# CA FINAL PAPER 4

## Corporate and Economic Laws

# CHAPTER 1. APPOINTMENT AND QUALIFICATION OF DIRECTORS

## Question 1

Pharma Limited is a company listed with Bombay Stock Exchange. The company is having 500 small shareholders. 50 shareholders have proposed to appoint Amar as a Director as their representative on the Board of Directors of the company. Amar is holding 1000 equity shares of ₹ 10 each in the said company. State, in the light of the provisions of the Companies Act, 2013, whether the proposal to appoint Amar as a Small Shareholders' Director can be adopted by the company. Also state, can the company appoint Small Shareholders' Director, if there is no such proposal moved by the small shareholders.
**(May 2022 Suggested Answers)**

**Answer:**

**Appointment of Small Shareholders' Director:**

According to Section 151 of the Companies Act, 2013 read with Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014,

A listed company may, upon notice of not less than:

(a) one thousand small shareholders; or
(b) 1/10th of the total number of such shareholders,

whichever is lower, have a small shareholders' director elected by the small shareholders.
However, a listed Company may opt to have a director on suo moto representing small shareholders.
The term "small shareholders" means a shareholder holding shares of nominal value of not more than ₹ 20,000 or such other sum as may be prescribed.

**(i) Proposal to appoint Mr. Amar as a Small Shareholders' Director:**
In the instant case, since 50 small shareholders' have proposed to appoint Amar as their representative, the said proposal is valid and can be adopted as 1/10th of 500 small shareholders' comes to 50. Also, the nominal value of shares held by Amar is
₹ 10,000 (i.e.1000 equity shares of ₹10/- each) which is below the maximum limit of
₹ 20,000.

**(ii) If there is no such proposal moved by the small shareholders:**
For the second part of the question, yes, the Company can suo moto appoint small Shareholders' director, even if there is no such proposal moved by the small shareholders.

## Question 2

A, B and C are independent directors of X Limited. A was appointed independent director for a period of 3 years, B was appointed for a period of 5 years and C was appointed for a second term of 5 years.

The period /term of all the independent directors will be over on 30th September, 2022. X Limited is planning to consider reappointment of the above independent directors. You are requested to advice whether A, B and C can be reappointed as independent directors as per the provisions of the Companies Act, 2013? **(May 2022 Suggested Answers)**

**Answer:**

**According to Section 149(10) & (11) of the Companies Act, 2013:**

**Term:** an independent director shall hold office for a term up to 5 consecutive years on the Board of a company.
**Eligibility for Re-appointment:** He 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.
**Limit on holding of office:** An independent director shall not hold office for more than 2 consecutive terms.
**Cooling period for appointment:** However, he shall be eligible for appointment after the expiration of 3 years of ceasing to be an independent director.

**Appointment of A**

In the instant case, A was appointed Independent Director for a period of 3 years, therefore he can be re-appointed after complying the above provisions.

**Appointment of B and C**

B was appointed for a period of 5 years; therefore he can also be re-appointed after complying the above provisions.

C was appointed for a second term of 5 years; he cannot be reappointed as Independent Director for consecutive third term. However, he shall be eligible for appointment after the expiration of 3 years of ceasing to be an independent director.

## Question 3

ABC Limited (wholly owned government company), failed to file its financial statements for the financial years 2018-2019, 2019-2020 and 2020-2021 with the ROC. However, the annual returns for the financial years 2018-2019 and 2019-2020 have been filed by the company. The company appointed Mr. Pratham as its non-executive director with effect from 1st May 2021. In the meantime, Mr. Pratham received an offer of directorship from AK Ltd. in the month of September, 2021 which he is willing to accept. Referring to the provisions of the Companies Act, 2013, examine whether Mr. Pratham is qualified to be appointed as director in AK Ltd.

**(Nov 2022 RTP)**

**Answer:**

**Section 164(2) of the Companies Act, 2013**, prescribes dis-qualifications which get attached to a person, if he is or has been a director of a Company which has committed default, as under.

(i) his Company has not filed financial statements or annual returns for any continuous period of 3 financial years; or
(ii) his Company has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem any debentures on the due date or pay

interest due thereon or pay any dividend declared and such failure to pay or redeem continues for 1 year or more.

In both the cases of default, the director concerned shall not be eligible to be re -appointed as a director of such defaulting Company or appointed in some other Company for a period of 5 years from the date on which the said Company has committed default.

However, in case a person is appointed as a director of a Company which has committed default as per clause (i) or (ii) above, he shall not incur the dis-qualification for a period of six months. Further in the light of the Notification No. GSR 582 (E), dated 13th June, 2017, Section 164(2) of the Act is not applicable to a Government Company provided it has not committed a default in filing its Financial Statements under Section 137 or Annual Return under Section 92 of the Act with the Registrar.

**Conclusion:** In the given problem, ABC Limited, a wholly owned Government Company, has not filed its financial statements for a continuous period of three financial years and hence, it is not entitled for an exemption under Section 164 (2) of the Act. Mr. Pratham, who is appointed as a Non-Executive Director in the defaulting Company shall not incur dis-qualification for a period of six months from the date of his appointment. The six month period will expire on 31.10.2021.

Hence, he is qualified to be appointed as a Director of AK Limited in the month of September, 2021.

## Question 4

Atlanto Tyres Ltd (ATL) is engaged in the business of manufacturing of tyres of all types of vehicles. The company have 6 directors. Recently the company has acquired a foreign company in UK which was engaged in manufacturing of tyres. The company thought that the merger will be beneficial for it. In order to take care of the operations and networking of the merged foreign entity, the directors of ATL travelled to UK on and often. Due to frequent travelling to UK, it was observed that all the directors in the FY 2020-21 could not stayed in India for a minimum period as prescribed in the Act. Examine the given situation in the light of the related law as in case if the same is not in compliance. **(Nov 2022 MTP 2)**

**Answer:**

In terms of Section 149(3) of the Companies Act, 2013, every company shall have at least one director who has stayed in India for a total period of not less than 182 during the financial year.

In the given case, out of 6 directors, none of the directors could have stayed in India for a minimum period of 182 days in the FY 2020-21.

Therefore, the requirement of said section 149(3), is not met with. Therefore, ATL is liable under section 172 of the Companies Act, 2013.

**In case of contravention**: Further Section 172 of the Act, provides that if a company is in default in complying with any of the provisions of Chapter XI ( i.e. with respect to the appointment and qualifications of directors) and for which no specific penalty or punishment is provided therein, in that case following is the penalties levied on:

(i) the company, and
(ii) every officer of the company who is in default- shall be liable to a penalty of 50,000 rupees.

In case of continuing failure, with a further penalty of 500 rupees for each day during which

such failure continues, subject to a maximum of three lakh rupees in case of a company and one lakh rupees in case of an officer who is in default.

# 2.MEETINGS OF BOARD AND ITS POWERS

**Question 1**

Green Developers Limited proposes to acquire a land owned by its Director, Mr. Manoj at a fair market value of ₹ 10.00 Crores to execute a project of developing a commercial and residential complex on that land. In consideration, the company will allot certain flats of equivalent value to Mr. Manoj on completion of the project. Referring to the provisions of the Companies Act, 2013, advise the Board of Directors of the company whether Green Developers Limited can enter into the proposed arrangement and what will happen, if compliance requirement is contravened?

**( May 2022 Suggested Answers)**

**Answer:**

**Restriction on acquiring assets for consideration other than cash:**

According to Section 192 (1) of the Companies Act, 2013, no company shall enter into an arrangement by which-

(a) a director of the Company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the Company; or

(b) the Company acquires or is to acquire assets for consideration other than cash, from such director or person so connected.

**Relaxation of Restriction:**

The above restriction shall be relaxed i.e. the company may enter into an arrangement involving non-cash transactions as stated above, if prior approval for such arrangement is accorded by a resolution of the Company in general meeting.

**Advise to the Board:**

Hence, in view of the above provisions of law, the Board of Directors of Green Developers Limited shall be advised that the proposed arrangement cannot be entered into by the Company. However, the proposed arrangement may be executed, if prior approval of the Company by way of an ordinary resolution is accorded thereto failing which the contract shall be voidable at the option of the Company.

Further, where the director or the connected person is a director of its holding company, approval shall also be required to be obtained by passing a resolution in general meeting of the holding company.

**What happens if Section 192 is contravened?**

Any arrangement entered into by a Company or its holding company in contravention of the provisions of Section 192 shall be voidable at the instance of the Company.

**The arrangement shall not be voidable;**

(a) if the restitution of any money or other consideration which is the subject-matter of the

arrangement is no longer possible and the Company has been indemnified by any other person for any loss or damage caused to it; or

(b) if any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section (i.e. Section 192) by any other person.

**Hence, the Board of Directors of Green Developers Limited can enter into the proposed arrangement by taking into account the above provisions**.

## Question 2

ABC Limited put forth the following matters for your examination. The meeting of the Board of Directors of the company was convened on 15th July, 2021. While one Director attended the Board Meeting physically all other five Directors of the Company attended the meeting through Video conferencing /other Audio-visual means and approved the Annual Financial Statements ending 31st March, 2021. Referring to the provisions of the Companies Act, 2013 you are requested to validate the followings:

(i) Compliance requirement of quorum for the said meeting.

(ii) Approval of the Financial Statements for the year ending 31st March, 2021

**(May 2022 Suggested Answers)**

### Answer:

According to Section 174(1) of the Companies Act, 2013, the quorum for a Board Meeting shall be one-third of its total strength or two directors, whichever is higher.

Also, Section 173(2) of the Act allows the directors of a Company to attend Board meetings in the following manner:

- in person
- through video conferencing
- other Companies audio-visual (Meetings means of as prescribed Board and under its Rule 3 Powers) of the Rules, 2014

**(i) Quorum Compliance**

In the instant case, since there are total 6 directors in ABC Limited, the quorum shall be 2 (1/3rd of 6 or 2, whichever is higher). Since, one director attended the meeting physically and all other five directors attended through Video conferencing/ Audio visual means, it implies that all the directors attended the meeting and quorum compliance is there.

**(ii) Approval of Financial Statements:**

Since the quorum of the Board meeting is complied with the presence of all the six directors, therefore, approval of Financial Statement in the Board Meeting held on 15th July, 2021 is valid.

Further, according to Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014, certain matters including the approval of Annual Financial Statements cannot be dealt with in a meeting through Video Conferencing / Other Audio-visual means. However, vide Notification GSR Powers) Rules, 2014, through enforcement of the Companies (Meeting of Board and its Powers) Rules, 2014, Rule 4 dealing with matters to be dealt with in a meeting through video conferencing or other audio-visual means was omitted. Therefore, the Company has compiled with the provisions of the Companies Act, 2013 approving the Annual Financial Statements at the Board Meeting held on 15th July, 2021.

# 3. APPOINTMENT & REMUNERATION OF MANAGERIAL PERSONNEL

## Question 1

PCR Limited has appointed Mr. Vivek, a person resident in India, as a Managing Director who has taken a charge of the post on 1st June, 2021. The remuneration package sanctioned to him is as below:

| Sr. No. | Particulars | ₹ |
|---|---|---|
| 1 | Salary | 60,00,000 |
| 2 | Rent free accommodation | 6,00,000 |
| 3 | Children education allowance | 3,00,000 |
| 4 | Leave Travel Concession Package | 3,00,000 |
| 5 | Premium in respect of insurance taken for indemnification | 5,00,000 |

It has, further, been informed that-

*(a)* Mr. Vivek has availed the Leave Travel Concession Package which will not be pro- rated for 2021-22.

*(b)* Mr. Vivek is not proved guilty during the financial year 2021-22 with respect to the above insurance policy.

*(c)* The company has not passed a special resolution for payment of remuneration in excess of the limit prescribed by schedule V to the Companies Act, 2013.

*(d)* The company has incurred losses during the financial year 2020-21 and 2021-22.

*(e)* The effective capital of the company as at 31st March, 2021 is in negative.

Based on the above details and referring to the provisions of the Companies Act, 2013, you are requested to analysis and answer the following:

*(i)* Compute the amount that would constitute the yearly remuneration for Mr. Vivek.

(ii) Compute the excess remuneration paid to Mr. Vivek, if any, and discuss the prospects of recovery thereof. **(May 2022 Suggested Answers)**

**Answer:**

**(i) Computation of the amount that would constitute the yearly remuneration for Mr. Vivek**

**As per Section 2(78) of the Companies Act, 2013, (the Act) the term "Remuneration** "means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income Tax Act, 1961.

**Further, as per Section 197(13) of the Act**, where any indemnification insurance is taken by a Company on behalf of Managing Director or other managerial personnel, the premium therefor paid by the Company shall not form part of the remuneration payable to any such personnel, if that person is proved not to be guilty during the year of insurance coverage.

In the light of the provided information in the problem and as per Section 197 read with Schedule V to the Companies Act, 2013, the computation of the amount that would constitute the yearly remuneration of Mr. Vivek in PCR Limited for the FY 2021-2022 will be as under:

| Sl. No. | Particulars | In ₹ (proportionate to 10 months as the MD has taken charge of the post w.e.f. 01.06.2021) |
|---|---|---|
| 1. | Salary | 50,00,000 |
| 2. | Rent Free Accommodation | 5,00,000 |
| 3. | Children Education Allowance | 2,50,000 |
| 4 | Leave Travel Concession Package (not pro-rated for 2021-22 as per the question) | 3,00,000 |
| | Total yearly remuneration of Mr. Vivek | 60,50,000 |

**NOTE:**
**Premium in respect of insurance taken for indemnification is not considered, as Mr. Vivek is not proved guilty during FY 2021-2022**.

**(ii) Computation of excess Remuneration paid to Mr. Vivek**

It is provided that the Company has suffered losses during the FY 2020-2021 and 2021-2022 and the effective capital of the Company as at 31st March, 2021 is in negative. So, as per the Act read with Schedule V, the maximum yearly managerial remuneration payable to Mr. Vivek shall be ₹ 60 Lakhs including perquisites.
From the above table of computation, the total yearly remuneration of Mr. Vivek is arrived ₹ 60,50,000 (pro-rated) and whereas, for the year 2021-2022, Mr. Vivek will be entitled for maximum remuneration payable not exceeding ₹ 50 lakhs per annum (pro-rated for 10 months).
Thus the excess remuneration paid to Mr. Vivek is ₹10,50,000/- [i.e.₹60,50,000 (-) ₹ 50,00,000].

**Prospects of Recovery thereof:**
As per Sections 197(9) and 197(10) of the Companies Act, 2013, where the remuneration received by any director is in excess of the limit it shall be refunded to the Company by such director and till that time he holds it in trust for the Company.
The Company shall not waive the recovery of any sum which is refundable to it unless the waiver is approved by a Special Resolution passed by the Company within two years from the date the sum becomes refundable.
In the given case, as the remuneration package sanctioned to him of ₹ 10,50,000/- is in excess of the prescribed limit and as provided in the question, that no special resolution is passed for payment of remuneration in excess of the limit prescribed by Schedule V to the Act.
**Therefore, the Company can recover the excess amount.**

## Question 2

Mr. Jack, a young and energetic 24 years old American Citizen came to India in the month of January, 2021 for taking up employment. He has been hunting for the job and stayed in India. M/s NS Software Solutions Limited is a listed company engaged in developing customized software package for automobile manufacture. This company appointed Mr. Jack as its Managing Director at the Annual General Meeting held on 11th November, 2021, upon certain terms & conditions. Based on the above information, you are requested to validate the following

referring to the provisions of the Companies Act, 2013 read with Schedule V of the Act:
(i) Eligibility of Mr. Jack for being appointed as a managing director.
(ii) Will your answer differ in case the company is located in Special Economic Zone. (SEZ)?

