

# Capital Trainers

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### PAPER- 4 – CORPORATE AND ECONOMIC LAWS

Question No. 1 is compulsory.

Answer any **four** from the rest

#### Question 1

- (a) CTC Limited is an unlisted public company having a paid up capital of ₹ 100 crores as on 31<sup>st</sup> March, 2017. The company made a turnover of ₹ 300 crores for the financial year ended 31<sup>st</sup> March, 2017. The Articles of Association of the company provides for payment of sitting fee to Directors for each Board Meeting/Committee thereof subject to a maximum of ₹ 40,000 per meeting. The Board of Directors is comprised of Independent Directors and Women Directors also. The Company is having 7 directors in its Audit Committee. Shri PKV, working as Financial Advisor of the company, was designated as Chief Financial Officer from 1<sup>st</sup> April, 2015. He retired from service on superannuation on 31<sup>st</sup> March, 2016, He is in receipt of monthly pension of ₹ 80,000 from the company. It is proposed to appoint Shri PKV as Independent Director of the Company. The Board of Directors proposes to fix sitting fee of ₹ 50,000 per meeting to Independent Director and ₹ 30,000 per meeting to Woman Director, taking into consideration their experience and qualification.

In the light of the provisions of the Companies Act, 2013, advise the Board of Directors in the following matters :

- (1) Appointment of Mr. PKV as Independent Director.
- (2) Fixing sitting fee of ₹ 50,000 to Independent Director and ₹ 30,000 to Woman Director.
- (3) Minimum number of Independent Directors.
- (4) Maximum sitting fee to a Director.

Assuming CTC Ltd. is a Government Company, what will be your advise in the matter of appointment of Mr. PKV as Independent Director. **(8 Marks)**

- (b) Securities of Herbal Products Limited were listed in Madras Stock Exchange, which is a recognized stock exchange. The company has incurred losses during the preceding three consecutive years and it has also negative net worth. On having such information, Madras Stock Exchange decided to delist the securities of the company.

Decide the validity of the decision and explain the provisions of Securities Contract (Regulation) Act, 1956 along with the grounds made under the Securities Contract (Regulation) Rules regarding delisting of securities. **(6 Marks)**

- (c) (i) Define the term "Payment System" under the provisions of the Prevention of Money Laundering Act, 2002. **(2 Marks)**
- (ii) Mr. Honest, a notorious, was caught in possession of Counterfeit Currency Notes, an offence specified under Part A - Paragraph 1 of the Schedule of the Prevention

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of Money Laundering Act, 2002. State the Punishment that can be awarded to him under the above Act. Also identify the punishment for the offence specified under Part A - paragraph 2 of the Schedule of the Prevention of Money Laundering Act, 2002. **(4 Marks)**

**Answer**

**(a) (1) Appointment of Mr. PKV as an Independent Director**

According to Section 149(6)(e)(i) of the Companies Act, 2013, an Independent Director shall be a person who, neither himself nor any of his relatives holds or has held the position of a Key Managerial Personnel (KMP) or is or has been an employee of the Company or its Holding, Subsidiary or Associate Company in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed.

In the instant case, the Company, CTC Limited is proposing to appoint Mr. PKV as an Independent Director who was working as Financial Advisor in the Company and then was designated as Chief Financial Officer for the financial year 2015-2016. Since, he was an employee and also a Key Managerial Personnel in one of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed, Mr. PKV shall not be appointed as an Independent Director in CTC Limited.

**(2) Fixing sitting fee to Independent Director and Women Director**

As per Section 197(5) of the Companies Act, 2013 along with the *Companies (Appointment and Remuneration of Managerial personnel) Rules, 2014*, a Company may pay a sitting fee to a Director for attending meetings of the Board or Committees thereof, such sum as may be decided by the Board of Directors thereof which shall not exceed one lakh rupees per meeting of the Board or Committee thereof.

However, for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors.

In the instant case, the Articles of Association of the Company provides for payment of sitting fee to Directors of ₹ 40,000.

Hence, the sitting fee of ₹ 50,000 can be paid to the Independent Director but the sitting fee payable to Woman Director shall not be less than ₹ 40,000. So, the amount of Sitting fee payable to Woman Director has to be increased from ₹ 30,000 (as proposed) to minimum ₹ 40,000.

**(3) Minimum number of Independent Directors**

According to the Rule 4 of the *Companies (Appointment and Qualification of Directors) Rules, 2014*, the following class or classes of Companies shall have at least 2 directors as Independent Directors:

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

However, in case a Company covered as under the above Rule is required to appoint a higher number of Independent Directors due to composition of its Audit Committee, such higher number of Independent Directors shall be applicable to it.

As per Section 177(2) of the Companies Act, 2013, the Audit Committee shall consist of a minimum of three directors with Independent Directors forming a majority.

