.2021, it was required to file the documents latest by 14.02.2021 with the Registrar.

26. (i) Embezzlement of the cash and absconding is a cognizable offence which means a police officer can arrest such person without the warrant of the magistrate.

(ii) Cognizable Offence:

"Cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.

Non- Cognizable Offence:

"Non-cognizable offence" means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant.

Cognizable offences are heinous crimes, whereas non-**cognizable offences** are not so serious. **Cognizable** offences encompasses murder, rape, theft, kidnapping, counterfeiting, etc. whereas the, non-**cognizable offences** include **offences** like forgery, cheating, assault, defamation and so forth.

By having an overview of the definitions of cognizable and non-cognizable offences as stated above, it is clear that in the matter of cognizable offences, a police officer have authority to arrest any person without warrant, but in case of non-cognizable offences, policy office do not have such authority. Therefore non-cognizable offences are less serious than that of the cognizable offences.

(iii) Section 435 (1) provides that the Central Government may, for the purpose of providing speedy trial of offences under this Act, **except under section 452,** by notification, establish or designate as many Special Courts as may be necessary.

Section 452 of the Companies Act, 2013 provides that

If any officer or employee of a company—

(a) wrongfully obtains possession of any property, including cash of the company; or

(b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act,

he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Hence, as per the provisions of the Companies Act, 2013, the Special Court cannot deal with the matters on which section 452 applies. In the given case, since the branch manager, after collecting the money from the borrowers, absconded [as defined as per section 452(1)(a) & (b)], which comes under the purview of section 452, hence this matter shall not be dealt with by the Special Court.