**(May 2022 Suggested Answers)**

**Answer:**

**Additional eligibility conditions for appointment as per Schedule V:**

**Part I of Schedule V** to the Companies Act, 2013, has prescribed additional eligibility conditions for appointment as Managing Director or whole-time director or a manager without seeking approval from the Central Government. According to condition (4), the person to be appointed shall be resident of India.

**Explanation I** clarifies that **resident in India** includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India, -
(a) for taking up employment in India; or
(b) for carrying on a business or vocation in India.

**Explanation II** clarifies that the condition above shall not apply to the companies in Special Economic Zones (SEZ).

(i) **Eligibility of Mr. Jack for being appointed as the MD**
In the instant case, Mr. Jack, an American Citizen came to India in the month of January, 2021 for taking up employment. He has been appointed as Managing Director in NS Software Solutions Limited on 11th November, 2021.
Since, Mr. Jack has not stayed in India for a continuous period of twelve months immediately preceding 11th November, 2021, he is not eligible for being appointed as the Managing Director.

(ii) **If the Company is located in SEZ**

In case the Company is located in Special Economic Zone (SEZ), the above condition shall not apply and Mr. Jack is eligible for being appointed as a Managing Director.

## Question 3

Mr. Talented was a director in a holding company and also in its subsidiary company. He was drawing his managerial remuneration from both the companies in his capacity as a director. It was brought to the attention of the company that he cannot draw remuneration from both the companies because of virtue of relationship as a holding and subsidiary company. Discuss on the legality of drawing managerial remuneration by Mr. Talented from both the companies.
**(Nov 2022 MTP 1)**

**Answer:**

Any director who is in receipt of any commission from the company and who is managing or Whole-time director of the company shall not be disqualified from receiving any remuneration of commission from any holding or subsidiary company of such company subject to its disclosure by the company in the Board's report as per section 197(14) of the Companies Act. However subject to the provisions of sections I to IV of schedule V of the Companies Act, 2013, a

managerial person shall draw remuneration from one/both companies, provided that the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any one of the companies of which he is managerial person. Accordingly, Mr. Talented is advised to check that it does not exceed the higher maximum limit admissible in any of the companies i.e. either holding or subsidiary.

## Question 4

The following particulars are extracted from the statement of profit and loss of Sunlight Limited for the year ended 31st March 2022**:**

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

You are required to calculate the overall managerial remuneration payable under section 197 of the Companies Act, 2013 subject to the provisions under Schedule V**. (Nov 2022 MTP 2)**

**Answer:**

The managerial remuneration shall be computed in accordance with the provisions laid down in section 198 of the Companies Act 2013.

| Particulars | | Amount |
|---|---|---|
| | Net profit | 13,00,000 |
| Less: | Capital profits on sale of building (Note 1) | 1,00,000 |
| | Salaries & Wages (Note 2) | - |
| | Sundry repairs to fixed Assets (Note 2) | - |
| | Subsidy from the government (Note 3) | - |
| | Compensation from breach of contract (Note 2) | - |
| | Depreciation (Note 2) | - |
| | Loss on Sale of Investments (Note 4) | - |

| | | |
|---|---|---|
| | Interest on unsecured loans (Note 2) | - |
| | Interest on debentures (Note 2) | - |
| Add: | Repair expenses to fixed assets (Capital in Nature) (Note 5) | 2,00,000 |
| | Net profits as per section 198 | 14,00,000 |

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

**Notes:**

1)As per section 198(3), credit shall not be given for profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets; provided that where the amount for which any fixed asset is sold exceeds the written-down value thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written- down value.
Accordingly, the calculation of capital profit is computed as under:
Profit = Selling Price – Written down value
5,00,000 = Selling Price – 6,00,000. Therefore, Selling Price = 11,00,000. Capital profit = 11,00,000 – 10,00,000 (original cost) = 1,00,000

2) According to section 198 (4), the following sums shall be deducted:
   a) All the usual working charges – salaries and wages are considered as usual working charges
   b) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature
   c) any compensation or damages to be paid in virtue of any legal liability including a liability arising from a breach of contract
d) interest on debentures issued by the company
e) interest on unsecured loans and advances
f) depreciation to the extent specified in section 123

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

3) According to section 198 (1), credit shall be given for bounties and subsidies received from any government, or any public authority constituted or authorised in this behalf, by any government, unless and except in so far as the Central Government otherwise directs.

4) According to section 198(5), Loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or any part thereof shall not be deducted. In the given question, in the absence of the specific information about the nature of investments, the said investments are considered as current investments and revenue in nature and accordingly no effect is given as it is already deducted while arriving at net profit.

5) According to section 198(4), expenses on repairs, whether to immovable or to movable property is deducted only for repairs which are not capital in nature. Accordingly, we have added back to the net profit.

**Question 5**

Mr. Srinath, Ms. Smriti and Mr. Irfan are directors of Protease Sports Limited (PSL), which is renowned brand of sports items. Mr. Rahul is a Managing Director there. Mr. Irfan is Whole time director whose 4 years of tenure is still there. The annual average remuneration of Mr. Rahul, Mr. Srinath, Ms. Smriti and Mr. Irfan are ₹ 84 lacs, ₹ 21 lacs, ₹ 18 lacs, and₹ 48 lacs respectively. PSL acquired by Rockman Sports. Mr. Srinath, Ms. Smriti and Mr. Irfan lost their office of director. Mr. Rahul also lost his office but he is appointed as the Managing director of the body corporate resulting from the restructuring. All of them demanding the compensation for loss of office.

Enumerate and analyze as per the given situation in the light of the provisions of Companies Act, 2013 whether they are eligible to get compensation? If yes, then what will be amount of compensation for the same? **(May 2023 RTP)**

**Answer:**

**Section 202 of the Companies Act 2013**, deals with the compensation for loss of office of managing or whole-time director or manager.

According to Sub-section 1, it provides that a company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement. Hence, Mr. Srinath and Ms. Smriti are not eligible for any compensation for loss of the office.

Further sub-section 2 provides that in certain cases wherein no payment shall be made as compensation, the clause (a) of sub-section 2 states, where the director resigns from his office as a result of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation, hence Mr. Rahul is not eligible for any compensation for loss of the office of MD at PSL.

Therefore, only Mr. Irfan will get the compensation for loss of office (Whole Time Director).

Besides, Sub-section 3 impose the limit on the amount of compensation. It states that any payment made to a managing or whole-time director or manager in pursuance of sub- section (1) shall not exceed the remuneration which he would have earned if he had been in office for the remainder of his term or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold office, or where he held the office for a lesser period than three years, during such period. So the maximum amount of compensation that can be paid to Mr. Irfan is ₹ 1.44 crore (₹ 48 lacs* 3 i.e. Unexpired period subject maximum of 3 year).

**Question 6**

Dr. Kishore Krishnan has opted to join as Independent Director in Rosemary Pharmaceuticals Limited which manufactures various kinds of medicines under the brand name “ROSE”. As an Independent Director, Dr. Krishnan is of the view that he needs to be paid amount ten thousand more than the sitting fees which is being paid to other directors for attending board meetings. You are required to comment on the viability of the proposal as per the Companies Act, 2013.

**(May 2023 RTP)**

**Answer:**

Section 197(5) of the Companies Act, 2013, states that a director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board:

Provided that the amount of such fees shall not exceed the amount as may be prescribed.
Further, Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides as under:

"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:

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

In view of the above provisions, Dr. Kishore Krishnan may be paid Rs. ten thousand more than the sitting fees which is being paid to other directors for attending board meetings but in no case the maximum payment shall exceed one lakh rupees per meeting of the Board or committee thereof. Thus, if other directors are being paid Rs. one lakh per meeting,

# 4. INSPECTION, INQUIRY AND INVESTIGATION

## No Questions

# 5. Compromises, Arrangements & Amalgamations

**Question 1**

STC Limited is a wholly owned subsidiary of HTC Limited. The 100% equity shares, fully paid-up, of STC Limited is held by HTC Limited including the shares held by 6 nominees of HTC Limited. In order to effectively utilize the resources, a proposal is under discussion in the board meeting of HTC Limited for merger of both the companies. The majority of the directors of HTC Limited opined in the board meeting that the merger has to be done through fast-track mode as per the provisions of Section 233 of the Companies Act, 2013. However, the Company Secretary was of the view that the merger of both the companies cannot be done through fast track mode as they are public companies. Referring to the provisions of the Companies Act, 2013-

*i.* Analyze the validity of merger of HTC Limited and STC Limited through fast-track mode.
*ii.* Examine, whether STC Limited can be merged with HTC Limited, if HTC Limited is a foreign company. **(May 2022 Suggested Answers)**

**Answer:**

**(i) Companies who may enter into scheme of Merger or Amalgamation [Section 233 (1)]:**

A scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or class or classes of companies as may be prescribed (i.e. between two or more start-up companies or one or more start- up company with one or more small company) if 100% of its share capital is held by the holding company, except the shares held by the nominee or nominees to ensure that the number of members of subsidiary company is not reduced below the statutory limit as provided in section 187 of the Companies Act, 2013.

**Validity of Merger of HTC Limited and STC Limited through Fast Track Mode.**

In the instant case, the 100% equity shares of STC Limited is held by HTC Limited including the shares held by 6 nominees of HTC Limited.

Yes, proposal for the merger of HTC Limited and STC Limited opined by the Board of Directors through fast-track mode will be valid subject to the following: -

(a) A notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within thirty days is issued by the transferor company or companies and the transferee company

(b) The objections and suggestions received are to be considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent of the total number of shares;

(c) Each of the companies involved in the merger files a declaration of solvency, in the prescribed form, with the Registrar of the place where the registered office of the company is situated; and

(d) The scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing.

**Contention of Company Secretary that the merger of both the companies cannot be done through fast-track mode as they are public companies, is incorrect.**

**(ii) Merger of STC Limited with HTC Limited, a Foreign Company:**

Section 234 of the Companies Act, 2013 makes provisions in respect of cross border mergers and amalgamations i.e., between Indian Company and a foreign body corporate. Procedure has been prescribed in Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. According to this Section, STC Ltd. can be merged with HTC Ltd. (if it's a foreign company) with RBI approval and after complying with provisions of Sections 230 to 232 of the Act and relevant Rules.

## Question 2

A Ltd. (transferee) decides to acquire B Ltd. (transferor) by acquiring its shares via a process of takeover u/s 235 of the Companies Act, 2013. A Ltd. prepared a scheme by which an offer was made to the shareholders of B Ltd. The offer was made on 1st August, 2019. The offer remained open for 4 months. Such offer was approved by shareholders having 92% value of the shares. Subsequently A Ltd. gave a notice to the remaining shareholders that it desires to acquire their shares. Such notice was given on 5th January, 2019. Certain dissenting shareholders made an application to the tribunal that acquisition of their shares should not be permitted. Such application was dismissed by the tribunal. Hence A Ltd. acquired shares of 5% of the dissenting

shareholders (out of balance 8%). The shareholding of balance 3% shareholders continued to remain with them. Comment on the validity of such a takeover by A Ltd. **(Nov 2022 MTP 2)**

**Answer:**

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

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

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

In the given case since application made by the dissenting shareholders has been dismissed by the tribunal hence A Ltd is entitled and bound to acquire all the shares of the dissenting shareholders i.e. entire 8% shareholding.

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

# 6. PREVENTION OF OPPRESSION & MISMANAGEMENT

**Question 1**

SOPS Limited is in the field of manufacturing of toys. The company has Authorised Share Capital of ₹ 50 Lakhs consisting of 40,000 equity shares of ₹ 100 each and 10,000 preference shares of ₹ 100 each. The company has issued 32,000 equity shares and 8,000 preference shares of which 24,000 equity shares and 6,000 preference shares are subscribed and fully paid-up. The company has 650 members holding equity shares and 200 members holding preference shares. A petition was submitted before the Tribunal signed by 90 members holding 3,100 equity shares of the company alleging various acts of oppression and mismanagement on the part of the company. During pendency of the petition, 10 petitioner-members holding 1,000 equity shares disassociated from the petition. Referring to the provisions of the Companies Act, 2013, answer the following:

(i) Whether the petition will be admitted?

(ii) Whether the petition will be maintainable after disassociation of the stated members?

**(May 2022 Suggested Answers)**

**Answer:**

**Right to apply for Oppression and Mis-management**:

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

- 100 members; or
- 1/10th of the total number of members; or
- Members holding not less than 1/10th of the issued share capital of the company.

Provided that the applicant or applicants has or have paid all calls and other sums due on his or their shares.
The share holding pattern of SOPS Limited is given as follows:

₹ 40,00,000 issued share capital (equity and preference) held by 850 members

The petition alleging oppression and mismanagement has been made by some members as follows:
(i) No. of members making the petition - 90 members holding 3100 equity shares of ₹100/- each.

(ii) Amount of share capital held by members making the petition - ₹ 3,10,000 The petition shall be valid if it has been made by the lowest of the following:

- 100 members; or
- 85 members (being 1/10th of 850); or
- Members holding ₹ 4,00,000 share capital (being 1/10th of ₹40,00,000)

(i) **Whether the Petition is maintainable?**

As it is evident, the petition made by 90 members meets the eligibility criteria specified under Section 244 of the Companies Act, 2013 as it exceeds the minimum requirement of 85 members in this case. Therefore, the petition is maintainable.

(ii) **Whether the petition is maintainable even after disassociation of the stated members?** The consent to be given by a shareholder is reckoned at the beginning of the proceedings. The withdrawal of consent by any shareholder during the course of proceedings shall not affect the maintainability of the petition [**Rajamundhry Electric Corporation Vs. V. Nageswar Rao A.I.R.].**

Hence, the petition will be maintainable even after disassociation of the stated members i.e., by 10 petitioner members holding 1,000 equity shares.

## Question 2

Anurag is the Managing Director of ABC Ltd. His term was expired in the month of September 2022 inspite of this, he is continuing to hold the office of MD. No meeting of the Board was held for his re-appointment. Being a shareholder of the company, can you take any action and how it will be taken? **(Nov 2022 MTP 2)**

**Answer:**

Where the term of the Managing Director has expired and he continues in office without a

meeting of the board being held for re-appointment, is considered as mis-management of the affairs of the company.
In such a situation an application to the NCLT for relief in case of Oppression and mis-management can be filed under section 241 read with section 244.
Section 241(1)(a) provides that any member of a company who complains that the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company, may apply to the Tribunal.

Section 244(1)(a) provides that in the case of a company having a share capital, not less than 100 members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares, shall have the right to apply under section 241.
May A shareholder of the company, in compliance with above procedure, can file an application for relief on mismanagement before the NCLT.

## Question 3

Modern Furniture Limited (MFL) is dealing in designer office and household furniture, MFL was incorporated in 2014, until 2018 MFL made huge profits and declares the dividend at extremely high rate nearly 400% i.e. (four time to the paid-up face value).

In 2019 MFL came-up with public issue of equity, therefore share capital was increased 3 times from 12 crores to 36 crores. The number of total registered member increased to 7680. The company drastically reduced the rate of dividend payment and paid only at average rate of 25% during 2019 to 2022.