In the instant case, CTC Limited shall appoint at least 2 directors as Independent Directors as it is covered under Rule 4 of the above Rules since the Company is having a paid up capital of ₹ 100 crores and a turnover of ₹ 300 crores for the financial year ended 31<sup>st</sup> March, 2017. But since the Company is having an Audit Committee having 7 directors, therefore 4 directors out of 7 must be Independent directors (4 is forming majority).

**(4) Maximum sitting fee to a Director**

As per Section 197(5) of the Companies Act, 2013 along with the *Companies (Appointment and Remuneration of Managerial personnel) Rules, 2014*, a Company may pay a sitting fee to a Director for attending meetings of the Board or Committees thereof, such sum as may be decided by the Board of Directors thereof which shall not exceed one lakh rupees per meeting of the Board or Committee thereof. Accordingly, the maximum sitting fee payable to a Director shall not exceed one lakh rupees.

**(5) Appointment of Mr. PKV if CTC Ltd is a government company**

If CTC Ltd. is a Government Company, then also Mr. PKV shall not be appointed as an Independent Director in CTC Limited because, he was an employee and also a Key Managerial Personnel in one of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed.

**(b) Delisting of Securities [Section 21A of the Securities Contract (Regulation) Act, 1956]**

A Recognised Stock Exchange may delist the securities, after recording the reasons therefore from any Recognised Stock Exchange on any of the ground or grounds as may be prescribed under this Act. The Securities of a Company shall not be delisted unless the Company concerned has been given a reasonable opportunity of being heard. A listed company or an aggrieved investor may file an appeal before the Securities

Appellate Tribunal against the decision of the Recognised Stock Exchange within fifteen days from the date of the decision of the recognised stock exchange delisting the securities.

**The alleged grounds have been detailed in Rule 21 of the Securities Contract (Regulation) Rules, 1957 which are stated as follows:**

- (i) the Company has incurred losses during the preceding 3 consecutive years and it has negative net-worth;
- (ii) trading in securities of the Company has remained suspended for a period of more than 6 months;
- (iii) the securities of the Company have remained infrequently traded during the preceding 3 years;
- (iv) the Company or any of its promoters or any of its director has been convicted for failure to comply with any of the provisions of the Act or SEBI Act, 1992, or Depositories Act, 1996 or rules, regulations, agreements made thereunder, as the case may be and awarded a penalty of not less than one crore rupees or imprisonment of not less than 3 years;
- (v) the addresses of the Company or any of its promoter or any of its directors, are not known or false addresses have been furnished or the Company has changed its Registered Office in contravention of the provisions of Companies Act 1956 / 2013; or
- (vi) shareholding of the Company held by the public has come below the minimum level applicable to the Company as per the listing agreement under the Act and the Company has failed to raise public holding to the required level within the time specified by the recognised stock exchange.

In the instant case, the decision of the Madras Stock Exchange to delist the securities of Herbal Products Limited is valid because the Company has incurred losses during the preceding three consecutive years and it has also negative net worth.

- (c) (i) **Payment System [Section 2(1)(rb) of the Prevention of Money Laundering Act, 2002]:** "Payment System" means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them.

It includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations.

- (ii) Section 4 of the Prevention of Money Laundering Act, 2002 provides for the punishment for Money-Laundering. According to the Section, whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years

and shall also be liable to fine. But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to ten years instead of seven years.

Since, counterfeiting of currency notes is a predicate offence, specified under paragraph 1 of Part A of the Schedule (and not under paragraph 2 of Part A of the Schedule), Mr. Honest can be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Where the offence specified falls under Part A- Paragraph 2 of the Schedule of PMLA, maximum punishment may extend to 10 years.

### Question 2

(a) *The business of Weak Fabrication Limited is conducted fraudulently and the management activities are not in the interests of the Company. The paid up capital of the company is One crore rupees. A group of shareholders numbering 110 members representing 1/9 of total voting power decided to approach Tribunal (NCL T) to carryout investigation into the Company's affairs under the provisions of the Companies Act, 2013. They seek your advice in the following matters, stating the relevant provisions of the Companies Act, 2013.*

- (1) *Whether the group can make valid application?*
- (2) *Other than member, can any other person make application?*
- (3) *Are the applicants required to furnish security for payment of cost and expenses of Investigation? **(7 Marks)***

(b) *Pioneer Textiles Limited desired to amalgamate its enterprise with Latex Textiles Limited. A scheme of amalgamation for this purpose was approved by an overwhelming majority of shareholders and all creditors of both companies at meetings held under the provisions of Section 232 of the Companies Act, 2013. Thereupon it was presented to the Company Law Tribunal for its sanction. While the scheme was pending in the Tribunal, some of the dissentient shareholders of Pioneer Textiles Limited requisitioned an extraordinary general meeting to negotiate with Latex Textiles Limited as according to the requisitionists the exchange ratio was not fair and reasonable.*

