MOCK TEST PAPER 1

FINAL (OLD) COURSE: GROUP – I

PAPER – 4: CORPORATE AND ALLIED LAWS

SUGGESTED ANSWERS

DIVISION A: MULTIPLE CHOICE QUESTIONS (TOTAL OF 30 MARKS)

1. (b)
2. (c)
3. (c)
4. (c)
5. (c)
6. (d)
7. (d)
8. (d)
9. (a)
10. (c)
11. (c)
12. (a)
13. (d)
14. (b)
15. (b)
16. (c)
17. (a)
18. (c)
19. (c)
20. (c)

Descriptive Answers (70 Marks)

1. (a) Section 152(6) of the Companies Act, 2013 specifies the legal provision as to the retirement of directors by rotation of public company. According to the said provision, out of retiring directors, 1/3rd of directors must retire every year.

However, as per MCA vide Notification No. 463(E) dated 13th June, 2017, the government companies are exempted from the applicability of Section 152(6) and 152 (7) of the Act.

Accordingly, a Government company, which is not a listed company, in which not less than fifty-one per cent of paid up of share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; and a subsidiary of a Government company, referred above, the provision as to retirement by rotation is not applicable.

Following are the answers in the light of the stated provisions:

(i) Since Eternal Ltd. is a wholly owned Government Company (other than listed company), so section 152(6) in given circumstances is not applicable. None of the directors of Eternal Ltd. will be retired by rotation under section 152(6).

(ii) Since Evergreen Ltd. is a subsidiary company of Eternal Ltd. so retirement by rotation is also not applicable here. None of the directors of Evergreen Ltd. will be retired by rotation under section 152(6).

(iii) In case Eternal Ltd. is a listed Government Company, then section 152(6) will be applicable presuming that a company has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar. According to it, the Eternal Ltd. will be treated as a public company, with 10 directors in its Board, 3 can be non-retiring and out of 7 retiring directors, 2 must retire every year.

(b) (i) As per section 196(3) of the Companies Act, 2013, no company shall appoint or continue the employment of any person as managing director, whole-time director or manager who is below the age of twenty-one years or has attained the age of seventy years, unless that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person.

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.

Therefore, appointment of Mr. Chander in the shining Ltd. being of 75 years is valid in compliance to above legal provision.

(ii) As per section II of Part II of Schedule V to the Companies Act 2013, "effective capital" means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, overdrafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.

According to the particulars given:

Particulars	**Amounts (in Crores)**
Paid up share capital (Excluding share application money) (215-15)	INRs 200
General Reserve (Excluding Revaluation Reserve) (170-20)	INRs 150
Long term loans	INRs 200
Less: Investments (40) and Accumulated losses (10)	(INRs 50)
Effective Capital	INRs 500

(iii) As per Section II of Part II of Schedule V to the Companies Act 2013, in case of no or inadequate profits, if effective capital of company is INRs. 250 crores or more then, yearly remuneration per person payable shall not exceed by INRs 120 lakh plus 0.01% of the effective capital in excess of INRs. 250 crores.

The maximum remuneration that may be paid to each managerial person will be [120 lakh+ (0.01% x 250 cr)] = 122.5 lakh.

Provided that the remuneration in excess of above limits may be paid if the resolution passed by the shareholders is a special resolution.

2. (a) (i) Section 244 of the Companies Act, 2013 provides the eligibility of members who hold the right to file an application under section 241 for oppression and mismanagement with the Tribunal. These qualification as provided in section 244 ensure that only the persons with sufficient interest in the affairs of the company can file the petition under section 241 of the Act.

According to the section in the case of a company not having a share capital, not less than one-fifth of the total number of its members are eligible to make an application before the Tribunal. Where any members of a company are entitled to make an application under Section 244 (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

In the given scenario, requirement of minimum numbers of members is fulfilled i.e. it is more than 1/5th of the total number of its members of the company (1/5x 100= 20). So, the members of the company are eligible to file the petition to tribunal under section 241.