Handful of the shareholders raised this issue and their concerns related to it, in all 4 annual general meetings (from 2019 to 2022), but they were not supported by large chunk of shareholders. They reached to chairman with their concern that they made investment after considering the rate of dividend which MFL was offering between 2014 and 2018. The chairman reverted back that MFL is aspired to open furniture showroom in 40+ cities in upcoming two years, in line of board's recommendations, hence declare the dividend at rate recommended by board.

The share capital of MFL consists of equity shares only.

Such minor chunk of shareholder (members), which are 84 in numbers and holding around 6% of the issued share capital (fully called and duly paid-up); approached you (a legal consultant) for advice on;

(a) Can minor chunk of shareholders object to lower dividend? Does lower rate of dividend amounts to oppression on minority?
(b) Is there any forum where at this minor chuck can register their grievance? Are they eligible to file petition? **(May 2023 RTP )**

**Answer:**

(a) Dividend is undoubtedly declared at AGM every year, but it is declared based upon the recommendation made by Board of Directors in this regards. Members (Shareholders) neither declare for dividend at higher rate than recommend by Board of Directors (refer entry 80 of table F given in schedule I to the Companies Act 2013) nor can they

pressurize Board to recommend dividend at some higher rate , although they may declare dividend at some lower rate. Hence, minor chuck of shareholder can't object to lower dividend.

Further, the lower rate of dividend shall not considered as oppression on the minority. However, if it can be proved that minorities are being deprived of genuine benefits,then can be amounts to oppression. Even failure to declare dividend doesn't amount to oppression. (Thomas Veddon V.J. v. Kuttanad Robber Co. Ltd).

If issue document of public issue of shares by MFL contains any commitment regarding high rate of dividend than actions for misstatement in prospectus can be taken, even if no one (investor) subscribe the share considering that commitment. (Actual loss to investor is not necessary for make any person liable for misstatement made by him in prospectus).

(b) Minority chunk of shareholders can seek redressal by advancing a petition to NCLT under section 241 of the Companies Act, 2013. In case of listed companies minorities may register their grievances for resolution in Investor Relations committee of the Board or file petition in NCLT.

Further under section 244 of the Companies Act, 2013, it is provided that in the case of a company having share capital, the following member(s) have the right to apply to the Tribunal under section 241;

(i) Not less than 100 members of the company or not less than one-tenth of the total number of members, whichever is less; or

(ii) Any member or members holding not less than one-tenth of the issued share capital of the company provided the applicant(s) have paid all the calls and other sums due on the shares.

But in given the case, there are only 84 members i.e. 1.09% of total of 7680 members, and holding nearly 3% of issued share capital, hence petition can't be advanced to NCLT.

# 7. COMPANIES INCORPORATED OUTSIDE INDIA

**Question 1**

RFC Limited has been incorporated in Singapore and has a business place in Mumbai. The company has issued 5,00,000 shares of USD 100 each, consisting of 4,00,000 equity shares and 1,00,000 preference shares. The issued share capital is fully paid up except 5,000 preference shares where USD 50 per share is unpaid.

RJW, an Indian citizen is holding 26,000 preference shares which include 1100 partly paid- up shares and Ronte Limited incorporated in New-Delhi (India) is holding 2,23,500 equity shares in RFC Limited.

The Registrar of Companies issued notice under Section 379 of the Companies Act, 2013 addressed to the person whose name and address has been delivered to the Registrar by RFC Limited for compliance under the Companies Act, 2013 for foreign companies.

The above notice was Delivered at the address which was given by RFC Limited to the Registrar of Companies.

Answer the following, referring to the provisions of the Companies Act, 2013:

(i) Whether RFC Limited is a foreign company?

(ii) Whether service of notice by the Registrar of companies is valid?

**(May 2022 Suggested Answers)**

**Answer:**

**(i) Whether RFC Limited is a Foreign Company ?**

**Definition of a Foreign Company**

As per **Section 2(42)** of the Companies Act, 2013, "Foreign Company" means any company or body corporate incorporated outside India which has a place of business in India whether by itself or through an agent, physically or through electronic mode; and conducts any business activity in India.

**Provision of Section 379(2): Requirement of holding of paid up share capital of Foreign Company:**
Further, in the light of the inputs given in the problem, where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company incorporated outside India is held 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 foreign company shall also comply with the provisions of Chapter XXII and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India. [Section 379(2)]

In the given case, RFC Limited, incorporated in Singapore has a business place in Mumbai. The Company has issued 5,00,000 shares of USD 100 each i.e. of USD 5,00,00,000 comprising of USD 4,00,00,000 equity share capital (i.e. 4 lac* USD 100) and USD 1,00,00,000 preference share capital ( i.e,1 lac * USD 100).

As the issued capital was fully paid up except 5,000 preferences shares (i..e, 5000* 50= USD 2,50,000), so, total paid up share capital of the RFC limited is:

| | |
|---|---|
| Equity Share Capital | USD 4,00,00,000 |
| Preference Share Capital (Full Paid) | USD 95,00,000 |
| Preference Share Capital (Partly Paid) | USD 2,50,000 |
| Total Paid up Share Capital | USD 4,97,50,000 |

As per facts, shareholding by RJW, an Indian citizen is USD 25,45,000 preference share capital (i.e. 26,000 shares *USD 100- 1100 shares * USD 50) and Ronte Limited incorporated in New-Delhi (India) is holding USD 2,23,50,000 equity share capital (i.e., 2,23,500 *USD 100) in RFC Limited. Aggregate shareholding is USD 2,48,95,000.

As per requirement of Section 379(2), RJW, an Indian citizen and Ronte Limited incorporated (an Indian Company) were holding more than 50% of the shareholding (i.e. 50%* USD 4,97,50,000 = 2,48,75,000) in RFC Limited.
Therefore, RFC Ltd. is not only a foreign company as per Section 2(42) but shall also be complying with the provisions of Chapter XXII and other provisions of this Act with regard to the business carried on by it in India, as if it were a company incorporated in India as per Section 397(2) .

**(ii) Whether service of notice by the RoC is valid?**

Yes, the service of notice by the Registrar of Companies is valid in the light of Section 383 of the Companies Act, 2013. According to the provision any process, notice, or other document required to be served on a foreign company, shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar and left

at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

## Question 2

A company incorporated in France, with limited liability, established an office in Baroda, and started conducting business activity from its place of business. In compliance of Section 382 of the Companies Act, 2013, it conspicuously exhibited a name board outside its office, with the name of the company in English in big block letters.
In three days, the company received a notice from the Registrar stating that it had not properly complied with the requirements of Section 382 of the Companies Act, 2013. Mention the areas of lapses of the foreign company, which would be mentioned in the notice. **(Nov 2022 MTP 1)**

**Answer:**

**According to Section 382 of the Companies Act, 2013,**

- every foreign company shall conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;
- if the liability of the members of the company is limited, cause notice of that fact—

(I) to be stated in every such prospectus issued and in all business letters, bill -heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and

(II) to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situated.

After taking into account the provisions of Section 382 of the Companies Act, 2013, the following are the lapses by the company:

(i) The company has exhibited the name of the company in English but it has not displayed the name of the Country where it was incorporated, name of the country. Further, it has not displayed both the facts in the local language or one of the languages in general use in the locality in which the office or place is situated. i.e. Baroda.

(ii) Further the company is one where the liability of members is limited. The fact that the members liability is limited has not been conspicuously exhibited on the outside of every office or place i.e. in Baroda, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality i.e. Baroda

The above lapses would have given rise to the notice from the Registrar.

## Question 3

(i) Elegant Educations Ltd. is a UK based company, engaged in the business of providing on- line education. It has introduced some certificate courses having duration of 4 to 6 months and any person can enroll in the courses. The education is provided through on-line classes, webinars and study materials are supplied through e-mails to the registered candidates. The company is

not having any place of business in India. It is mentioned that all the candidates who have enrolled in the course are the Indian Citizens residing in India.
Based on the above facts of procuring 100% business from India, whether the company will be treated as foreign company or an Indian company.

(ii) What will be your answer if in the above question, more that 55% of that foreign company's paid-up share capital is held by Indian Companies or Indian Citizens.

**(Nov 2022 MTP 2)**

**Answer:**

**(i) In terms of Section 2(42) "Foreign Company"** means any company or body corporate incorporated outside India which—
(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
(b) conducts any business activity in India in any other manner.

Further Rule 2(1)(c)(iv) of the Companies (Registration of Foreign Companies) Rules, 2014 provides that for the purposes of clause (42) of section 2 of the Act, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to online services such as telemarketing, telecommuting, telemedicine, education and information research.

Thus, from the above provisions the company is treated as foreign company irrespective of the fact that its 100% business comes from India.

(ii) Section 379(2) provides that where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by-
- one or more citizens of India; or
- one or more companies; or
- bodies corporate incorporated in India;
- one or more citizens of India and one or more companies or bodies corporate incorporated in India,

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

Thus, in the given case, if more that 50% of the paid-up share capital is held by Indian Companies / Citizen it shall be treated as a company incorporate in India and such company shall abide by the provisions of Section 380 to 386 (both inclusive) and Section 392 and 393 shall be applicable.

## Question 4

Zell Power LLC (ZPL), is foreign company as per definition provided in the Companies Act 2013, carrying business in India also. It is strictly observing the provisions stated for foreign companies in Companies Act 2013, while Registrar (ROC, Delhi) is of opinion that ZPL apart from observing the provision prescribed for foreign companies (section 380 to 386 along section 392 and 393) ZPL also need to observe other provisions of the Companies Act, 2013 with regard to the business carried on by it in India as if it were a company incorporated in India.

ZPL is not agreed to opinion of Registrar and continue to observe only those provisions which are applicable to foreign companies. ZPL also furnish the following details to ROC. ZPL capital includes;

Ordinary Share (6 million @ Face Value £ 5 with £ 2 Paid-up) – £12 Million
Preference Stock (1.2 million @ £10 fully Paid-Up) - £ 12 Million
Debt Fund - £ 21.25 Million

Out of which;

Mr. Trishi who is an Indian citizen and residing in India being part of promoter group own 2,932,780 ordinary shares of ZPL.

Mr. Nirav who is an Indian citizen but residing in UAE own 109,205 preference stock of ZPL
Modern Engineering Limited that an Indian Company own 67,220 ordinary shares and 142,320 preference stocks of ZPL

Raj Investment Limited, which is an Indian Company holds 393,475 preference stocks of ZPL

You are required to evaluate the facts, and determine whose opinion hold legal validity in the light of the relevant provisions of the Companies Act, 2013. **(May 2023 RTP)**

**Answer:**

Section 379 of the Companies Act 2013 deals with application of Act to foreign companies.
Sub-section 2 to section 379 provides **where not less than fifty percent of the paid-up share capital (whether equity or preference or partly equity and partly preference) of a foreign company is** held by

(i) one or more citizens of India or
(ii) one or more companies or bodies corporate incorporated in India, or
(iii) 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.

Total of ordinary shares held by Indian citizen or corporation in aggregate are 3 million (i.e. 2932780 and 67220) whose paid-up value is £6 million

Total of preference stock held by Indian citizen or corporation in aggregate are 0.645 million (i.e. 109,205, 142,320, and 393,475) whose paid-up value is £6.45 million

Since out of paid-up capital of £24 (i.e. £12 million ordinary share capital + £12 million preference share capital) of ZPL, £12.45 million held by citizens of India along with companies incorporated in India, in aggregate hence ZPL 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. Opinion of Registrar is legally valid and shall prevail.

# 8.MISCELLANEOUS PROVISIONS

## Question 1

**The following balances are extracted from the last audited financial statement of Blow (Nidhi) Limited.**

| Particulars | Amount in ₹ |
|---|---|
| Paid up Equity Share capital | 15,00 000 |
| Paid up Preference Share Capital | 5,00,000 |
| Free Reserves | 1,00,000 |
| Tangible Assets | 10,00,000 |
| Intangible Assets | 2,00,000 |

Referring to the Nidhi Rules, 2014, as amended from time to time, formulated under the Companies Act, 2013 answer the following:
(i) Compute the Net Owned Funds of Blow (Nidhi) Limited.
(ii) Compute the Maximum amount of deposits that Blow (Nidhi) Limited can accept.

**(May 2022 Suggested Answers)**

**Answer:**

**(i) Computation of Net Owned Funds of Blow (Nidhi) Limited Provision**

According to Rule 3 of the Nidhi Rules, 2014, "Net Owned Funds" means the aggregate of paid-up equity share capital and free reserves as reduced by accumulated losses and intangible assets appearing in the last audited balance sheet.

Provided that the amount representing the proceeds of issue of preference shares shall not be included for calculating Net Owned Funds.
**Calculation**

| **Particulars** | **Amount in ₹** |
|---|---|
| Paid up Equity Share Capital | 15,00,000 |
| Free Reserves | 1,00,000 |
| Less: Intangible Assets | (2,00,000) |
| **Net Owned Funds** | **14,00,000** |

(ii) **Computation of maximum amount of deposits that Blow** (Nidhi) Limited can accept According to Rule 11 of the Nidhi Rules, 2014, a Nidhi shall not accept deposits exceeding twenty times of its Net Owned Funds (NOF) as per its last audited financial statements.

Hence, Blow (Nidhl) Limited can accept maximum ₹ 2,80,00,000 (20 times of ₹ 14,00,000) as deposits.

## Question 2

Anoor Sheep Private Limited, a small company, donated, One Lakh to a Political Party in the month of May 2021. The Company has been in existence for less than three financial years and it has, thus, contravened the provisions of Section 182 of the Companies Act 2013. Eventually, a

fine of ₹ 5 Lakh, ignoring the legal status of the company, was imposed by the Adjudicating Officer (Registrar of Companies) on the Company. Anoor Sheep Private Limited approached the Registrar of Companies with a request to levy lesser penalties. Referring to the provisions of the Companies Act, 2013, answer the following:

*(i)* Is it possible to levy lesser penalty?

*(ii)* If so, compute the quantum of the penalty that will be payable by the Company.

**(May 2022 Suggested Answers)**

**Answer:**

According to Section 446B of the Companies Act, 2013, if penalty is payable for non- compliance of any of the provisions of this Act by a One Person Company, Small Company, Start• up Company or Producer Company, or by any of its officer in default, or any other person in respect of such company, then such Company, its officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than one- half of the penalty specified in such provisions subject to a maximum of two lakh rupees in case of a company and one lakh rupees in case of an officer who is in default or any other person, as the case may be.

**Section 182 of the Companies Act, 2013, provides:**

(1) a company which has been in existence for less than three financial years is not allowed to contribute to any political party

(2) if a company makes any contribution in contravention of the provisions of Section 182, he company shall be punishable with fine up to five times the amount of contribution so made.

In the light of the above provisions and facts of the question, the following are the answers

(i) **Is it possible to levy Lesser Penalty?**

Yes, it is possible to levy lesser penalty as Anoor Sheep Private Limited is a small company and section 446B provides for lesser penalty for small companies.

(ii) **Computation of the Quantum of Penalty**

Anoor Sheep Private Limited has contravened the provisions of section 182 and is liable to penalty (maximum 5 times of ₹ 1,00,000), however, it being a small company cannot be penalised for an amount exceeding ₹ 2,00,000 [(1/2 of ₹ 5,00,000) subject to a maximum of two lakh rupees].

## Question 3

B. Pharma Ltd. is a company registered in India for last 5 years. Since last 2 financial years, it has not been carrying on any business or operations and has not filed financial statements and annual returns saying that it has not made any significant accounting transaction during the last two financial years.

Considering the current situation, Directors of the Company is contemplating to apply to Registrar of Companies to obtain status of dormant or inactive company. Advise them on:

(i) Whether B. Pharma Ltd. is eligible to apply to Registrar of Companies to obtain dormant status for the company?