*Examine whether the directors may refuse to call the extraordinary general meeting. Also discuss the powers of the Tribunal in this respect. **(5 Marks)***

(c) *All offences under the Companies Act, 2013 are non-cognizable except offences of fraud covered under Section 447 of the Act. Explain the validity of the statement. **(2 Marks)***

(d) *Mr. Satish, General Secretary of a political party received an invitation from the American Labour Party. He wants to avail foreign hospitality. Define the term "foreign hospitality". In the light of the provisions of the Foreign Contribution (Regulation) Act, 2010, decide whether he can avail it. Discuss also the exception, if any, under which the provisions of the said Act may be relaxed. **(6 Marks)***

**Answer****(a) (1) Whether the Group can make a valid application?**

According to Section 213(a)(i) of the Companies Act, 2013, the Tribunal may on an application made by not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a Company having a share capital, order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government.

In the instant case, the application by 110 members representing 1/9 of total voting power of Weak Fabrication Limited to carryout investigation into the company's affairs is valid.

**(2) Other than member, can any other member make an application?**

According to Section 213(b)(i) of the Companies Act, 2013, the Tribunal may, on filling of an application by other person (not being a member of Company), if satisfied, that there are circumstances suggesting that the business of the Company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the Company was formed for any fraudulent or unlawful purpose, may order after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the Company ought to be investigated by an Inspector or Inspectors appointed by the Central Government and where such an Order is passed, the Central Government shall appoint one or more competent persons as Inspectors to investigate into the affairs of the Company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct.

Thus, any other person (other than a member) can also make an application.

**(3) Section 214 of the Companies Act, 2013 provides for security for payment of costs and expenses of investigation:**

Where an investigation is ordered by the Central Government in pursuance of an order made by the Tribunal under Section 213, the Central Government may before appointing an Inspector under clause (b) of Section 213, require the applicant to give such security not exceeding 25,000 rupees as may be prescribed, as it may think fit, for payment of the costs and expenses of the investigation. Such security shall be refunded to the applicant if the investigation results in prosecution.

**(b) According to Section 235 of the Companies Act, 2013,**

- (1) Where a scheme or contract involving the transfer of shares or any class of shares in a Company (the "Transferor Company") to another company (the "Transferee Company") has, within four months after making of an offer in that behalf by the

transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved, other than shares already held at the date of the offer by, or by a nominee of the transferee company or its subsidiary Companies, the transferee Company may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.

- (2) Where a notice under sub-section (1) is given, the transferee Company shall, unless on an application made by the dissenting shareholder to the Tribunal, within one month from the date on which the notice was given and the Tribunal thinks fit to order otherwise, be entitled to and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee Company.

According to Section 232(3) of the Companies Act, 2013, the Tribunal, after satisfying itself that the procedure specified in 232(1) and (2) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement.

In the light of the above stated provisions,

- (i) Once the scheme of amalgamation has been approved by an overwhelming majority, transferee Company gets the right to give notice to any dissenting shareholder that it desires to acquire his shares. Further, as per the facts of the question, the dissenting shareholders has not applied to the Tribunal against the scheme of amalgamation.

Hence, it is not mandatory for the directors to call the extraordinary general meeting.

- (ii) According to Section 232(3) of the Companies Act, 2013, the Tribunal may make provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement.

[**Note:** It is assumed that overwhelming majority as specified in the question signifies approval by the holders of not less than nine-tenths in value of the shares (which is a pre-requisite to apply the provisions of section 235 of the Companies Act, 2013)].

- (c) **Offences to be Non-cognizable:** As per Section 439 (1) of the Companies Act, 2013, every offence under the Companies Act, 2013, except the offences referred to in section 212(6), shall be deemed to be non-cognizable under the Code of Criminal Procedure.

As per Section 212(6), \*offence covered under Section 447 of this Act shall be cognizable.

The given statement in the question is valid.

\* The offences covered under Section 7(5) & (6), Section 34, Section 36, sub-section 38(1), Section 46(5), Section 56(7), Section 66(10), Section 140(5), Section 206(4), Section 213, Section 229, Section 251(1), Section 339 (3) and Section 448 attract the punishment for fraud provided in section 447.

**(d) Definition of "Foreign Hospitality"**

**"Foreign hospitality"** means any offer, not being a purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any foreign country or territory or with free boarding, lodging, transport or medical treatment. [Section 2(i) of the Foreign Contribution (Regulation) Act, 2010]

**Whether Mr. Satish can avail foreign Hospitality?**

As per Section 6 of the Act, Office bearers of political parties require prior approval from Ministry of Home Affairs before accepting Foreign Hospitality. In the instant case, Mr. Satish, General Secretary of a political party, before availing foreign hospitality shall require prior approval from Ministry of Home Affairs.