(ii) According to section 221 of the Companies Act, 2013, if it appears to the Tribunal, on a complaint made by members as specified under section 244(1) that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of its members, Tribunal may order that such transfer, removal or disposal shall not take place during such period not exceeding three years as may be specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit.

Here, in the given case, management disposed of the certain assets within 1 year of such order of Tribunal. So accordingly, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with 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.

(b) (i) In this case, Mr. Vivaan may opt for 'Option' derivative contract, which is an agreement to buy or sell a set of assets at a specified time in the future for a specified amount. However, it is not obligatory for him to hold the terms of the agreement, since he has an 'option' to exercise the contract. For example, if the current market price of the share is Rs. 100 and he buy an option to sell the shares to Mr. X at Rs. 200 after three-month, so Vivaan bought a put option.

Now, if after three months, the current price of the shares is Rs. 210, Mr. Vivaan may opt not to sell the shares to Mr. X and instead sell them in the market, thus making a profit of Rs. 110. Had the market price of the shares after three months would have been Rs. 90, Mr. Vivaan would have obliged the option contract and sold those shares to Mr. X, thus making a profit, even though the current market price was below the contracted price. Thus, here the shares of Travel Everywhere Limited is the underlying asset and the option contract is a form of derivative.

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

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

(a) Any failure on the part of the stock broker to issue contract notes in the form and manner specified by the stock exchange of which the stock broker is a member.

(b) Any failure to deliver any security or any failure to make payment of the amount due to the investor in the manner within the period specified in the regulations.

(c) Any collection of charges by way of brokerage which is in excess of the brokerage specified in the regulations.

3. (a) According to the Section 248(2) of the Companies Act, 2013, a company may, after extinguishing all its liabilities, by a special resolution, or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in section 248(1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner.

Further Section 249 provides restrictions on making application under section 248 .

An application under section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company—

(a) has changed its name or shifted its registered office from one State to another;

(b) has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;

(c) has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;

(d) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or

(e) is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.

Violation of above conditions on filing of application: If a company files an application in violation of restriction given above, it shall be punishable with fine which may extend to one lakh rupees.

Rights of registrar on non-compliance of conditions by the company: An application filed under above circumstances, shall be withdrawn by the company or rejected by the Registrar as soon as conditions are brought to his notice.

Aggrieved person to file an appeal against the order of registrar: As per section 252(1), any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies. However, a reasonable opportunity is given to the company and all the persons concerned.

According to the above provisions, following are the answers:

(i) As per the restrictions marked in the Section 249(1)(d) stating that an application under section 248 on behalf of a company shall not be made if, at any time in the previous three

months, the company has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded.

As per the facts application to the registrar for removal of the name of company from the register of companies, was filed by the Eminence Ltd. within three months to the filing of an application to the Tribunal for approval of compromise or arrangement proposal. Therefore filing of such an application by Eminence Ltd is not valid.

(ii) If a company files an application in above situation, it shall be punishable with fine which may extend to one lakh rupees. An application so filed, shall be withdrawn by the company or rejected by the Registrar as soon as conditions are brought to his notice.

(iii) According to the provision given in section 252(1), a person aggrieved by an order of the Registrar, notifying Eminence Ltd. as dissolved under section 248, may:

- file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar, and
- if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the Eminence Ltd. in the register of companies.
- A reasonable opportunity is given to the Eminence Ltd. and all the persons concerned.

(b) (i) Toy Ltd. being a Japanese company would be a person resident outside India. [Section 2(w) of the FEMA, 1999]. Section 2(u) defines 'person'. Under clause (vii) of section 2(u) person would include any agency, office or branch owned or controlled by such 'person'. The term such 'person' appears to refer to a person who is included in clauses (i) to (vi). Accordingly, robotic unit in Mumbai, being a branch of a company, would be a 'person'.