(ii) What will be your answer, if B. Pharma Ltd is continuing payment of fees to Registrar of Companies and payment of rentals for its office and accounting records for last two financials years? **(Nov 2022 RTP)**

**Answer:**

(i) **According to section 455 of the Companies Act, 2013**, an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.
Here, "inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.

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

(ii) According to Explanation to section 455, "significant accounting transaction" means any transaction other than—
(1) payment of fees by a company to the Registrar;
(2) payments made by it to fulfill the requirements of this Act or any other law;
(3) allotment of shares to fulfill the requirements of this Act; and
(4) payments for maintenance of its office and records.

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

**Question 4**

Jackpot Limited, a public company, with 7 Directors in the Board, had not filed annual returns and financial statements for 2 consecutive financial years. The Register after required formalities, entered the name of the company in the register maintained for dormant companies.

One of the directors suggested that since, the company was now registered as a dormant company, the company need not have 7 directors and having one or maximum two directors would suffice.

Following his advice, 5 directors resigned, and the company was left with only 2 directors. The existing two directors did not file any statement with the Registrar, regarding change of directors.

Advise stating the provisions of Section 455, of the Companies Act, 2013, whether the reduction in the number of directors and not filing a statement with Registrar regarding change of Directors, is appropriate. **(Nov 2022 MTP 1)**

**Answer:**

A dormant Company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the

Register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed.
According to Rule 6 of the Companies (Miscellaneous) Rules, 2014, a dormant company shall have a minimum number of 3 directors in case of a public company, 2 directors in case of a private company and 1 director in case of a One Person Company.
According to the Rule 7 of the Companies (Miscellaneous) Rules, 2014, a dormant company shall also continue to file the return / returns and change in directors in the manner and within the time specified in the Act, or whenever the company allots any security to any person or whenever there is any change in the directors of the company.

Under the provisions, a dormant public company should have minimum 3 directors. The reduction of number of directors to 2 is not appropriate.

Hence, by taking into account the above provisions, reduction in the number of directors to 2 and not filing a statement with Registrar regarding change of Directors by Jackpot Limited is not appropriate.

## Question 5

Sukesh after passing of the CA examination, applied for the membership and Certificate of Practice from ICAI. Sukesh married to Manyata, who has done Graduation in Civil Engineering. Manyata had worked for 6 years in Town Planning Dept in Brihanmumbai Municipal Corporation, Mumbai.
After one year of his practice Sukesh appeared in valuation examination ( Securities or Financial Assets). Sukesh also advised Manyata to appear in valuation exam (Land and Building). Both, Sukesh and Manyata passed the respective examination of valuation and applied for membe rship of IBBI.
Based on the above facts answer the following sub-questions:
(i) Whether Sukesh is eligible to be Registered Valuer?
(ii) Whether Manyata is eligible to be Registered Valuer?
(iii) Whether Manyata is eligible to accept valuation of Securities or Financial Assets?
**(Nov 2022 MTP 2)**

**Answer:**

(i) In terms of the Companies (Registered Valuers and Valuation) Rules, 2017, Sukesh is not eligible to be the Registered Valuer of Securities or Financial Assets, since he is not having the minimum experience of 3 years.
(ii) In terms of the Companies (Registered Valuers and Valuation) Rules, 2017 , Manyata is eligible to be the Registered Valuer of Land & Building, since she is having the minimum experience of 5 years after her graduation in Civil Engineering.
(iii) Manyata can do the valuation of Land and Building only and not of the Securities or Financial Assets since she is not the Registered Valuer for SFA.

She can do the valuation of SFA only, if she is possessing the requisite qualifications and experience, passes the valuation examination of SFA and get herself registered with IBBI as Register Valuer of SFA.

## Question 6

Vikas Nidhi Ltd was incorporated as a Nidhi Company in the year 2018. It has 500 members with a Net Owned Funds (NOF) of 10 crore rupees and deposits of 190 crores as of 31.03.2022. For the FY 2022-23 the company targets-

(i) To raise deposits by 20%.
(ii) To invite the public to deposit with the company.
(iii) To issue lockers to the depositors.
(iv) To grant loan against Gold Jewellery to any person.

Examine each of the above points, whether the Nidhi company is permitted to do so? **(Nov 2022 MTP 2)**

**Answer:**

**(i) To raise deposits by 20%:** As per Rule 5(1)(d) the ratio of NOF to deposits should not be more than 1:20. As on 31.03.2022 the NOF was 10 crore rupees and deposits was 190 crores. If target of deposit is achieved then the deposit will be 228 crore rupees, which exceed the ratio of 1:20. Thus, either the NOF shall be increased or deposits be restricted up to 200 crores.

**(ii)** **To invite the public to deposit with the company:** In terms of Rule 6(f), no Nidhi company can accept deposits from or lend to any person, other that its members.

**(iii)** **To issue lockers to the depositors**: In terms of proviso attached to Rule 6(e), the Nidhi Companies which adhered to all the provisions of these rules may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding 20% of the gross income of the Nidhi at any point of time during a financial year.

**(iv)** **To grant loan against Gold Jewellery to any person:** In terms of Rule 6(f), no Nidhi company can accept deposits from or lend to any person, other that its members. Hence the gold loan to any person, other than the members is prohibited.

**Question 7**

Progress Ltd. was incorporated with charitable object under Section 8 of the Companies Act, 2013. However, the company made default in complying with the requirements relating to the formation of companies with charitable object.

Whether this offence is a compoundable offence? State the relevant provisions of the Companies Act, 2013. **(Nov 2022 MTP 2)**

**Answer:**

Section 8(11) of the Companies Act, 2013 provides that if a company makes any default in complying with any of the requirements laid down in Section 8, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than 10 lakh rupees but which may extend to one crore rupees and the Directors and every officer of the company who is in default shall be punishable with fine which shall not be less than 25,000 rupees but which may extend to 25 lakh rupees.

Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.

Any offence punishable under this Act (whether committed by a company or any officer thereof) not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by

–

**Offence compoundable by the NCLT:** Default by the company in complying with the requirements relating to formation of companies with charitable objects etc.

**Offence compoundable by the Regional Director**: Default by the officers in complying with the requirements relating to formation of companies with charitable objects etc. where the maximum amount of fine which may be imposed for such offence does not exceed twenty-five lakh rupees.
Any officer authorised by the Central Government.

## 9. NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL

## NO QUESTIONS

# 10.WINDING UP

**Question 1**

Green Rose Limited is regularly filing its annual financial statements with the Registrar of Companies (RoC). The Company is suffering losses continuously for the past 5 years. The annual financial statements disclosed that the liabilities are ten times of its assets as per the latest audited financial statements. Based on the financial position revealed by the financial statements filed with his office, the RoC came to the conclusion that the Company should be wound up in the public interest being unable to pay its debts. The RoC filed a petition before the Tribunal [NCLT] under Section 272 of the Companies Act, 2013 for winding up of the Company without obtaining previous approval therefor. Referring to the provisions of the Companies Act, 2013.

(i) Enumerate the circumstances in which a company may be wound up by the Tribunal.
(ii) Examine the validity of the petition filed by the RoC **(May 2022 Suggested Answers)**

**Answer:**
(i) **Circumstances in which company may be wound up by Tribunal:**

According to Section 271 of the Companies Act, 2013, a company may be wound up by the Tribunal in the following circumstances, where-

(a) the company has, by special resolution, resolved that the company be wound up by the Tribunal;
(b) the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;
(c) on an application made by the Registrar or any other person authorised by the Central Government. The Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner/ formed for fraudulent and unlawful purpose / the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;

(d) the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or
(e) the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

**(ii) Validity of the petition filed by the RoC**

According to Section 272 of the Companies Act, 2013, the Registrar of Company is entitled to present a petition for winding up under section 271 except on the grounds specified in clause (a) of that Section.

Provided that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition. The Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.

Here in the given instance, RoC filed a petition before the Tribunal for winding up without obtaining previous approval of the Central Government.

**Therefore, the petition filed by the RoC is invalid.**

**Question 2**

The Tribunal has made an order for winding-up of LTR Private Limited Consequently, considering the report of the Liquidator stating that Mr. Tejas has committed the fraud in formation of the company, the Tribunal directed him to present himself for examination. However, Mr. Tejas defended the order on the ground that he was never a promoter, director, officer or employee of the Company, Examine the tenability of the stand taken by Mr. Tejas to defend the order of the Tribunal and enlighten him of the rights available to the person to be examined in light of the provisions of the Companies Act, 2013. **(Nov 2022 RTP)**

**Answer:**

**Power of the Tribunal to order the person to attend and be examined before the Tribunal:**

As per Section 300 of the Companies Act, 2013 (the Act) where an order has been made for the winding up of a Company by the Tribunal, and the Company Liquidator has made a report to the Tribunal under this Act, stating that, in his opinion, a fraud has been committed by any person in the promotion, formation, business or conduct of affairs of the Company since its formation, the Tribunal may, after considering the report, direct that-
(i) such person or officer shall attend before the Tribunal on a day appointed by it for that purpose, and
(ii) be examined as to promotion or formation or the conduct of the business of the Company or as to his conduct, and
(iii) dealings as an officer thereof.

Hence, Mr. Tejas is bound to appear before the Tribunal for examination even if he was not a promoter, director, officer or employee of the Company as the Tribunal has powers to direct any person to appear for examination. Hence, his stand is not tenable,

**Rights available to the person to be examined:**

A person ordered to be examined under this Section:
May
(i) shall, before his examination, be furnished at his own cost with a copy of the report of the Company Liquidator; and
(ii) may at his own cost employ Chartered Accountants or Company Secretaries or Cost Accountants or legal practitioners entitled to appear before the Tribunal under Section 432 of the Act, who shall be at liberty to put to him such questions as the Tribunal may consider just for the purpose of enabling him to explain or qualify any answers given by him. He may exercise the rights conferred on him as above.

## Question 3

Simar Limited was in the process of liquidation. It had some correspondence with its auditor, which was in the company's letter head. The auditor observed that the letter head was not in compliance with Section 344, as it did not mention the fact that the company was being wound up. He immediately called up one of the directors and advised him about the provisions of Section 344 and the consequences of non-compliance. State, the provisions and consequences regarding which the auditor would have advised. **(Nov 2022 MTP 1)**

**Answer:**

**Statement that Company is in Liquidation [Section 344 of the Companies Act, 2013]**

(1) **Statement of winding up**: Where a Company is being wound up, whether by
- the Tribunal or
- voluntarily,

every invoice, order for goods or business letter issued-
- by or on behalf of the Company or
- by a Company Liquidator of the Company, or
- by a receiver or
- by the manager of the property of the Company,

being a document on or in which the name of the Company appears, shall contain a statement that the Company is being wound up.

(2) **If a company contravenes the above provisions**, the company and every officer of the Company, the Company Liquidator and any receiver or manager, who willfully authorizes or permits the non-compliance, shall be punishable with fine which **shall not be less than fifty thousand rupees but which may extend to three lakh rupees.**

**In the instant case, the Auditor would have advised accordingly.**

## Question 4

Covid 19 pandemic has badly affected the business of travel ticket booking agent company. Restrictions & frequent lockdowns led to the permanent closure of the company's operations. The secured creditors of the company of value ₹ 50 Lakhs filed a winding up petition with the High court & subsequently the HC passes a winding up order. The workers of the company were not favouring this and hence filed an appeal against the winding up order. The workmen's dues were ₹ 30 Lakhs. The secured creditors were against this defending that their dues were more than the workmen's & hence not valid. Is the creditor's statement correct? Enumerate in the light of the Companies Act, 2013 ? **(Nov 2022 MTP 1)**

**Answer:**

According to section 279 of the Companies Act, 2013, when a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose:
Provided that any application to the Tribunal seeking leave under this section shall be disposed off by the Tribunal within sixty days.
Nothing as stated above, shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.
According to Section 325,326,327 of the Companies Act, 2013, in case of winding up of a company, the workmen's dues shall be paid in priority to all other debts ranking Pari passu with the secured creditors.
As per the facts of the case, the High court has already passed a winding up order of the company. Hence, the workmen can appeal against the winding up order but only with the leave of Tribunal and subject to the terms imposed by the Tribunal. Further, the dues / interests of the workmen shall be protected in priority as workmen's dues shall be paid in priority to all debts ranking Pari passu with secured creditors.
Hence, even though the dues of secured creditors are more than workmen's dues, priority is given to workmen's dues as per provisions of the Act.

**Question 5**

The Registrar of Company (RoC), Mumbai has observed that Ronak Enterprises Ltd. have not filed its financial statements and annual returns for the last immediately preceding 5 consecutive years. What course of action is available before the RoC in the given case in line with the requisite compliance on the presentation of petition? **(Nov 2022 MTP 2)**

**Answer:**

Section 272(1)(d) of the Companies Act, 2013, states that a petition to the Tribunal for the winding up of a company can be presented by the Registrar. Sub-section (3) provides that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition. The Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.

Section 271 (d) provides that 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.

A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.

A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.

# 11.Compounding of Offences, Adjudication & Special Court

## No Questions

# 12.CORPORATE SECRETARIAL PRACTICE – DRAFTING OF NOTICES, RESOLUTIONS, MINUTES AND REPORTS

**Question 1**

Maharaja Limited proposed to appoint Mr. Mantri as its Managing Director for a period of 5 years with effect from 1st May, 2022. Mr. Mantri fulfils all the conditions as specified under Schedule V to the Companies Act, 2013.

The terms of appointment are as under:

(i) Salary. 1 lakh per month;
(ii) Commission, as may be decided by the Board of Directors of the company;
(iii) Perquisites; Free Housing,

Medical reimbursement upto 10,000 per month,
Leave Travel concession for the family,
Club membership fee,
Personal Accident Insurance 10 lakh,
Gratuity, and Provident Fund as per Company's policy.

You being the Secretary of the said Company are required to draft a resolution to give effect to the above, assuming that Mr. Mantri is already the Managing Director in a Limited company.

**(Nov 2022 RTP)**

**Answer:**

Resolution passed at the meeting of board of directors of Maharaja Limited held at its registered office situated at ……..…on ……..(day), the (date) at A.M.

"Resolved that consent of all the directors present at the meeting be and is hereby accorded to the appointment of Mr. Mantri, who is already the Managing Director of another limited company, and fulfils the conditions as specified in Schedule V of the Companies Act, 2013, as the Managing Director of the company for a period of 5 years effective from 1st May, 2022 subject to approval by a resolution of shareholders in a general meeting and that Mr. Mantri may be paid remuneration as follows:

**(i)** Salary of ₹ 1 Lakh per month
**(ii)** Commission
**(iii)** Perquisites: Free Housing, Medical reimbursement upto ₹ 10,000 per month, Leave Travel Concession for the family, Club membership fee, Personal Accident Insurance of ₹10 Lakhs, Gratuity, Provident Fund etc.

Resolved further that in the event of loss or inadequacy of profits, the salary payable to him shall be subject to the limits specified in Schedule V.

Resolved further that the Secretary of the company be and is hereby authorize to prepare and file with the Registrar of Companies necessary forms and returns in respect of the above appointment."

Sd/
Board of Directors Maharaja Limited

**Question 2**

Draft a resolution for authorising to make application for compounding of offence under Section 8 of the Companies Act, 2013. **(Nov 2022 MTP 2)**

**Answer:**

**Draft Resolution for Authorizing to make application for Compounding of an Offence under Section 8 of the Companies Act, 2013.**

**RESOLVED THAT** an application be made to the Registrar of Companies pursuant to clause (a) of sub-section (3) of Section 441 of the Companies Act, 2013 for compounding the offence for which prosecution has been filed with the request to forward the same to the Tribunal for necessary action.