**Exceptions**

It shall not be necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during a visit outside India. But, where such foreign hospitality has been received, the person receiving such hospitality shall give an intimation to the Central Government as to the receipt of such hospitality within one month from the date of receipt of such hospitality, and the source from which, and the manner in which, such hospitality was received.

**Question 3**

- (a) *CPR Ltd. and TJC Ltd. are wholly owned by Government of Tamil Nadu. As a policy matter, the Government issued administrative orders for merging TJC Ltd. with CPR Ltd. in the public interest. State the authority with whom the application for merger is required to be filed under the provisions of the Companies Act" 2013. Also state the provisions governing the preservation of Books and Records of TJC Ltd. after merger under the said Act. (3 Marks)*
- (b) *Kojol Research Development Ltd. was registered to innovate unique business idea emerging from research and development in a new area. It is a future project and the Company has no significant accounting transactions and business activities. Therefore the company made an application to RoC for obtaining the status of a Dormant Company. The application is under process. In the meantime, the Company without extinguishing all its liabilities filed an application to RoC for removing the name of the Company, after passing a special resolution giving effect to this.*

*In the light of the provisions of the Companies Act, 2013, analyse the following:*

- (1) *Whether the application is tenable under the Act?*

- (2) What are the restrictions imposed under the Act for making application by a Company to remove the name of the Company from the register of RoC?
- (3) What are the penal consequences in case of violation of restrictions? **(8 Marks)**
- (c) Explain the meaning of the term "Demutualization" used under the Securities Contracts (Regulation) Act, 1956. **(3 Marks)**
- (d) Mr. Bandha, a software Engineer, Indian Origin took employment in USA. He is a resident of USA for a long time. He desires
- (i) to acquire a farm house in Munnar (Kerala).
  - (ii) to make investment in KLJ (Nidhi) Ltd., registered as Nidhi Company.
  - (iii) to make investment in Rose Real Estate Ltd., an Indian Company formed for the development of township.

Mr. Unsatisfactory, brother of Mr. Bandha residing at Chennai is aggrieved by an order made by Appellate Tribunal established under Foreign Exchange Management Act, 1999, desires to file further appeal.

With references to the provisions of Foreign Exchange Management Act, 1999, analyse whether there are any restrictions in respect of the transactions desired by Mr. Bandha. Also determine the appeal procedure to Mr. Unsatisfactory on the order of Appellate Tribunal under the said Act. **(6 Marks)**

#### Answer

##### (a) Authority to whom the application for merger is to be made

According to Section 237 of the Companies Act, 2013, where the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company.

Thus, In the given situation of merger between two wholly owned Government companies in public interest, there is no specific authority with whom the application for merger is required as the Central Government shall by notification in the Official Gazette, will provide for the amalgamation of the two said companies into a single company.

##### Preservation of books and records of amalgamated companies

According to Section 239 of the Companies Act, 2013, the books and papers of a Company which has been amalgamated with, or whose shares have been acquired by, another Company shall not be disposed of without the prior permission of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the transferor company or its amalgamation or the acquisition of its shares.

(b) According to Section 248 (1) of the Companies Act, 2013, where the Registrar has reasonable cause to believe that—

- (a) a Company has failed to commence its business within one year of its incorporation, or;
- (b) a Company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant Company under section 455,

-he shall send a notice to the Company and all the Directors of the Company, of his intention to remove the name of the Company from the register of Companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

According to 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 sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner:

**(1) Whether the application is tenable under the Act?**

In the light of the above provisions, since the Company has applied for the status of dormant Company and also without extinguishing its liabilities applied for the removal of the name of the Company from Register of members, such an application shall not be tenable.

**(2) Restrictions**

According to Section 249(1) of the Companies Act, 2013,

An application under Section 248 of the Companies Act, 2013, 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 ceases 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.

### (3) Penal Consequences

According to section 249(2) of the Companies Act, 2013, if a Company files an application in violation of restriction as given in sub-section (1) as given above, it shall be punishable with fine which may extend to one lakh rupees.

### (c) Meaning of “Demutualisation”

According to Section 2(ab) of the Securities Contracts (Regulation) Act, 1956, “Demutualisation” means the segregation of ownership and management from the trading rights of the members of a recognised stock exchange in accordance with a scheme approved by the Securities and Exchange Board of India.

In simple words, it is a term used to describe the transition from mutual association of exchange members operating on a not-for-profit basis to a limited liability, for-profit company, accountable to shareholders. Essentially, demutualisation separates ownership (and voting right) from the right of access to trading.