Section 2(v) defines 'person resident in India'. Under clause (iii) of section 2(v), 'person resident in India' would include an office, branch or agency in India owned or controlled by a person resident outside India. Robotic unit in Mumbai is owned or controlled by a person 'resident outside India'. Hence, it would be 'person resident in India'.

However, robotic unit in Mumbai, though not 'owned' controls Singapore branch, which is a person resident in India. Hence *prima facie*, it may be possible to hold a view that the Singapore branch is 'person resident in India'.

(ii) Enterprise: The term 'enterprise' is defined in section 2(h) of Competition Act, 2002. Accordingly, 'enterprise' means a person or a department of the Government, who or which is engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services of any kind. But the term does not include any activity of the Government relatable to sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

Certain specific activities of Government departments like dealing with atomic energy, etc. and sovereign functions of the Government (like police, defence, etc.) are excluded from the purview of the said terms. Hence, a Government department engaged in the activity of providing service in the form of supply of water for irrigation to the agriculturists after levying charges can be considered as an 'enterprise' within the meaning of section 2(h) of Competition Act, 2002.

Consumer: The term 'consumer' is defined in section 2(f) of Competition Act, 2002. Accordingly, 'consumer' means any person who buys any goods for a consideration, which

has been paid or promised or partly paid and partly promised, whether such purchase of goods is for resale or for any commercial purpose or for personal use.

Hence, it is not necessary that a person must purchase the goods for personal use in order to be considered as a 'consumer' under Competition Act, 2002. Even a person purchasing goods for resale or for any commercial purpose will also be considered as a 'consumer' within the meaning of Section 2(f) of Competition Act, 2002.

4. (a) Section 59 of the Insolvency & Bankruptcy Code, 2016 empowers a corporate person intending to liquidate itself voluntarily if it has not committed any default, to initiate voluntary liquidation proceedings under the provisions of this Code.

Any corporate person registered as a company shall meet the following conditions to initiate a voluntary liquidation process:-

(a) A declaration from majority of the directors of the company verified by an affidavit stating

i. That they have made a full inquiry into the affairs of the company and have formed an opinion that either the company has no debts or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and

ii. That the company is not being liquidated to defraud any person.

(b) The declaration shall be accompanied with the following documents, namely:

i. Audited financial statements and a record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;

ii. A report of the valuation of the assets of the company, if any, prepared by a registered valuer.

(c) After making the declaration the corporate debtor shall within four weeks -

i. Pass a special resolution at a general meeting stating that the company should be liquidated voluntarily and insolvency professional to act as the liquidator may be appointed.

ii. Pass a resolution at a general meeting stating that the company be liquidated voluntarily as a result of expiry of the period of its duration (fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, if any) and appointing an insolvency professional to act as the liquidator.

Here, in the given situations, according to the above provisions, a declaration made with an affidavit of the some of the directors of the X Ltd. verifying that company have made full inquiry of the affairs of the company, is not in compliance as the majority was the requirement for initiation of the voluntary liquidation proceedings. And the further declaration that the company is not being liquidated to defraud any person is not given in the affidavit. The documents to be accompanied with declaration shall be as per the point (b) given above in the stated provision

Where if the articles fixed the period of duration of continuation of the company and that period expires, X Ltd. after making declaration, shall within 4 weeks pass a resolution at a general meeting stating that the company be liquidated voluntarily as a result of expiry of the period of its duration as fixed by its articles and appointing an insolvency professional to act as the liquidator.

(b) In the given problem, on commission of default by the Wisdom Ltd., against Mr. F, entitled him to file an application for initiating corporate insolvency resolution process before adjudicating authority. Further, Mr. X another financial creditor also moved an application for initiation of insolvency resolution process against the Wisdom Ltd.

According to the section 6 of the Code, where any corporate debtor commits a default, a financial creditor, Operational creditor or the Corporate debtor itself may initiate insolvency resolution process against such corporate debtor.