**RESOLVED FURHTER THAT** Mr. Joseph, the Managing Director of the Company, be and is hereby authorised to file/ move/ present/ before the Registrar of Companies, Mumbai, Tribunal, Mumbai, Central Government and / or such other judicial /quasi-judicial and / or administrative authority(es), as may be deemed appropriate and advised to by the legal counsels, such petitions/ application including any application for compounding on behalf of the Company, in connection with the show cause notice issued by the Registrar of Companies, Mumbai for violation of provision of Section 8 of the Companies Act, 2013 and any penal proceedings/ complaint initiated or may be initiated against the Company and / or directors / officials of the Company, and further verify, sign, affirm, submit the said petitions / applications including and other statements forming part of such petitions / applications.

# 13.THE SECURITY & EXCHANGE BOARD OF INDIA ACT, 1992 & SEBI LODR

**Question 1**

ABC Limited mobilized the funds from the public towards development of plots under "Cash-down Payment Scheme". The said scheme, inter alia, stipulates the following terms & conditions.

*(i)* The plot will be allotted to the customer after completion of 9 months from the date of agreement.
*(ii)* No specific plot is mentioned at the time of entering into the agreement.
*(iii)* The company has authority for developing and maintaining the plots.
*(iv)* The amount mobilized under the scheme will be utilized for the purpose of the scheme.
*(v)* The customers do not have day-to-day control over the development of plots.

**Other information:**

*(i)* The scheme is registered with the Securities and Exchange Board of India [SEBI]

*(ii)* The Company had raised ₹ 100 Crores under the Scheme.

Referring to and analyzing the provisions of the Securities and Exchange Board of India Act, 1992, decide:

*(i)* Whether the "Cash-down Payment Scheme" operated by ABC Limited is a Collective Investment Scheme.

***(ii)*** What will be your answer in case the scheme is not registered with SEBI?

**(May 2022 Suggested Answers)**

**Answer:**

**"Collective Investment Scheme"** means any scheme or arrangement which satisfies the conditions specified in Section 11AA of the Securities and Exchange Board of India, Act, 1992 [Section 2(1)(ba)]

Collective investment Scheme [Section 11AA]: Any scheme or arrangement which satisfies following conditions, shall be a collective investment scheme as specified in sub-section (2) or sub- section (2A).

Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board, involving a corpus amount of one hundred crore rupees or more, shall be deemed to be a collective investment scheme.

**Requisite conditions [Section 11AA(2)]:** Any scheme or arrangement made or offered by any person under which -

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement;

(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, from such scheme or arrangement;

(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;

(iv) the investors do not have day-to-day control over the management and operation of the scheme or arrangement. [Sub-section 2]

**Section 11AA(2A)·** Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.

Accordingly, following shall be the answers:

(i) Yes, "Cash -down Payment Scheme" operated by ABC Limited is a Collective Investment Scheme in compliance with the requisite conditions and is registered with the SEBI.

(ii) In the given case, if the Scheme is not registered with SEBI, then any pooling of funds under any scheme, involving a corpus amount of one hundred crore rupees or more, shall be deemed to be a Collective Investment Scheme.

**Therefore, the answer will remain the same.**

## Question 2

'SEBI has powers to pass cease and desist order'. Examine the statement with reference to the provisions of the Securities and Exchange Board of India Act, 1992. **(May 2022 Suggested Answers)**

**Answer:**

According to **Section 11D of the SEBI Act, 1992**, if the Board finds, after causing an inquiry to be made, that any person-
(i) has violated, or
(ii) is likely to violate,

any provisions of this Act, or any rules or regulations made thereunder.

It may pass an order requiring such person to cease and desist from committing or causing such violation.
Provided that the Board shall not pass such order in respect of any listed public company or a public company (other than the intermediaries specified under section 12) which intends to get its securities listed on any recognized stock exchange unless the Board has reasonable grounds to believe that such Company has indulged in insider trading or market manipulation.

In view of the above, the statement that SEBI has powers to pass cease and desist order, is correct subject to the conditions provided in Section 11(D) of the SEBI Act. 1992.

## Question 3

Ramesh has been appointed as member of the SEBI by the Central Government. Ramesh also holds directorship in 6 other listed entities. The meetings of the SEBI Board are being conducted on and often as per the requirement and all the members attend the meetings and members are expected to discuss over the agenda and vote. However, on certain occasions Ramesh attended the meetings but did not discuss and voted on some of the agenda items due to conflict of interest.
In light of this, explain the provisions of SEBI Act, 1992 in which a member is not supposed to discuss and vote on the agenda in the Board meeting? **(Nov 2022 MTP 2)**

**Answer:**
**In terms of Section 7A of the SEBI Act, 1992 any member-**
- Who is a director of a company; and
- Who as such director has any indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board,

shall, disclose (As soon as possible after relevant circumstances have come to his knowledge) the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Board, and the member shall not take any part in any deliberation or decision of the Board with respect to that matter.

## Question 4

Charming Limited, a Listed Company, has constituted Nomination and Remuneration Committee (NRC) which was consisting of 5 members. The Chairman of the Committee is an independent director and 3 other independent director are the members. Besides, the Chairman of the company, who is a whole-time director, has also been adopted as a member of the committee. Based on the given information and referring to the provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, examine the following:
(i) Compliance requirement of the composition of NRC.
(ii) Quorum for the meeting of NRC. **(Nov 2022 RTP)**

**Answer:**

As per Regulation 19 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the Board of Directors shall constitute the Nomination and Remuneration Committee (NRC) as follows:

**(i) Compliance requirement of the composition of NRC**

(a) The Committee shall comprise of at least 3 directors
(b) All directors of the Committee shall be Non-Executive Directors; and
(c) At least 2/3rd of the directors shall be independent directors.

The Chairperson of the listed entity, whether executive or non-executive, may be appointed as a member of the NRC and shall not chair such Committee. The NRC of Charming Limited meets all these requirements and hence the composition requirement of the NRC is in compliance with Regulation 19 of SEBI (LODR) Regulations, 2015.

**(ii) Quorum for the meeting of NRC**

The quorum for a meeting of NRC shall be either two members or one third of the members of the Committee, whichever is greater, including at least one independent director in attendance.

## Question 5

Modern Furniture Limited (MFL) is a listed company dealing in furniture, with expertise in Space-saving foldable furniture items. Board of MFL through its chairman instructs the secretary to call and convene board meeting to consider certain agenda items.
If board meeting to be taken place on 9th January 2023, then after explaining the relevant SEBI Regulation regarding prior intimations to Stock Exchanges of the Board Meetings, where certain proposals are to be considered, you are required to list the cut-off date of intimation in each of following cases considering these as independent case from each other.
(a) Consider quarterly financial results
(b) Proposal for buy-back
(c) Change in interest cycle of debenture
(d) Conversion of securities
(e) Reconsidering redemption date of preference shares **(May 2023 RTP)**

**Answer:**

Provisions related to prior intimation of Board Meeting where any of the following proposals is to be considered are included in Regulation 29 of SEBI (LODR) Regulations, 2015 are;
(i) **At least 5 clear Days** excluding the date of the intimation and date of the meeting in which financial results viz. quarterly, half yearly, or annual to be considered.
(ii) **At least 2 clear Working Days** excluding the date of the intimation and the meeting for the given proposals.
   (a) proposal for buyback of securities
   (b) proposal for voluntary delisting
   (c) fund raising by way of
      1. Further public offer
      2. Rights Issue
      3. American Depository Receipts
      4. Global Depository Receipts
      5. Foreign Currency Convertible Bonds

6. Qualified institutions placement
7. Debt issue
8. Preferential issue and
9. Determination of issue price.

(d) Any AGM or EGM or Postal Ballot proposed to be held for obtaining shareholder approval for further fund raising indicating type of issuance.

(e) Declaration/recommendation of dividend, issue of convertible securities including convertible debentures or of debentures carrying a right to subscribe to equity shares or the passing over of dividend.

(f) The proposal for declaration of bonus securities, if part of Agenda papers.

(iii) **At least 11 Working Days before**

(a) Any alteration in the form or nature of any of its securities or in the rights or privileges of the holders thereof.

(b) Any alteration in the date on which, the interest on debentures or bonds, or the redemption amount of redeemable shares or of debentures or bonds, shall be payable.

Accordingly, the cut-off date for intimation to SEBI shall be as following (Saturday and Sunday are non-working days);

| Case | Agenda | Cut-off date for intimation |
|---|---|---|
| a | Consider quarterly financial results | 3rd January 2023 |
| b | Proposal for buy-back | 4th January 2023 |
| c | Change in interest cycle of debenture | 23rd December 2022 |
| d | Conversion of securities | 4th January 2023 |
| e | Reconsidering redemption date ofpreference shares | 23rd December 2022 |

# 14.Insolvency & Bankruptcy Code 2016

**Question 1**

Argunt Infrastructure Project Private Limited [Corporate Debtor] is classified as a Small Enterprise under Sub-section (1) of Section 7 of the Micro, Small and Medium Enterprises Development (27 of 2006) Act, 2006. It owes ₹ 60 Lakh to its creditors. In view of Covid- 19 Pandemic situation, the Corporate Debtor was not in a position to recover money from Sundry Debtors as per the payment schedule and it commits default in settling dues to the Sundry Creditors. The Corporate Debtor decided to go for Pre-packed Insolvency Resolution Process [PPIRP] under the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC) and accordingly took the following steps to initiate PPIRP.

1. The Financial Creditors of the Corporate Debtor, not being its related parties, representing 66% in value of the financial debt due to them proposed Mr. Pure, the Insolvency Professional, to be appointed as Resolution Professional to conduct PPIRP.
2. The Majority of the Board of Directors of the Corporate Debtor have made a declaration that the PPIRP is not being initiated to defraud any person and nothing more is contained in the declaration.
3. The Members of the Corporate Debtor passed an Ordinary Resolution approving the filing of an application for initiating PPIRP.

There were no further approvals obtained from the Financial Creditors / Board of Directors on any matters.

Referring to the provisions of the Insolvency and Bankruptcy Code 2016, advise on the following matters for filing of an application before NCLT to initiate PPIRP.

*(i)* Whether the act of Financial Creditors proposing the name of the Mr. Pure as Resolution Professional is valid?

*(ii)* Whether the declaration made by the Board is in accordance with the Provisions of the IBC?

*(iii)* Whether the resolution passed by the members of the company is in line with the requirements of the IBC?

*(iv)* Are there any requirements to get the approval of the Financial Creditors/ Board of Directors on any other matters? If so, state the relevant provisions of the IBC.

**(May 2022 Suggested Answers)**

**Answer:**

**Pre-Packaged Insolvency Resolution Process (PPIRP) [Sections 54A - 54P of the Insolvency and Bankruptcy Code, 2016].**

**Corporate Debtors eligible for Pre-Packaged Insolvency Resolution Process**

In terms of Section 54A(1) of the IBC,2016 an application for initiating PPIRP may be made in respect of a corporate debtor classified as a micro, small or medium enterprise under Section 7(1) of the Micro, Small and Medium Enterprises Development Act, 2006.

**(i) Whether the Act of the Financial Creditors proposing the name of Mr. Pure as Resolution Professional is valid?**

In terms of Section 54A(2) of the IBC, 2016 an application for initiating PPIRP may be made in respect of a corporate debtor who commits default referred to in Section 4 subject to a condition specified in Section 54A2(e) whereby, 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 PPIRP of the corporate debtor and the financial creditors of the corporate debtor not being its related parties representing not less than 66% in value of the financial debt due to such creditors have approved in such form as may be specified.

Therefore, In view of the above, the act of Financial Creditors proposing the name of Mr. Pure as Resolution Professional, is valid.

**(ii) Whether the declarations made by the Board is in accordance with the provisions of IBC, 2016?**

In terms of Section 54A(2)(f) of the IBC, 2016, the majority of the director or partners of the corporate debtor, as the case may be, have made a declaration, in such form as may be specified stating that:

**(i)** That the corporate debtor shall file an application for initiating PPIRP within a definite time period of 90 days,

**(ii)** That the PPIRP is not being initiated to defraud any person.

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

In view of the above, the only declaration by the majority of Board of Directors of the Corporate Debtor that the PPIRP is not being initiated to defraud any person, is not sufficient. The declaration shall also contain the matters contained in Clause 2(f)(i) and (iii) above.

**(iii) Whether the resolution passed by members is in line with the requirements of IBC,**

**2016?**

No. The Act requires that the members of the corporate debtor to pass 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.

**(iv) Requirements to get the approval of Financial Creditors / Board of Directors**

Yes. The corporate debtor shall obtain an approval from its financial creditors, representing at least 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.

By majority of the directors of the corporate debtor, a declaration is required on stating that the corporate debtor shall file an application for initiating pre-packaged insolvency resolution process within a definite time period not exceeding ninety days; and the name of the insolvency professional proposed and approved to be appointed as resolution professional.

## Question 2

Ram, the financial creditor, was an investor and a debenture holder of 'Optionally Convertible Debenture Bond (OCDB)' payable on maturity with redemption premium, issued by Asset Limited (Corporate Debtor). The zero interest OCDB bonds amounted to ₹ 3 Crore was matured in 2016. The Corporate Debtor failed to discharge this liability in due date. Ram filed an application to initiate the Corporate Insolvency Resolution Process (CIRP) before the NCLT. Advise, in the light of the given facts, the following situations referring to the provisions of the Insolvency and Bankruptcy Code, 2016:

*i.* Whether Ram is eligible for filing an application for initiation of CIRP?

***ii.*** Whether the redemption of debenture bonds, payable on the maturity date, amounts to debt? **(May 2022 Suggested Answers)**

**Answer:**

**Optionally Convertible Debenture Bonds (OCDB)** are debt securities which allow an issuer to raise capital and in return the issuer pays interest to the investor till the maturity.

**(i) Whether Ram is eligible to file an application for initiation of CIRP?**

In the given case, Ram, was a debenture holder of OCDB payable on maturity issued by Asset Limited (Corporate Debtor), which it failed to discharge on due date.

According to Section 21(6A), where a financial debt 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;

According to the proviso to Section 7 of the Code, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by required number of such creditors in the same class as specified, through such authorised representative i.e. trustee or agent.

Accordingly, Mr. Ram is entitled for filing an application for initiation of CIRP.

**(ii) Whether the redemption of debenture bonds, payable on the maturity date amounts to debt?**

Yes, Redemption of debenture bonds, payable on maturity amounts to debt. Debt under the Code means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. [Section 3(11)]

**Financial Debt** - "Financial debt" means a debt along with interest, if any, which is disbursed

against the consideration for the time value of money and includes any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument.

## Question 3

S & M Private Limited, classified as a small enterprise (a Corporate Debtor), has made an application to the Adjudicating Authority (the Tribunal) for initiating Pre-Packaged Insolvency Resolution Process (PPIRP). The requirement for filing an application being satisfied the Adjudicating Authority, by an order, has admitted an application commencing the PPIRP. Referring to the provisions of the Insolvency and Bankruptcy Code, 2016 explain the following:

(i) An external agency of which an approval would be sought to base resolution plan prior to making an application to the Adjudicating Authority.

(ii) Circumstances causing invitation for submission of resolution plan or plans.