### (d) (i) Acquisition of a Farm House

Mr. Bandha, cannot acquire a farm house in Munnar (Kerala) because a person resident outside India who is a citizen of India may acquire immovable property in India other than an agricultural property, plantation, or a farm house.

### (ii) Making Investments in KLJ Nidhi Limited

Mr. Bandha cannot make investment in KLJ (Nidhi) Ltd., as a person resident outside India is prohibited from making investments in India in any form, in any Company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engage as Nidhi Company.

### (iii) Making Investments in Rose Real Estate Limited

The person resident outside India is prohibited from making investments in India in any form, in any Company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engage in real estate business, or construction of farm houses. However, development of townships shall not be included in the real estate business.

Thus, Mr. Bandha can make investment in Rose Real Estate Ltd.

**Appeal to High Court (Section 35)**

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal on any question of law arising out of such Order.

However, the High Court may, if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Mr. Unsatisfactory can file an appeal to the High Court, as per the above procedure.

**Question 4**

- (a) Queen Construction Company Ltd. acquired 60% of the equity paid up share capital of ABC Ltd. Queen Construction Ltd. has planned to expand its operation for which additional fund is required. The Board of Directors decided to avail additional exposure of ₹ 10 crore from the Bank.

The following data is furnished as on 30th June, 2017.

	₹ In crores
Authorised Equity Share Capital	25
Issued and Subscribed Equity Share Capital	22
Paid up Equity Share Capital	20
Capital Reserve	2
Revaluation Reserve	1
General Reserve	3
Open cash credit Limit (for working Capital requirement) with the Bank repayable in 3 months	5
Loan obtained under the Hire Purchase agreement for acquiring vehicles.	1
Long term Borrowing from Banks and other parties	15

ABC Ltd. approached Queen Construction Ltd. to grant a loan of ₹ 25 Lakhs and stand as guarantor for repayment of loan ₹ 10 Lakhs to be sanctioned by a Bank.

The two loans (25 Lakhs plus 10 Lakhs) will be utilized by ABC Ltd. for its principal business activities.

You being the Financial Advisor of the company, advise the Board of Directors about the procedure to be followed to avail additional exposure of ₹ 10 Crore from the Bank. Also evaluate whether the loan guarantee given by Queen construction Ltd. to ABC Ltd. is valid according to Section 185 of the Companies Act, 2013. **(8 Marks)**

- (b) *The Delhi Stock Exchange Ltd. was granted recognition by Securities Exchange Board of India. SEBI received complaint alleging that the said Stock Exchange is indulging in fraudulent activities. SEBI is of the opinion that the recognition granted should be withdrawn in the interest of trade and public. State the provisions to withdraw the recognition under the Securities Contracts (Regulation) Act, 1956. Examine the validity of the contracts entered by the Stock Exchange prior to such withdrawal order. (6 Marks)*
- (c) *Mr. AA, a farmer mortgaged his agriculture land and obtained a term loan for cultivation purpose from a Nationalized Bank. Due to continuous drought, Mr. AA could not honour the repayment schedule. Identify whether the Bank can initiate action invoking the provisions of the SARFAESI Act, 2002. (2 Marks)*
- (d) *You are appointed as Interim Resolution Professional in XYZ Company Ltd. under the Insolvency and Bankruptcy Code, 2016. State the time limit to make Public Announcement? Also state the protocol for issuance of public notice. Who shall bear the expenses of public announcement? (4 Marks)*

**Answer****(a) Borrowing by the Company (Section 180 of the Companies Act, 2013)**

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

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

Particulars	₹ In Crores
Paid up Equity Share Capital (A)	20
General Reserve (being free reserve) (B)	3
Capital Reserve (Not a free reserve)	-
Revaluation Reserve (Not a free reserve)	-
Aggregate of paid up capital and free reserve (A)+(B)	23
Total borrowing power of the Board of Directors of the company, i.e., 100% of the aggregate of paid up capital and free reserves (C)	23
Less: Amount already borrowed as Long term loan (D)	16
Amount upto which the Board of Directors can further borrow without the approval of shareholders in a general meeting. (C) – (D)	7

In the present case, the Directors of Queen Construction Limited by a resolution passed at its meeting decide to borrow an additional sum of ₹ 10 Crores from the bank. Hence, the borrowing will be beyond the powers of the Board of directors.

Thus, the Management of Queen Construction Limited., should take steps to convene the general meeting and pass a special resolution by the members in the meeting as stated in Section 180(1)(c) of the Companies Act, 2013. Then, the borrowing will be valid and binding on the company and its members.

According to Section 185 of the Companies Act, 2013, no Company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

However, the above sub-section shall not apply to 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. [Section 185(1)(c)]. It is also provided that the loans made under this clause are utilized by the subsidiary company for its principal business activities.