As per the facts given in the question default has been committed only against Mr. F and not against Mr. X. So Mr. F is prima facie entitled to file an application for initiation of the CIRP.

Further, section 7 of the Code specifies financial creditor either by itself jointly with other financial creditor may file an application only when default has accurred. Since in the given case, default has occurred only against Mr. F and so further no application for initiation of CIRP can be initiated by Mr. X, however he being a creditor, is entitled under the Code to raise his claim in this case against the Wisdom Ltd.

(c) (i) Apex Limited failed to repay the amount borrowed from the bankers, ACE Bank Limited, which is holding a charge on all the assets of the company. The bank took over management of the company in accordance with the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by appointing four persons as directors. The company is managed by a Managing Director, Mr. X.

Here, Apex Limited is a borrower and ACE Bank Limited is a secured creditor.

Compensation to Managing director (Mr. X) for loss of office:

According to section 16 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, irrespective of anything contained in any contract or in any other law for the time being in force, no managing director or any other director or a manager or any person in charge of management of the business of the borrower shall be entitled to any compensation for the loss of office or for the premature termination under this Act. However any such managing director or any other director or manager or any such person in charge of management has the right to recover from the business of the borrower, moneys recoverable otherwise than by way of such compensation.

Effect of takeover on rights of the shareholders:

Where the management of the business of a borrower, being a company as defined in the Companies Act is taken over by the secured creditor, then, notwithstanding anything contained, such borrower- in the said Act or in the memorandum or articles of association of such company -

(1) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

(2) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor;

(3) no proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any court, except with the consent of the secured creditor.

The secured creditor is under an obligation to restore the management of the business of the borrower, on realisation of his debt in full, in case of takeover of the management of the business of a borrower by such secured creditor.

"Provided that if any secured creditor jointly with other secured creditors or any asset reconstruction company or financial institution or any other assignee has converted part of its debt into shares of a borrower company and thereby acquired controlling interest in the borrower company, such secured creditors shall not be liable to restore the management of the business to such borrower."

(ii) Compensation to shareholders of the acquired bank: Under section 36AE of the Banking Regulation Act, 1949, the Central Government has power to acquire the undertaking of Banking Companies. When a bank is acquired by the Central Government, a scheme for the acquired bank is made in consultation with the Reserve Bank of India.

Such Scheme also provides for compensation payable to the registered shareholders of the acquired Bank (Section 36AF).

Section 36AG of the Banking Regulation Act, 1949 states that compensation is paid to the registered shareholders in accordance with the principles provided in section 5 of the said Act.

Any shareholder aggrieved with the amount of compensation may request the Central Government to refer the matter to Tribunal to be constituted under section 36AH of the Act. If the number of representation received is not less than one-fourth of the total number of shareholders holding not less than one-fourth of the paid-up share capital of the acquired Bank, the Central Government shall constitute a Tribunal for the purpose. Thus, such matters can be resolved through the Tribunal by the Central Government and the amount of compensation determined by the Tribunal is final and binding on all concerned parties.

5. (a) (i) All offences which are punishable in this Act with imprisonment of 2 years or more, shall be triable only by the special court established for the area in which the registered office of the company in relation to which the offence is committed. According to section 436 of the Companies Act, 2013, where there are more special courts than one for such area, all offences shall be triable by such one of them as may be specified in this behalf by the high court concerned.

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

(ii) In terms of the definition of a foreign company under section 2 (42) of the Companies Act, 2013 a "foreign company" means any company or body corporate incorporated outside India which:

(a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) Conducts any business activity in India in any other manner.

According to section 386 of the Companies Act, 2013, for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), "Place of business" includes a share transfer or registration office.

From the above definition, the status of XYZ Ltd. will be that of a foreign company as it is incorporated outside India, has a place of business in India and it may be presumed that it carries on a business activity in India.