(iii) Consequences of not approving the selected resolution plan by the Committee of Creditors (CoC). **(Nov 2022 RTP)**

**Answer:**

**(i) Approval of External Agency to base Resolution Plan**

S & M Private Limited, the Corporate Debtor, shall seek the approval of the financial creditors to base the Resolution Plan as required under Section 54A (4) of the IBC, 2016.

**(ii) Circumstances causing invitation for submission of resolution plan or plans are as below:**

(a) Where the Committee of Creditors does not approve the base resolution plan or

(b) the base resolution plan impairs any claims owed by the corporate debtor to the operational creditors.

**(iii) Consequences of not approving the selected resolution plan by the Committee of Creditors (CoC)**

If selected resolution plan is not approved by the Committee of Creditors (CoC), the resolution professional shall file an application for termination of the pre-packaged insolvency resolution process and the Adjudicating Authority shall, within 30, days of the date of such application, by an order, terminate pre-packaged insolvency resolution process. (Section 54N of the Code).

## Question 4

**Explain the time limit for completion of the Corporate Insolvency Resolution process?**

**(Nov 2022 MTP 1)**

**Answer:**

Section 12 of the Insolvency and Bankruptcy Code states that any Corporate & Insolvency Resolution Process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate the process.

However, the National Company Law Tribunal (NCLT) may on an application made by the resolution professional, under a resolution passed by the Committee of Creditors, by a voteof 66% of voting shares, after consideration provide one extension which shall not extend more than 90 days.

Second proviso to Section 12 (3) states that the corporate insolvency resolution process (CIRP) shall compulsorily be completed within 330 days from the insolvency commencement date including any extension of the time period of corporate insolvency resolution process granted under Section 12 and also the time taken in legal proceedings in relation to such resolution process of the corporate debtor.

## Question 5

Good Bank Ltd. granted a credit facility of Rs. 50 lakh to Sandhya Cosmetics Pvt Ltd. on the personal guarantee of Sandhya, who is the Managing Director of the Company.

After some time the company defaulted in paying the dues of the Bank so the financial creditor initiated CIRP against Sandhya. Sandhya opposed and pleaded that-

(i) The company has defaulted in payment of the dues of the Bank and not the 'Sandhya'. 'Sandhya' and 'Sandhya Cosmetics Ltd.' are two different persons, one is individual and the second is the corporate person. The Bank should first initiate action against the company and not against the Sandhya in her individual capacity.

(ii) The Adjudicating Authority for individual is DRT and not the NCLT.

**(Nov 2022 MTP 2)**

**Answer:**

(i) As per the IBC,2016, that without initiating CIRP against the principal borrower, it is open to the FC to initiate CIRP under section 7 against corporate guarantors as the creditor is also the FC qua corporate guarantor.

(ii) In terms of Section 5(22) "personal guarantor" means an individual who is the surety in a contract of guarantee to a corporate debtor. In the given case 'Sandhya' is the personal guarantor of the Company.

Section 60(1) of the IBC provides that the Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and **personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.**

## Question 6

Win Bank Ltd., invited tender for supply of stationery items to Stationery Dept. This Stationery Dept. of the Bank is a centralised dept. of the Bank, which undertakes to supply the stationery items for whole of the financial year for its branches.

Vallabh Stationers won the tender and supplied the materials as per the requirements of the Bank. After some times the quality of the stationery items supplied by the Vallabh Stationers went down and the Bank stopped making the payment. Aggrieved to this the Vallabh Stationers planned to initiated CIRP proceedings against the Bank under section 9 of the Code.

Discuss, whether the application for initiation of CIRP by the Vallabh Stationers as Operational Creditor will succeed? **(Nov 2022 MTP 2)**

**Answer:**

**Corporate Person**

In terms of Section 3(7) of the IBC "corporate person" means a company as defined in clause

(20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force **but shall not include any financial service provider.**

**Who is Financial Service Provider**

**In term of Section 3(17) "financial service provider" means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator.**

CIRP cannot be initiated against a financial service provider/non-banking financial company as financial service providers are excluded from definition of corporate debtor in terms of section 3(7) of the Insolvency Bankruptcy Code, 2016.

## Question 7

Article 14 of the Constitution of India reads as "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Modern Engineering Limited (MEL) enters into the Insolvency Resolution Process. Resolution professional prepare the list of claims, wherein it place operational creditors after financial creditors in priority order. Operational creditors was annoyed with this priority order, hence advance a writ petition to declared the Insolvency and Bankruptcy Code, 2016 (IBC) unconstitutional on the ground, it is discriminatory and unfair to an operational creditor as compared to the financial creditor.

Recommended in your opinion, whether IBC is constitutional or unconstitutional w.r.t Article 14 and support your answer in the light of relevant provisions of IBC. **(May 2023 RTP )**

**Answer:**

Looking at the constitutional validity of the Code as per Article 14 of the Constitution of India, IBC is constitutional in entirety and not discriminatory and unfair to an operational creditor as compared to the financial creditor in the light of section 3(6) of the Code.

According to the Code, 'Claim' gives rise to 'debt' only when it is due and 'default' occurs only when debt becomes due and payable and is not paid by the debtor. Though debt means a liability/obligation in respect of a claim which is due from any person & includes a financial debt and operational debt. [Sections 3(11)].

Further financial creditors are clearly different from operational creditors and therefore, there is obviously a clear difference between the two which has a direct relation to the objects sought to be achieved by the Code.

The excessive power given to the Committee of Creditors (CoCs) is controlled through approval/rejection of the plan with the large majority (rather a simple majority) and the Adjudicating Authority, if required, can set aside the arbitrary decisions of CoCs.

Since there is a difference in the relative importance of two types of debts when it comes to objects sought to be achieved by the insolvency code, hence Article 14 of the Constitution of India (equality before the law) does not get infracted.

# 15.PREVENTION OF MONEY LAUNDERING ACT, 2002

## Question 1

LMR Limited, a banking company has a "Record Preservation Policy" which inter alia states to maintain the documents evidencing identity of its clients and beneficial owners for a period of 5 years after the account has been closed. Evaluate, whether the "Record Preservation Policy" of the Company has fulfilled its obligation under the provisions of the Prevention of Money Laundering Act, 2002? **(May 2022 Suggested Answers)**

**Answer:**

**Section 12 of the Prevention of Money Laundering Act, 2002** provides for the obligation of Banking Companies, Financial Institutions and Intermediaries i.e. the reporting entity to maintain records of all transactions.

According to sub-section (1)(e), every reporting entity shall maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

**Maintenance of Records**: The records referred to in clause (e) of sub-section (1) of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

The records shall contain information about nature of transaction, amount of transaction, currency, date of transaction and parties to transaction as per the respective Rules of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005.

**Conclusion**

In view of the above, LMR Limited has not fulfilled its obligation to maintain the above stated documents for a period of 5 years after the business relationship between a client and the Company has ended or the account has been closed, whichever is later. The Preservation Policy of the Company does not provide such conditions stated above.

## Question 2

TZ is a promoter director of Ind Exports Limited engaged in the export of software products to various countries in the world. ZZ, a customer in U.S. to whom the company exported certain products, failed to pay the amount due for these exports. Later, the company settled the amount for 50% with ZZ and the amount was transferred through hawala to India. The money so received was partly used by the company to part finance its office building in Mumbai and the balance of the money to part finance the residential flat in Delhi purchased by TC, a son of TZ. During the search in the premises of hawala businessman, some documentary evidences were captured by the search officer and based on which, the Adjudicating Authority appointed under the Prevention of Money Laundering Act, 2002 issued an order attaching the office of Ind Exports Limited and the flat of TC alleged to be involved in scheduled offence of money laundering.

Based on the above scenario, answer the following as per the provisions of the Prevention of

Money Laundering Act, 2002 (the Act):

(i) What is the scheduled offence?
(ii) Where an order for confiscation has been made, all the rights and title in such property shall vest in President of India. Examine the statement.
(iii) Advise Ind Export Limited about the remedy available under the Act.

**(May 2022 Suggested Answers)**

**Answer:**

**(i) Scheduled Offence**

The term "Scheduled Offence" has been defined in clause (y) of sub-section (1) of Section 2 of the Prevention of Money Laundering Act, 2002. It means -
**(a)** the offences specified under Part A of the Schedule; or
**(b)** the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or
**(c)** The offences specified under Part C of the Schedule.

**(ii) Whether all the rights and title in property vest in President of India**

According to Section 9 of the Prevention of Money Laundering Act, 2002, where an order of confiscation has been passed in respect of any property of a person, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances. Therefore, the statement that right and title in property shall vest in President of India on the passing of an order of confiscation, is incorrect.

**(iii) Remedies Available**

According to Section 5 of the Prevention of Money Laundering Act, 2002, Ind Exports Limited shall have right to enjoy or use its Office. The flat purchased by TC, son of TZ can enjoy the rights during the period of provisional attachment being an interested person here.

Also, under Section 26 and 42 of the Act, Ind Exports Limited, if being aggrieved by an order made by the Adjudicating Authority on the attachment order, may prefer an appeal to the Appellate Tribunal. The appeal shall be filed within 45 days from the date on which a copy of the order made by the Adjudicating Authority is received and appeal further in the High Court against any decision or order of the Appellate Tribunal.

**Question 3**

Mr. Manoj managed to transfer the proceeds of crime to his son, abroad (a contracting state). His son then converted the proceeds into immovable properties in his name. if that property would have been situated in India. It would have been liable for confiscation. Will Mr. Manoj succeed in escaping the investigation proceedings and the property situated abroad not being subjected to confiscation? Explain, referring to the provisions of the Prevention of Money Laundering Act, 2002. **(Nov 2022 RTP)**

**Answer:**

According to Section 57 of the Prevention of Money Laundering Act, 2002, (the Act) a Special Court, if satisfied, may issue a letter of request to a Court or an Authority in the Contracting State abroad competent to deal with such request to examine facts and circumstances of the

case, take such steps as the Special Court may specify in such letter of request, and forward all the evidence so taken or collected to the Special Court issuing such letter of request.
According to Section 60 of the Act where a Special Court has made an order of confiscation relating to a property found to be involved in money laundering under sub-section (5) of Section 8, and such property is suspected to be in a contracting State, the Special Court, on an application by the Director or the Administrator appointed under sub-section (1) of Section 10, as the case may be, may issue a letter of request to a Court or an Authority in the Contracting State for execution of such order.

Mr. Manoj has transferred the proceed of crime into the Contracting State, a Special Court by order confiscate the property situated abroad and take steps to enforce his order by following the due procedure as explained above. Thus, Mr. Manoj will not succeed in escaping the process of investigation and property being confiscated.

**Question 4**

Ravi is a Mining Engineer and employed in Mines and Geology Dept of Government of Rajasthan. He earned a good amount of money through bribe to the tune of 50 lakhs just in a year. He purchased a flat of Rs 60 lakh and to show the funding, availed housing loan of Rs 50 lakh from a bank and rest Rs 10 lakh as margin money by availing gold loan (in the name of his wife) from another bank by pledging the gold jewellery of his wife. The repayment period of housing loan was for 20 years and gold loan was for 2 years. He however, liquidated the gold loan in just 3 months. The housing loan was also paid within a year.

Ravi continued to take bribe and one day he was caught red handed by a team of Anti-Corruption Bureau (ACB). His house was inspected and bank accounts were also seized. The ACB team observed that in just 3 years of his service, the assets (including the flat and gold jewellery) were not in proportion of his salary. The ACB reported the matter to the Enforcement Directorate (ED) which treated the house property as the proceeds of crime and accordingly attached the house property.

Ravi pleaded that house property was purchased through bank finance and cannot be treated as proceeds of crime.

Based on the above facts, whether the house property shall be treated as 'Proceeds of Crime'.

**(Nov 2022 MTP 2)**

**Answer:**

**What is Proceeds of Crime**
In terms of Section 2(1)(u) of the Prevention of Money Laundering Act, "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.

Explanation. —For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

Ravi purchased the flat by availing bank finance and its repayments was to be made in 20 years. The said housing loan was liquidated by Ravi within a year, this was paid not from the salary

income but was paid from the money received from the bribe. As per the definition given above, the bribe amount was indirectly paid in acquiring / paying the loan amount, hence the flat shall be termed as proceeds of crime and hence he is liable to be prosecuted under PMLA, 2002 with in the preview of scheduled offence.

**Question 5**

Mr. Ranga allegedly handed over a sum of ` 50,000,000 (Rupees five crore) to a public servant Mr. Billa. An FIR was registered under Indian Penal Code, 1860 for criminal conspiracy and Sections 7, 12, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. Later, a case was registered by the Enforcement Directorate against Mr. Billa including Mr. Ranga under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002.

It may be decided between Mr. Ranga and Mr. Billa, that Mr. Ranga will leave suitcase carrying money in the car, parked in parking space. Even before Mr. Billa could project the sum of ` 50,000,000 as untainted money, the CBI intervened and seized the money in the parked car.

Mr. Ranga moved a petition to the hon'ble High Court. The High Court allowed the petition of Mr. Ranga and quashed the PMLA proceedings against him. According to the High Court, the sum of ` 50,000,000 as long as it was in the hands of Mr. Ranga could not have been stated as tainted money. The sum of ` 50,000,000 became the proceeds of a crime only when Mr. Billa accepted it as a bribe.

Enforcement Directorate approached you (a leading consultant on Economic Law Matters) for advice. Analyse the given situation and state the legal position of Mr. Ranga. **(May 2023 RTP)**

**Answer:**

As per the definition of money laundering and proceeds of crime given under the PMLA, 2002, it can be advised as follows:

(i) so long as the amount is in the hands of a bribe giver, and till it does not get impressed with the requisite intent and is actually handed over as a bribe, it would definitely be untainted money.

(ii) If the money is handed over without such intent, it would be a mere entrustment. If it is thereafter appropriated by the public servant, the offense would be of misappropriation or species thereof but certainly not of bribe. The crucial part, therefore, is the requisite intent to hand over the amount as a bribe and normally such intent must necessarily be antecedent or prior to the moment, the amount is handed over.

(iii) Such intent having been entertained well before the amount is actually handed over, the person concerned would certainly be involved in the process or activity connected with "proceeds of crime" including inter-alia, the aspects of possession or acquisition thereof.

(iv) By handing over the money with the intent of giving bribes, such a person will be assisting or will knowingly be a party to an activity connected with the proceeds of crime. Without such active participation on part of the person concerned, the money would not assume the character of being proceeds of crime.

(v) The relevant expressions from Section 3 of the PML Act are thus wide enough to cover the role played by such a person.

Therefore Mr. Ranga being 'Bribe Giver' is connected party to proceed of crime and is liable for proceeding under the Prevention of Money Laundering Act, 2002

# 16.FOREIGN EXCHANGE MANAGEMENT ACT, 1999

## Question 1

Mr. MGJ, a person resident outside India, is contemplating to invest his foreign currency funds through equity contribution in an Indian company engaged in a huge township development project consisting commercial and residential complex in Bangalore (India). Examine, referring to the provisions of the Foreign Exchange Management Act, 1999, the feasibility of his proposal of investing funds in the said company. **(May 2022 Suggested Answers)**

**Answer:**

As per the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, 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 in real estate business, or construction of farm houses.

Here the term "real estate business" shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.

**Conclusion:** Accordingly, the proposal of investing funds in an Indian Company by Mr. MGJ, is feasible as the investment is for development of township as per the above stated laws.