In the instant case, Queen Construction Ltd. acquired 60% of the equity paid up share capital of ABC Ltd. Hence, ABC Ltd. is a subsidiary company of Queen Construction Ltd. [as per Section 2(87)]

Hence, as per Section 185(1)(c), granting of loan of ₹ 25 Lakhs by Queen Construction Ltd to ABC Ltd is not valid but providing of guarantee for repayment of loan of ₹ 10 lakhs to be sanctioned by bank is valid.

**(b) Withdrawal of Recognition**

Section 5(1) of the Securities Contracts (Regulation) Act, 1956, states that if the Central Government/ SEBI is of the opinion that the recognition granted to a stock exchange under the provisions of this Act, should, in the interest of the trade or in the public interest, be withdrawn.

The Central Government or SEBI may serve on the governing body of the stock exchange, a written notice that the Central Government is considering the withdrawal of the recognition for the reasons stated in the notice and after giving an opportunity to the governing body to be heard in the matter.

The Central Government may withdraw by notification in the Official Gazette, the recognition granted to the stock exchange.

**Contract entered prior to such withdrawal:** No such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Central Government may, after consultation with the stock exchange, make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contracts outstanding on that date.

As per the proviso to section 5(1), all the contracts entered by the Stock Exchange prior to such withdrawal order shall be valid.

- (c) According to Section 31 of the SARFAESI Act, 2002, the provisions of the Act do not apply to any security interest created in agricultural land.

Hence, the Bank cannot initiate action against Mr. AA who could not honour repayment schedule for a bank loan obtained against his mortgaged agricultural land.

**(d) (1) Time Limit for making Public Announcement**

Interim Resolution Professional shall make the Public Announcement immediately after his appointment. "Immediately" here means not more than three days from the date of appointment of the Interim Resolution Professional. Hence, the time limit to make Public Announcement is within 3 days from the date of appointment of the Interim Resolution Professional.

**(2) Protocol for issuance of Public Notice**

As per Section 15 of the Insolvency and Bankruptcy Code, 2016, public announcement shall include the following:-

- (a) Name & Address of Corporate Debtor under the Corporate Insolvency Resolution Process.
- (b) Name of the authority with which the corporate debtor is incorporated or registered.
- (c) Details of interim resolution Professional who shall be vested with the management of the Corporate Debtor and be responsible for receiving claims.
- (d) Penalties for false or misleading Claims.
- (e) The last date for the submission of the claims.
- (f) The date on which the Corporate Insolvency Resolution Process ends.

**(3) Expenses of Public Announcement**

The expenses of public announcement shall be borne by the applicant which may be reimbursed by the Committee of Creditors, to the extent it ratifies them.

**Question 5**

- (a) *The register of contracts or arrangement under Section 189 of the Companies Act, 2013 is maintained at the Registered office of Fortune Ltd. under the custody of the Company Secretary. The AGM was held in different place but in the same town where the registered office is situated. Mr. Semar, a shareholder of the company and Mr. Raj, proxy of a shareholder insisted for producing the said register at the commencement of the AGM for inspection. The Company Secretary refused to produce the register stating that*

*being the statutory register it has to be maintained at the registered office only. Examine whether Mr. Semar and Mr. Raj will succeed in their attempt under the provisions of the Companies Act, 2013?*

*Also identify the particulars to be disclosed to the members of a company to pass a resolution approving any payment by way of compensation for loss of office of a director as per the provisions of Section 191 of the Companies Act, 2013 read with Rule 17 of the Companies (Meetings of Board and its Powers) Rules, 2014. (8 Marks)*

- (b) *LED Bulb Ltd., has made default in filing financial statements and annual returns for a continuous period of 4 financial years ending on 31<sup>st</sup> March, 2017. The Registrar of Companies having jurisdiction approached the Central Government to accord sanction to present a petition to Tribunal (NCLT) for the winding up of the company on the above ground under Section 272 of the Companies Act, 2013*

*Examine the validity of the RoC move, explaining the relevant provisions of the Companies Act, 2013. State the time limit for passing an order by the Tribunal under Section 273 of the Companies Act, 2013? (6 Marks)*

- (c) *Rose Garden Ltd. was incurring continuous losses and its financial position went bad to worse. Black Stone (Private) Ltd., a trade creditor, issued notice under Section 271 of the Companies Act, 2013 for winding up of Rose Garden Ltd. on the ground that Rose Garden Ltd. was unable to pay its debts. After some time, Black Stone (Private) Ltd. being an operational creditor filed a petition before the Adjudicating Authority to initiate insolvency process under the Insolvency and Bankruptcy Code, 2016. Demand Notice and copy of invoice were not served to Rose Garden Ltd. since a notice was earlier issued for winding up. All other formalities were complied with. The Adjudicating Authority initiated Insolvency Resolution Process by admitting the application and appointed Resolution Professional. After complying required formalities, the Adjudicating Authority issued orders for moratorium and other relief within the stipulated time. Being aggrieved by the order of Adjudicating Authority, Rose Garden Ltd. (Corporate debtor) filed an appeal before NCLAT under the Insolvency and Bankruptcy Code, 2016. Determine will the Company succeed in its appeal? (6 Marks)*

### **Answer**

- (a) **Place of maintenance of Register of Contracts or Arrangements:**

As per Section 189 of the Companies Act, 2013, every Company shall keep one or more registers giving separately the particulars of all contracts or arrangements related to disclosure of interest by director as per Section 184(2) or related party transactions given under Section 188.