(iii) The Companies Act, 2013 vide section 380 provides every foreign company is required to deliver to the Registrar for registration, within 30 days of the establishment of office in India, documents which have been specified therein. According to the *Companies (Registration of Foreign Companies) Rules, 2014*, any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.

(b) (i) Section 25 of the Prevention of Money Laundering Act, 2002 empowers the Central Government to establish an Appellate Tribunal to hear appeal against order of the Adjudicating Authority and other authorities under the Act.

Section 26 deals with the right and time frame to make an appeal to the Appellate Tribunal. Any person aggrieved by an order made by the Adjudicating Authority may prefer an appeal

to the Appellate Tribunal within a period of 45 days from the date on which a copy of the order is received by him. The appeal shall be in such form and be accompanied by such fee as may be prescribed. The Appellate Tribunal may extend the period if it is satisfied that there was sufficient cause for not filing it within the period of 45 days.

The Appellate Tribunal may after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, confirming, modifying or setting aside the order appealed against.

The Act also provides further appeal. According to Section 42, any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the order of the Appellate Tribunal.

In the light of the provisions of the Act explained above the company is advised to prefer an appeal to Appellate Tribunal in the first instance.

(ii) In the present case, Sohan Lal, a farmer, who was involved in embezzlement of opium cultivated by him shall be said to have committed a scheduled offence under the Paragraph 2 of Part A of Schedule to the Prevention of Money Laundering Act, 2002. It covers offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 whereby, embezzlement of opium by cultivator (section 19) is an offence which is illegal by law and hence the person involved in the proceeds of crimes arising out of the commission of scheduled offences shall be liable for commission of trial under PMLA.

Accordingly, as per section 4 of the PMLA, 2002, Sohan Lal shall be liable for the rigorous

6. (a) (i) **Transfer to reserves (Section 123 of the Companies Act, 2013):** A company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Therefore, the company may transfer such percentage of profit to reserves before declaration of dividend as it may consider necessary. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company.

As per the given facts, YZ Limited has earned a profit of Rs. 910 crores for the financial year 2018-19. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of current year profit.

As per the provisions stated above, the amount to be transferred to reserves out of profits for a financial year is at the discretion of the YZ Ltd. acting vide its Board of Directors.

(ii) As per the proviso to section 127 of the Companies Act, 2013, no offence will be said to have been committed by a director for adjusting the calls in arrears remaining unpaid or any other sum due from a member from the dividend as is declared by a company.

Thus, as per the given facts, Future Ltd. can adjust the sum of Rs. 50,000 unpaid call money against the declared dividend of 10%, i.e. 5,00,000 x 10/100 = 50,000. Hence, Karan's unpaid call money (Rs. 50,000) can be adjusted fully from the entitled dividend amount of Rs. 50,000/-.

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

Conclusion: In the present case, Ayush, an auditor of X Ltd., joined as partner with 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.

(ii) As per section 141(3)(d)(i), an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holds any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.

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

(c) (i) Under section 5 of the Foreign Exchange Management Act, 1999, and Rules relating thereto, some current account transactions require prior approval of the Central Government, some others require the prior approval of the Reserve Bank of India, some are free transactions and some others are prohibited transactions. Accordingly,

(A) It is a current account transaction, where M is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.

(B) Withdrawal of foreign exchange for payment related to call back services of telephone is a prohibited transaction. Hence, Mr. P will not succeed in acquiring US $ 2,000 for the said purpose.

(ii) (A) Preamble: The preamble expresses the scope, object and purpose of the Act more comprehensively than the Long Title. The preamble may recite the ground and the cause of making a statute and the evil which is sought to be remedied by it.

Like the Long Title, the preamble of a Statute is a part of the enactment and can legitimately be used for construing it. However, the preamble does not override the plain provision of the Act but if the wording of the statute gives rise to doubts as to its proper construction, e.g. where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the preamble can and ought to be referred to in order to arrive at the proper construction.

In short, the preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

(B) Use of Foreign Decisions: Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.