## Question 2

XYZ Private Limited is a Start-up company recognized by the Central Government. The company is intending to raise External Commercial Borrowing under automatic route of USD 3 million for 3 years in the form of partially convertible preference shares for working capital from one of the shareholders.
You are requested to advice the company on the Maturity, Forms and Amount of External Commercial Borrowing permitted as per the provisions of the Foreign Exchange Management Act, 1999. **(May 2022 Suggested Answers)**

**Answer:**

**XYZ Limited, based on the guidelines contained in the Master Direction No 5/2018 - 19 issued by the Reserve Bank of India**, is advised as under:

**ECB facility for Start-ups:** AD Category-I Banks are permitted to allow Start-ups to raise ECB under the automatic route as per the following framework:

**Eligibility:** An entity recognized as a Start-up by the Central Government as on date of raising ECB. Maturity: Minimum average maturity period will be 3 years.

**Forms:** The borrowing can be in form of loans or non-convertible, optionally convertible or part I convertible preference shares.

**Amount of ECB**: The borrowing per Start-up 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.

## Question 3

EDC Computer Hardware Limited received an advance payment for export of high-tech hardware to a business concern in Abu Dhabi (UAE) by entering into an export agreement to supply the hardware within 14 months from the date of receipt of advance payment. Examine under the provisions of the Foreign Exchange Management Act, 1999 and decide:
(i) Whether it is permissible to receive advance payment in the above scenario?
(ii) If so, what are the conditions to be complied with in the relation to the advance payment against export in the above scenario? **(Nov 2022 RTP)**

**Answer:**

**Advance payment against exports under Regulation 15 of the FEM (Export of Goods & Services) Regulation 2015.**

(1) Where an exporter receives advance payment (with or without interest), from a buyer/ third party named in the export declaration made by the exporter, outside India, the exporter shall be under an obligation to ensure that-
   (i) the shipment of goods is made within one year from the date of receipt of advance payment;
   (ii) the rate of interest, if any, payable on the advance payment does not exceed the rate of interest London Inter-Bank Offered Rate (LIBOR)+ 100 basis points, and
   (iii) the documents covering the shipment are routed through the authorised dealer through whom the advance payment is received;

Provided that in the event of the exporter's inability to make the shipment, partly or fully, within one year from the date of receipt of advance payment, no remittance towards refund of unutilized portion of advance payment or towards payment of interest, shall be made after the expiry of the period of one year, without the prior approval of the Reserve Bank.

**(2) Exemption**: An exporter may receive advance payment where the export agreement itself duly provides for shipment of goods extending beyond the period of one year from the date of receipt of advance payment.

In view of the above provisions EDC Computer Hardware Limited can receive the advance payment for export of high-tech hardware to business concern in Abu Dhabi, complying the above conditions.

## Question 4

Ms. Milap had resided in India for 182 days in the financial year 2019-20. She went to UK on 1st April, 2020 and returned to India on 1st July, 2021 on an employment contract in India for a year. She completed her contract and immediately left India. Under Section 2(v) of FEMA 1999, determine the residential status of Milap for the financial years:
(i) 2020-21
(ii) 2021-22 **(Nov 2022 MTP 1)**

**Answer:**

**As per Section 2(v) of the Foreign Exchange Management Act, 1999, "Person Resident in India" means:**
a person residing in India **for more than 182 days during the course of the preceding financial year but does not include—**
(A) a person who has gone out of India or who stays outside India, in either case—

(a) for or on taking up employment outside India, or
(b) for carrying on outside India a business or vocation outside India, or
(c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) a person who has come to or stays in India, in either case, otherwise than:

(a) for or on taking up employment in India, or
(b) for carrying on in India a business or vocation in India, or
(c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

In line with the above definition, Residential status of Milap for the financial years will be as follows:

i. **For FY 2020-2021**: As in the preceding year 2019-2020, Milap resided for 182 days which is not in compliance with the requirement of number of days of her stay (for more than 182 days). Here, residential status of Milap is a Person resident outside India.
ii. **For FY 2021-2022**: In the preceding year 2020-2021, Milap has not resided in India as she went to UK on 1st April 2020 and returned on 1st July 2021. In this case also, the residential status of Milap is a person resident outside India.

## Question 5

Surbhi deals in exporting of handicrafts items to abroad. On 1st January, 2022 Surbhi exported handicrafts items to UK. However, the payment of the same has not been realised even aft er passing of more than 9 months.
Explain the relevant provisions under the FEMA relating to –
(i) the realisation period of exported goods.
(ii) the delay in receipt of payment. **(Nov 2022 MTP 2)**

**Answer:**

(i) **Period within which export value of goods/software/ services to be realised**
**Regulation 9 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015** deals with the matter relating to the period within which export value of good to be realised.
Regulation 9(1) provides that-
The amount representing the full export value of goods / software/ services exported shall be realised and repatriated to India within nine months or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time, from the date of export, provided that-
(a) where the goods are exported to a warehouse established outside India with the permission of the Reserve Bank, the amount representing the full export value of goods exported shall be paid to the authorised dealer as soon as it is realised and in any case within fifteen months or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time, from the date of shipment of goods;
(b) further that the Reserve Bank, or subject to the directions issued by that Bank in this behalf, the authorised dealer may, for a sufficient and reasonable cause shown, extend the said period.

**(ii) Delay in Receipt of Payment Regulation 14 provides that -**

Where in relation to goods or software export of which is required to be declared on the specified form and export of services, in respect of which no declaration forms has been made applicable, the specified period has expired and the payment therefor has not been made as aforesaid, the Reserve Bank may give to any person who has sold the goods or software or who is entitled to sell the goods or software or procure the sale thereof, such directions as appear to it to be expedient, for the purpose of securing-

(a) the payment therefor if the goods or software has been sold and

(b) the sale of goods and payment thereof, if goods or software has not been sold or reimport thereof into India as the circumstances permit, within such period as the Reserve Bank may specify in this behalf;

Provided that omission of the Reserve Bank to give directions shall not have the effect of absolving the person committing the contravention from the consequences thereof.

## Question 6

Ruchika got an employment opportunity in a UK based IT company. She moved to UK and remained there for 10 years. During her tenure she purchased a small flat in UK for the residential purpose.

After returning to India, she joined another IT company and let out her flat situated in UK. The rental income of UK flat was deposited by her in the bank account of UK. A good amount was accumulated in her UK' bank account, so she planned to purchase a second flat in the UK.

Based on the above facts, answer the following questions:

(i) Whether Ruchika can purchase the first flat in UK and continue to retain even after returning to India?

(ii) Whether Ruchika can purchase second flat in UK after returning to India?

**(Nov 2022 MTP 2)**

**Answer:**

**(i) Purchase of First Flat in UK**

Section 6(4) of the FEMA, 1999 provides that 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.

Ruchika purchased the first flat when she residing in UK and was resident outside India. After returning to India and after becoming the resident in India, she can continue to hold such flat.

**(ii) Purchase of Second Flat**

After returning to India and becoming the resident in India, Ruchika cannot buy another property in UK as mentioned in Section 6(4) of the FEMA.

## Question 7

Grand Father of Mr. Narendra Kamal was farmer in undivided India and own large chunk of land. Due to partition, his grand-father along other family members evacuated from west Punjab, hence got a piece of agricultural land in compensation under Displaced Persons

(Compensation and Rehabilitation) Act, 1954 in that area of east Punjab which is present day Haryana touching NCT.

Such land was inherited by Mr. Saurabh Kamal and Mr. Varun Kamal (both resides in India) in equal portion as per the testament of their Narendra' Grandfather. Mr. Narendra is only child of Mr. Saurabh. At death of Mr. Saurabh in 2005, his will was executed and piece of land belong to him transferred to Mr. Narendra.

Mr. Narendra in 2002, shifted to New Zealand, there he operate an accounting KPO firm. Mr. Narendra surrender Indian citizenship and hold kiwi passport. Now the children of Mr. Narendra is also grown-up. His son want to enter in film-making hence need funds, Mr. Narendra decided to sell the land inherited by him from his father (in -turn from his Grandfather). He approached Mr. Balraj, a property linker for identifying buy for said land. It was decided that part of proceed will be used by son of Mr. Narendra and rest will be planned to invest in New Zealand only.

You are required to advise Mr. Narendra can he sell/transfer the land he owned in India as per the relevant provisions of FEMA. **(May 2023 RTP)**

**Answer:**

According to Section 6 (5) of The Foreign Exchange Management Act 1999, it is provided that 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 the 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 (like in given case inherited by Mr. Narendra in 2005).

Further, a person referred to in sub-section (5) of Section 6 of the Act, or his successor shall not, except with the general or specific permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property referred to in that sub-section as per the second schedule of the FEM (Permissible Capital Account Transaction) Regulation, 2000.

Hence Mr. Narendra allowed transfer (sale) the agriculture land and after seeking permission of RBI can repatriate the sale proceeds, outside India.

# 17.ARBITRATION AND CONCILATION ACT, 1996

**Question 1**

On 1st day of April, 2020, Alm Food Processors Limited, a company engaged in food processor manufacturing unit, entered into a joint venture agreement with Ron and Col Limited, the largest manufacturer of Food processors. Both the companies are registered under the Companies Act, 2013. The joint venture agreement does not contain the term for referring the dispute relating to the quality of the goods supplied to the arbitration. In light of the Arbitration and Conciliation Act, 1996, examine, what will happen, if the parties later on agreed to refer the dispute to the arbitration concerning quality of goods supplied in 2021? **(May 2022Suggested Answers)**

**Answer:**

In the given question, the Joint Venture Agreement (JVA) between Alm Food Processors Limited and Ron and Col Limited, does not contain the term for referring the dispute relating to the quality of the goods supplied to the arbitration. To resolve this dispute, the parties later entered

into an agreement to refer the dispute to the arbitration concerning quality of goods supplied in 2021.As per the Arbitration and Conciliation Act, 1996, the purpose of an arbitration agreement is to submit disputes to arbitration on the basis of whether existing or future disputes would be submitted to arbitration. Where an agreement is entered into after the disputes have arisen, then, it would be called as a 'submission agreement".

Conclusion: Thus, a submission agreement may be entered by the parties that shall be submitted arbitration, whereby they agree to abide by the decision of the arbitrator.

## Question 2

Answer the following in the light of the Arbitration and Conciliation Act, 1996 :

(i) How important are the ideas of independence and impartiality in arbitration in the below given context?

(a) Is the arbitrator required to disclose anything to the parties?

(b) Is membership of the same sports club as one of the parties problematic?

(ii) Can an arbitrator resign on their own account? Do they have to give reasons for their resignation? Could an award be challenged on the ground that the arbitrator had resigned without giving any proper justifications? **(Nov 2022 RTP)**

**Answer:**

(i) (a) The arbitrator are under a duty of disclose any relations with parties or their lawyers that might give rise to justifiable doubts as to their independence and impartiality.

(b) Such an association is too remote to count as a relation that might lead to doubts of bias.

(ii) An arbitrator can resign when they want, without giving reasons for their resignation. This action does not affect the validity either of the arbitration proceedings or the arbitral award.

## Question 3

P-1 entered into a contract with P-2 wherein P-2 will supply the building materials of Cement and Iron to P-1. In a contract note entered into between them, there was a clause to refer the matter tothe arbitration, in case of dispute arises in future, relating to the quality, quantity, price and place of supply of materials.
Both also executed an arbitration agreement and got it registered with the registering authority. The agreement copy was made in duplicate and each one of them was having the two original copies, duly signed.
During the course of business dealings, the disputes aroused between P-1 and P-2 for over pricing of invoices raised by P-2, whereas the same quality of material was available in the market at 10% lower prices.
P-1 referred the matter to a court and the summons were issued to P-2. P-2 informed to the court that there was an arbitration agreement between the P-1 and P-2 that in case of dispute, the matter will be decided by the arbitration.

**Examine the following situations in the light of the Arbitration and Conciliation Act, 1996:**

(i) P-1 referred the matter to the court, where as P-2 informed to the Court that there is an agreement to refer the matter to the arbitration, in case of dispute. What view the judicial authority will take in the matter?

(ii) In the arbitration agreement there was no mention of the number of arbitrators. Whether the parties to the disputes can now determine the number of arbitrators?
**(Nov 2022 MTP 1)**

**Answer:**

**(i) Section 8(1) of the Arbitration and Conciliation Act, 1996** provides that a judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies. Once the parties have agreed to arbitrate their matter, neither of the parties can unilaterally proceed to court to litigate that matter. Any party attempting to do that would be referred to arbitration, if the other party so requests.
Therefore, the Court may ask to parties to submit the original copy of the arbitration agreement and after satisfying that arbitration agreement exist, it may refer t he parties to the arbitration.

(ii) **Section 10(1) of the Arbitration and Conciliation Act, 1996** provides that the parties are free to determine the number of arbitrators, provided that such number shall not be an even number.

Yes, they can decide to determine the number of arbitrators provided that such number shall not be an even number.

## Question 4

ABC Ltd. and XYZ Ltd. entered in to a Joint Venture (JV) to construct a town consisting of 500 flats nearby Pune, which will be sold to the retail home buyers. They prepared a JV Agreement in which an arbitration clause entered. This clause specifies that in case of any dispute, the matter shall be referred to the arbitration. After some time, a dispute was aroused between the companies. ABC Ltd. contended that there was no separate agreement in writing between the companies to refer the matter to the arbitration and it was just a clause in the JV Agreement, hence the matter should be referred to the Court of law instead of arbitration.

Based on the above facts define the meaning of the arbitration agreement and whether the insertion of arbitration clause in the JV agreement is sufficient or it should be a separate agreement for arbitration? **(Nov 2022 MTP 2)**

**Answer:**

**Section 7 of the Arbitration and Conciliation Act, 1996 provides that -**
(1) "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
(3) An arbitration agreement shall be in writing.
(4) An arbitration agreement is in writing if it is contained in—
(a) a document signed by the parties;
(b) an exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide a record of the agreement; or
(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
(5) The reference in a contract to a document containing an arbitration clause constitutes

an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

Thus, as per Section 7(2) of the Act, an arbitration agreement may be in the form of an arbitration clause in a contract. Since the JV Agreement contains a clause to refer the matter to the arbitration, in case of dispute, is sufficient the arbitration agreement was arrived at between the companies.

**Question 5**

Modern Furniture Limited (MFL) of India going to sign an agreement with the Gruppo Molteni & C. (GMC) of Italy for development of contemporary designs of furniture. In the agreement both parties willing to insert a clause on conciliation in said agreement, because they admit that "Conciliator provide amicable resolution to dispute (if arise any)". While writing such clause in said agreement, the MFL is of opinion that single conciliator will be enough, but Italian counter-part GMC willing to have provision for two conciliators. It was decided that, there shall be two conciliators.

You are required to answer;

(a) Can conciliators be appointed in multiple and in even number by MFL and GMC?

(b) Who shall elect the conciliator(s) in given case?

(c) How conciliator(s) make decision in given case, to reach out at amicable solution?

**(May 2023 RTP)**

**Answer:**

Section 63 and 64 of the Arbitration and Conciliation Act 1996 deals with number of conciliators and Appointment of conciliators respectively. While section 67 highlights their role.

(a) Section 63 (1) states there shall be one conciliator unless the parties agree that there shall be two or three conciliators. Therefore, MFL and GMC can have two Conciliators.
Where there is more than one conciliator. The provision provides multiple conciliators ought to act jointly.

(b) Section 64 requires in conciliation proceedings with two conciliators, each party may appoint one conciliator
Section provides conditions or cautions that shall be observed by the contracting parties, while appointing conciliator to ensure their independence.