The register shall be kept at the registered office of the Company and it shall be-

- open for inspection at such office during business hours and extracts may be taken therefrom, and

- copies thereof as may be required by any member of the company shall be furnished by the company

The register to be kept under this Section shall also be produced at the commencement of every annual general meeting of the Company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting.

As per law, register shall be produced at the commencement of every annual general meeting of the Company and shall remain open and accessible during the meeting to any person having the right to attend the meeting.

Hence, Mr. Semar and Mr. Raj, being a shareholder and proxy of a shareholder, have a right to inspect the register of contract and arrangements during the meeting.

#### **Payment by way of compensation for loss of office to Director**

As per the Rule 17 of the *Companies (Meetings of Board and its Powers) Rules, 2014*, no director of a company shall receive any payment by way of compensation in connection with any event mentioned in 191(1) unless the following particulars are disclosed to the members of the company and they pass a resolution at a general meeting approving the payment of such amount -

- (a) name of the director;
- (b) amount proposed to be paid;
- (c) event due to which compensation become payable;
- (d) date of Board meeting recommending such payment;
- (e) basis for the amount determined;
- (f) reason or justification for the payment;
- (g) manner of payment - whether payable in cash or otherwise and how;
- (h) sources of payment; and
- (i) any other relevant particulars as the Board may think fit.

#### **(b) Validity of RoC's action**

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

In the instant case, the move by RoC to present a petition to Tribunal for the winding up of LED Bulb Ltd. is not valid as the Company has made default in filing financial statements and

annual returns for a continuous period of 4 financial years ending on 31<sup>st</sup> March, 2017.

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

- (c) As per Section 8 of the Insolvency and Bankruptcy Code, 2016, once a default has occurred, the operational creditor has to deliver a demand notice or a copy of invoice demanding payment of debt in default to the corporate debtor.

Since in the given case, demand notice and copy of invoice was not served to the Rose Garden Ltd., so the requirement for the initiation of the corporate insolvency resolution process by operational creditor under section 9 of the Code, was not in compliance. So, the admission of application in line with the compliance of other required formality as to issue of order of moratorium and other relief, given by the NCLT was against the law.

As Rose Garden Ltd. (Corporate debtor) was aggrieved by the Order of the Adjudicating Authority on the non-compliance of requirement of Section 8, Rose Garden Ltd. will succeed in its appeal filed before the National Company Law Appellate Tribunal.

#### Question 6

- (a) *Mr. Bond and Mr. James were appointed as Directors of Jamesbond Ltd. at the AGM held on 30<sup>th</sup> September, 2017 by a single resolution. State the relevant provisions of the Companies Act, 2013 and identify is it possible to appoint the above Directors by a single resolution?* **(4 Marks)**

**OR**

*When does a Director required to disclose his / her interest to the Company as per Section 184 of the Companies Act, 2013? What are the consequences of non-disclosure?* **(4 Marks)**

- (b) *Qinghai Huading Industrial Company Ltd., incorporated in China established a place of business at Mumbai. The Charter / Documents constituting the Company is in Mandarin Chinese (Chinese local language). It is required inter alia to file a certified translation of above documents with the Registrar of Companies in India. Who can authenticate the translated charter/ documents as per the provisions of the Companies Act, 2013 and Rules made there under governing foreign companies in case such translation is made at Mumbai?* **(2 Marks)**
- (c) *JSK, a shareholder of CRI (Private) Ltd. filed an application before erstwhile Company Law Board, alleging various acts of oppression and mis-management in the affairs of the Company and sought certain relief measures. The petition was transferred to NCLT on its constitution. The NCLT passed an order on 5th October, 2017 without the consent of the parties. Aggrieved by the order, the shareholder decided to prefer an appeal. Nevertheless the shareholder was suffering from low blood pressure. He was medically advised not to move and he did not move. Therefore, he preferred the appeal with*

*NCLAT on 5<sup>th</sup> December, 2017. Examine whether the appeal is admissible with reference to time limitation?*

*Identify the provisions governing further appeal on the orders of NCLAT under Section 423 of the Companies Act, 2013. (8 Marks)*

- (d) *Beta Ltd. failed to repay the amount borrowed from KMP Bank Ltd. in accordance with the terms of lending. The loan was granted against the mortgage of its Building. The Bank issued notice as required under Section 13 of the SARFAESI Act, 2002. It was decided by the bank to take possession of the Building after getting necessary assistance from the judicial authority. State the provisions enumerated under Section 14 of the SARFAESI Act, 2002 in this regard. (3 Marks)*
- (e) *Smart Automobiles Limited and Apex Four wheelers Limited entered into an agreement regarding annual maintenance services to be provided by Smart Automobiles for all vehicles within the state of Uttar Pradesh for five years. The agreement was containing a clause that in the event of a dispute between the parties the matter would be submitted to arbitration. At the end of the fifth year, the service agreement was not renewed.*

*Decide whether the arbitration. agreement should not be treated as terminated. Also describe the other grounds of termination of an arbitration agreement. (3 Marks)*

#### **Answer**

- (a) According to Section 162 of the Companies Act, 2013, at a general meeting of a Company, a motion for the appointment of two or more persons as Directors of the Company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.

A resolution moved in contravention of above shall be void, whether or not any objection was taken when it was moved.

A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment.

In the instant case, it is not possible to appoint Mr. Bond and Mr. James as Directors of James Bond Ltd. by a single resolution.

**Or**

According to Section 184(1) of the Companies Act, 2013 every Director shall disclose his concern or interest in any Company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed:

- (a) At the First meeting of the Board in which he participates as a director, and
- (b) Thereafter, at the first meeting of the Board in every financial year, or
- (c) Whenever there is any change in the disclosures already made, then at the first Board meeting held after such change.

**Consequences of non-disclosure [Section 184(3) and 184(4)]:**

- (a) **Voidable at the option of company:** A contract or arrangement entered into by the company without disclosing or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.
- (b) **Penalty:** If a director of the company contravenes the provisions of section 184, such director shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees, or with both.
- (b) According to Rule 10 of the *Companies (Registration of Foreign Companies) Rules, 2014*,
- (i) All the documents required to be filed with the Registrar by the foreign companies shall be in English language and where any such document is not in English language, there shall be attached a translation thereof in English language duly certified to be correct in the manner given in these rules.
- (ii) Where such translation is made within India, it shall be authenticated by-
- (a) an advocate, attorney or pleader entitled to appear before any High Court; or
- (b) an affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.

In the instant case, Qinghai Huading Industrial company Ltd. can translate the related documents within India and they shall be authenticated by the persons mentioned under the above Rules.

- (c) (1) **Appeal from Orders of Tribunal:** According to Section 421 of the Companies Act, 2013, any person aggrieved by an Order of the Tribunal may prefer an appeal to the Appellate Tribunal. However, no appeal shall lie to the Appellate Tribunal from an Order which was made by the Tribunal with consent of parties.

**\*Time period of appeal:** Every appeal in the above case, shall be filed within a period of forty-five days from the date on which a copy of the order of Tribunal is made available to the person aggrieved.

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

In the given situation, NCLT passed an order on 5<sup>th</sup> October, 2017 without the consent of the parties on the acts of oppression and mis-management in the affairs of the company and for the obtaining certain relief measures.

JSK, a shareholder, aggrieved by an order of NCLT, can prefer an appeal in the NCLAT within 45 days from the date on which a copy of the order of Tribunal is made available to the person aggrieved. However, on reasonable ground this period may be further extended by 45 days i.e. within 90 days from the date on which a copy of the order of Tribunal is received by JSK.

**Further Appeal on the orders of NCLAT:** Section 423 of the Companies Act, 2013 provides that any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order.

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days

\* **Assumption:** In the question, date of order of the NCLT may be taken as the date on which a copy of the order of Tribunal is made available to the person aggrieved to answer the question within the provided information.

**(d) Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset (Section 14)**

The secured creditor may, for the purpose of taking possession or control of secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him

- (a) take possession of such asset and documents relating thereto; and
- (b) forward such asset and documents to the secured creditor

within a period of thirty days from the date of application.

Provided further that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.

**(e) Termination of an arbitration agreement**

Just the way parties can enter into an arbitration agreement, they can also terminate an arbitration agreement. Thus, an arbitration agreement could be put to an end by:

1. Mutual consent: like any contract, the parties involved can jointly agree to put an end to a particular arbitration agreement.

2. Termination of principal contract: an arbitration agreement always operates in relation to a principal contract. If the principal contract is terminated through discharge or novation, the arbitration agreement terminates with the contract. However, if the principal contract is breached, then the arbitration agreement survives because of the operation of the doctrine of separability.

In the given instance, at the end of the fifth year, the Service Agreement was not renewed. Hence, the contract terminates, and along with it the arbitration agreement.

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