(c) As said earlier that multiple conciliators ought to act jointly, Further the decision making process guided by their role stated in section 67.
The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

# 18.FOREIGN CONTRIBUTION (REGULATION) ACT, 2010

**Question 1**

Upalayam Old Student Association was formed with the object of providing Coaching & Hostel facilities to the students studying in the government school. Mr. Murugan, an Indian Origin, acquired American citizenship and settled in USA. However, he is an overseas citizen of India cardholders. Mr. Murugan donated ` 10 Lakh to the said Association from his personal savings through the normal banking channel. Referring to the provisions of the Foreign Contribution (Regulation) Act, 2010, answer the following:

(i) Whether the donation made by Mr. Murugan is a foreign contribution?
(ii) What will be your answer in case Mr. Murugan still holds Indian Citizenship?

**(May 2022 Suggested Answers)**

**Answer:**

**Foreign Contribution:**

Foreign Contribution is defined under Section 2(1)(h) of the Foreign Contribution (Regulation) Act, 2010 (FCRA, 2010), to mean the donation, delivery or transfer made by any foreign source. Section 2(1)(j) only speaks about citizen of a foreign country while inclusively defining foreign source. A donation, delivery or transfer of any article, currency or foreign security by any person who has received it from any foreign source, either directly or through one or more persons is a foreign contribution.

(i) **Whether the donation made by Mr. Murugan is a Foreign Source?** Yes. Donation from Mr. Murugan, a Person of Indian origin who has acquired American citizenship and also is an Overseas Citizen of India cardholder, will be treated as foreign contribution.

(ii) **In case if Mr. Murugan still holds Indian Citizenship**

Contributions made by a citizen of India living in another country i.e. 'Non-resident Indians' from his personal savings through normal banking channels is not to be treated as foreign contribution. In case if Mr. Murugan holds Indian citizenship, he is not a foreigner and therefore, donation given by Mr. Murugan, will not be treated as foreign contribution.

## Question 2

Health Care Foundation has submitted an application of the Central Government for granting prior permission for receipt of foreign contribution. The value of such foreign contribution, on the date of final disposal of the application, is ₹ 3.00 crores. Referring to the provisions and relevant rules of the Foreign Contribution (Regulations) Act, 2010 advise on the following:
(i) Can permission for receiving the foreign contribution of ₹ 3.00 crores in instalments be granted by the Central Government?
(ii) Compliance requirement for obtaining the next instalment, if answer of (i) is affirmative.

**(Nov 2022 RTP)**

**Answer:**

**(a) Permission from the Central Government**
As per Rule 9A of the Foreign Contribution (Regulation) Rules, 2011, if the value of foreign contribution on the date of final disposal of an application for obtaining prior permission is over rupees one crore, the Central Government may permit receipt of foreign contribution in such instalments, as it may deem fit.
Hence, the Central Government may grant permission to Health Care Foundation for receiving foreign contribution of ₹ 3.00 crores in instalments, as it may deem fit.

**(ii) Compliance requirement for obtaining the next instalment:**
It is further provided in Rule 9A that the second and subsequent instalment shall be released after submission of proof of utilization of seventy-five per cent of the foreign contribution received in the previous instalment and after field inquiry of the utilization of foreign

contribution. Health Care Foundation may get next instalment, if this requirement is fulfilled.

**Question 3**

**Advise on the following legal positions as per the FCRA, 2010.**

(1) Whether donation given by Non-Resident Indians (NRIs) is treated as 'foreign contribution'?
(2) Whether foreign remittances received from a relative are to be treated as foreign contribution as per FCRA, 2010? **(Nov 2022 MTP 1)**

**Answer:**

(1) Contributions made by a citizen of India living in another country (i.e., Non-Resident Indian), from his personal savings, through the normal banking channels, is not treated as foreign contribution. However, while accepting any donations from such NRI, it is advisable to obtain his passport details to ascertain that he/she is an Indian passport holder.

(2) The position in this regard as given in Section 4(e) of FCRA, 2010 and Rule 6 of FCRR, 2011 are as under: Subject to the provisions of section 10 of the FCRA, 2010, nothing contained in section 3 of the Act shall apply to the acceptance, by any person specified in that section, of any foreign contribution where such contribution is accepted by him from his relative. However, in terms of Rule 6 of FCRR, 2011, any person receiving foreign contribution in excess of ***ten lakh rupees** or equivalent thereto in a financial year from any of his relatives shall inform the Central Government in Form FC-1 ***within 3 months** from the date of receipt of such contribution.

***** May 2023 Amendment**

**Question 4**

Mr. Vijay, Sanjay and Ajay are sons of Mr. Kulbushan Yadav. Mr. Sanjay who is professor reside in India, rest both the brothers settled in abroad.
Mr. Sanjay Yadav on his 25th wedding anniversary received a gift from his elder brother who is American national currently. Gift includes i-phone and an old chain of their father, with which emotional memories of Mr. Sanjay attached, he immediately wears that chain. I - phone in Indian rupee worth ₹ 1 lac 10 thousand, while chain worth ₹ 80 thousand.
While younger brother of Mr. Sanjay who is British national and investment banker by profession, present him securities worth ₹ 2 lacs.
Regarding the intimation of foreign contribution received by Mr. Sanjay, you are required to to give the legal position of Mr. Yadav in the light of the FCRA**.** **(May 2023 RTP )**

**Answer:**

According to Rule 6 and 6A of Foreign Contribution (Regulation) Rules, 2011, the Central Government has notified the Foreign Contribution (Regulation) Amendment Rules, 2022 vide GSR No. 506(E) on 1st July, 2022 to further amend the Foreign Contribution (Regulation) Rules, 2011.

As per amended Rule 6, any person receiving foreign contribution in excess of ten lakh rupees or equivalent thereto in a financial year from any of his relatives (as defined in section 2(1)(r) of the Foreign Contribution (Regulation) Act, 2010) shall inform the Central Government regarding the details of the foreign contribution received by him in electronic form in Form FC-1

within three months from the date of receipt of such contribution.

Earlier such monetary threshold limit was ₹ 1 Lakh and intimation to Central Government was required within thirty days.

Further rule 6A provides when any article gifted to a person for his personal use whose market value in India on the date of such gift does not exceed one lakh rupees shall not be a foreign contribution within the meaning of sub-clause (i) of clause (h) of sub-section
(1) of section (2).

I-phone (even for personal use, but value more than 1 lac; hence foreign contribution) and Shares together amounts to only 3 lacs and 10 thousands, which less than threshold of ten lacs; hence no intimation is required by Mr. Sanjay in given case.

However, with respect to chain having worth of ₹ 80,000 is not foreign contribution at all.

# 19. Important questions based on amendment

**Question 1**

What do you understand by the term "Director Identification Number" (DIN)? Describe the procedure to obtain the same as enumerated under the Companies Act, 2013 read with the relevant Rules. *(May 2013)*

**Answer**

➢ **Director Identification Number (DIN)** is a Unique Identification Number issued by the Ministry of Corporate Affairs.

➢ It is required to be obtained by **every person** who is intending to become a director of any company. DIN is a pre-requisite for filing various forms with the Registrar of Companies. The electronic system of the Ministry of Corporate Affairs will not allow filing / submitting of forms if DIN of the signatory director is not mentioned in the form being filed / submitted.

➢ **Under section 153** of the Companies Act, 2013 every individual intending to be appointed as director of a company **shall** make an application for allotment of Director Identification Number to the Central Government in such form and manner and along with such fees as may be prescribed.

➢ **Under rule 9 sub rule 1** of the Companies (Appointment & Qualification of Directors) Rules, 2014 every individual, who is to be appointed as director of a company shall make an application electronically in **Form DIR-3,** to the Central Government for the allotment of a Director Identification Number (DIN) along with such fees as provided in the **Companies (Registration Offices and Fees) Rules, 2014.**

➢ Under rule 9 (2) of the said rules The Central Government shall provide an electronic system to facilitate submission of application for the allotment of DIN through the portal on the website of the Ministry of Corporate Affairs(MCA).

➢ The applicant shall download **Form DIR-3** from the portal, fill in the required particulars sought
therein, verify and sign the form and after attaching copies of the following documents, scan and

file the entire set of documents electronically-

- ❖ Photograph
- ❖ proof of identity
- ❖ proof of residence;
- ❖ Copy of proposed board resolution, and
- ❖ Specimen signature duly verified.

➢ **"Form DIR 3**- shall be signed and submitted electronically by applicant using his digital signature certificate and shall be verified digitally by -:

i. CS in full time employment of Co or,
ii. MD or,
iii. Director or,
iv. CEO or,
v. CFO of the company in which applicant is intended to be appointed as a director"

➢ **Rule 10 (1)** of the **Companies (Appointment & Qualifications of Directors) Rules, 2014** states that on the submission of the **Form DIR-3** on the portal and payment of the requisite amount of fees through online mode, **an application number** shall be generated by the system automatically.

"Provided that no application number shall be generated in case of the person applying for Director Identification Number is a national of a country which shares land border with India (Pakistan, Afghanistan, China, Nepal, Bhutan, Myanmar and Bangladesh) , unless necessary security clearance from the Ministry of Home Affairs, Government of India has been attached along with application for Director Identification Number." **(May 2023 Update)**

➢ **Rule 10 (2)** further provides that after generation of application number, the Central Government shall process the applications received for allotment of DIN and decide on the approval or rejection thereof and communicate the same to the applicant along with the DIN allotted in case of approval by way of a letter by post or electronically or in any other mode, within a period of one month from the receipt of such application.

## Question 2

Akri Nidhi Limited proposes:

*(i)* To reappoint Mr. X, a Director who has completed a term of 10 consecutive year as a Director of the Nidhi.

***(ii)*** To pay dividend at the rate of 45%. *(May 2019 Exam)*

**Answer:**

According to **Rule – 17** of the Nidhi Rules, 2014, the Director of a Nidhi shall hold office for a term up to ten consecutive years on the Board of Nidhi and he shall be eligible for re-appointment only after the expiration of two years of ceasing to be a Director.

Hence, in the instant case, Akri Nidhi Limited cannot reappoint Mr. X as a director for a period of two years after completion of 10 consecutive years.

According to **Rule 18** of the Nidhi Rules, 2014, a Nidhi **shall not** declare dividend exceeding **25**% in a financial year. **(May 2023 Update)**

**In the instant case, if the Company wants to pay dividend at the rate of 45%, it has to**

**follow the procedure mentioned under Rule 18.**

## Question 3

Ariana Credit and Thrift (Nidhi) Ltd., was incorporated in December 2018 and want it to operate as a Nidhi Company. The company has established its registered office in Jaipur, Rajasthan.
The company started its operations from the April 2019.

The company's main function was to collect deposits from its members on monthly basis and to lend the members in case of need. The company pays interest @10% p.a. on quarterly basis on the deposits and charge interest @12%. p.a. on monthly basis. The loan to its members is granted for the working capital of the business only and for which the member borrower has to give guarantee of two members, against whom no loan is outstanding.

For the financial year ended on 31st March 2020, the company's paid-up equity share capital was
₹ 15 lakh and for the year ended on 31st March 2021, the capital remained as ₹ 15 lakh and reserves were ₹ 5 lakh.

Based on the captioned facts, answer the following questions:

(i) What are the criteria for declaration of any company as Nidhi Company by the Central Government? **(6 Marks)**

(ii) For the year ended on 31st March 2021, company's capital was ₹ 15 lakh and reserves were ₹ 5 lakhs. How much deposit the company can accept from its member in the FY 2021-22? **(2 Marks)** **(DEC 2021 MTP 1 NEW)**

**Answer :**

(i) In terms of Nidhi Rules, 2014 the following is the criteria for declaration of a company as Nidhi Company:

**Rule 4: Incorporation and incidental matters**

1. A Nidhi shall be a public company and shall have a minimum paid up equity share capital of **ten lakh rupees.**
   "Provided that every Nidhi existing as on the date of commencement of the Nidhi Amendment Rules, 2022, shall comply with this requirement within a period of eighteen months from the date of such commencement".(19/04/2022) **(May 2023 Update)**
2. On and after the commencement of the Act, no Nidhi shall issue preference shares.
3. If preference shares had been issued by a Nidhi before the commencement of this Act, such preference shares shall be redeemed in accordance with the terms of issue of such shares.
4. Except as provided under the proviso to sub-rule (e) to rule 6, no Nidhi shall have any object in its Memorandum of Association other than 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.
5. Every "Nidhi" shall have the last words 'Nidhi Limited' as part of its name.

**Rule 5: Requirements for Minimum Number of Members, Net Owned Fund etc.**

1. Every Nidhi shall, within a period of one year from the date of its incorporation, ensure that it has-

a. not less than two hundred members;
b. Net Owned Funds of **twenty lakh rupees or more**; **(May 2023 Update)**
c. Unencumbered term deposits of not less than ten per cent. of the outstanding deposits as specified in rule 14; and
d. ratio of Net Owned Funds to deposits of not more than 1:20.

2. Within ninety days from the close of the first financial year after its incorporation and where applicable, the second financial year, Nidhi shall file a return of statutory compliances in Form NDH-1 along with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 with the Registrar duly certified by a company secretary in practice or a chartered accountant in practice or a cost accountant in practice.

3. If a Nidhi is not complying with clauses (a) or (d) of sub-rule (1) above, it shall within thirty days from the close of the first financial year, apply to the Regional Director in Form NDH-2 along with fee specified in Companies (Registration Offices and Fees) Rules, 2014 for extension of time and the Regional Director may consider the application and pass orders within thirty days of receipt of the application. Provided that the Regional Director may extend the period upto one year from the date of receipt of application.

   Explanation.- For the purpose of this rule "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;

4. If the failure to comply with sub-rule (1) of this rule extends beyond the second financial year, Nidhi shall not accept any further deposits from the commencement of the second financial year till it complies with the provisions contained in sub-rule (1) and gets itself declared under sub-section (1) of section 406, besides being liable for penal consequences as provided in the Act.

**"The provisions of this rule shall not be applicable for the companies incorporated as Nidhi on or after the commencement (19/04/2022) of the Nidhi (Amendment) Rules, 2022"** **(May 2023 Update)**

(ii) **Rule 11 of the Nidhi Rules, 2014** deals with the acceptance of deposits by Nidhi's. Its sub - rule (1) provides that a Nidhi shall not accept deposits exceeding twenty times of its Net Owned Funds (NOF) as per its last audited financial statements.
The total NOF of the company is ₹ 20 lakhs only (15+5). The company can accept deposits from its members not exceeding 20 times of the NOF i.e., up to Rs 400 lakh only.

## Question 4

Whether foreign remittances received from a relative are to be treated as foreign contribution as per FCRA,2010? *Study Material*

**Answer**
**Provisions and Explanation:**

| **Foreign remittance received from a relative:** |
|---|
| ▶ As per **Sec.4** (e) of the Foreign Contribution Regulation Act ,**2010** and **Rule 6** of Foreign Contribution Regulation ,**2011**, even the persons prohibited u/s **3**, i.e., persons **not** permitted to accept foreign contribution, are allowed to accept foreign contribution from their relatives. |

| |
|---|
| ▶ However, in terms of **Rule 6** of Foreign Contribution Regulation **Rules**,**2011**, any person receiving foreign contribution in excess of **Rs.10 lakhs** or equivalent thereto in a financial year from any of his relatives **shall** inform the C.G in prescribed **Form FC -1 within 3 months** from the date of receipt of such contribution**. (May 2023 Update)** |
| **Conclusion:** |
| Foreign remittances received from a relative is **not** treated as foreign contribution. |