PAPER 1

Corporate and Allied Laws

Answer 1

(a) As per section 233 (1) of the Companies Act, 2013 notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered between,

- 2 or more small companies
- a holding company and its wholly-owned subsidiary 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.
- such other class or classes of companies as may be prescribed.

The provisions given for fast track merger in the section 233 are in the optional nature and not a compulsion to the company. If a company wants to make application for merger as per section 232, it can do so.

Hence, here the Company Secretary of the XYZ limited has erred in the law and his contention is not valid as per law. The company shall have an option to choose between normal process of merger and fast track merger.

(b) In terms of section 173(1) of the Companies Act, 2013, a company must hold a minimum number of four meetings of its Board of directors in such a manner that not more than 120 days shall intervene between two consecutive meetings of the Board.

Further, the proviso to this sub-section provides that the Central Government may by notification, direct that these provisions will not apply in relation to any class or description of companies or may apply subject to such exceptions, modifications or conditions as may be specified in the notification.

Vide Notification G.S.R. 583(E) Dated 13th June, 2017; Section 173(5) was amended.

According to which One Person Company, small company, dormant company and a private company (if such private company is a start-up) shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days.

Accordingly, here Urja, Pvt Limited in the given case is Private start up company, so will fall within the ambit of section 173(5) if the Act and shall be considered to have complied with the prov ision of this section by conduct of more than two board meetings in each half of a calendar year i.e. in 2017 and the gap between the two meetings is assumed to be more than ninety days.

However, in failure of compliance of section 137 of the Companies Act, 2013 by the Urja, Pvt. Limited, made it ineligible to fall under this exception. So Urja Pvt. limited has contravened the section 173, so the contention of the Urja Pvt. limited as to the valid holding of meeting is incorrect.

(c) Removal of Member of the SEBI (Section 6 of the Securities and Exchange Board of India Act, 1992)

According to section 6 of the Securities and Exchange Board of India Act, 1992, the Central Government shall have the power to remove a member appointed to the Board, if he:

- is, or at any time has been adjudicated as insolvent;
- is of unsound mind and stands so declared by a competent court;
- has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude.
- has, in the opinion of the Central Government so abused his position as to render his continuance in office detrimental to the public interest.

Before removing a member, he will be given a reasonable opportunity of being heard in the matter.

In the present case, a group of complainants have alleged that Mr. Moral, a member of the SEBI has a taken up bribe in the inquiries and audit of the stock exchanges that came up before the Board and he misused his position and committed an offence involved a moral

turpitude. Therefore, he should be removed from his office.

The Central Government may remove Mr. Moral from his office after giving him a reasonable opportunity of being heard in the matter.

(d) (i) According to Rule 4(1) of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following class or classes of companies shall have at least 2 directors as independent directors:

(1) the Public Companies having paid up share capital of 10 crore rupees or more; or

(2) the Public Companies having turnover of 100 crore rupees or more; or

(3) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees.

In the present case, XYZ Limited is an unlisted public company having a paid-up capital of ₹ 20 crores as on 31st March, 2017 and a turnover of ₹ 150 crores during the year ended 31st March, 2017. Thus, as per the Companies (Appointment and Qualification of Directors) Rules, 2014, XYZ Limited shall have at least 2 directors as independent directors.

(ii) Where a company ceases to fulfil any of 3 conditions for three consecutive years, it shall not be required to comply with these provisions (i.e., related to appointment of Independent directors) until such time as it meets any of such conditions.

(iii) As per Rule 4(2) of the Companies (Appointment and Qualification of Directors) Rules, 2014 the following classes of unlisted public company are not covered under Rule 4(1), namely:-.

(a) a joint venture;

(b) a wholly owned subsidiary; and

(c) a dormant company as defined under section 455 of the Act.

Accordingly, XYZ, a dormant company does not require to fulfil the conditions stated in Rule 4(1) for appointment of Independent Directors.

Answer 2

(a) Problem related to appointment of additional director: Section 161(1) of the Companies Act, 2013 provides for appointment of additional director. According to this section:

(i) The articles of a company may confer on its Board of Directors the power to appoint any person as an additional director at any time.

(ii) A person, who fails to get appointed as a director in a general meeting, cannot be appointed as an additional director.

(iii) Additional director shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

As per the stated fact, before the scheduled annual general meeting of 29 th September 2016 takes place, due to heavy rains and floods all the record of the company were destroyed. So, company to rebuild the records, approached the Registrar of Companies for extension of time for holding of the Annual General Meeting till 30 th December 2016.

As per the third provision to the section 96 of the Companies Act, 2013, Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

So, accordingly Mr. Abhi may continue as an additional director of Pioneer Limited till 30th December, 2016.

(b) The case study of the given problem is based on Section 66 of the competition Act, 2002 which is a repealed and saving clause in the Act. All such cases stand transferred to the Appellate Tribunal and shall be judged accordingly. In this reference, the case study and its solution may be discussed as follows:

The appellant explained their practice by pleadings which does not controvert, their past experience as automobile manufacturer was limited to heavy vehicles and hence in their initial venture into the car segment, they were not sure of public response and they had decided to plan their production schedule on the basis of reality test of car's demand in the market. For this speculative bookings were required to be discouraged and the same was

sought to be achieved by demanding an amount closer to the anticipated price which the customer would be required to pay. According to submissions, such practice could not have promoted the sale of their vehicle rather it was discouraging.

The large response shows peoples' faith in the products of the appellant and also that the interest rate offered by the appellants was appreciable and fair. The second limb of arguments also flows from the definition in Section 36A of the Act. By placing reliance upon judgment of this Court in the case of Rajasthan Housing Board v. Paravti Devi (Smt) (2000) 6 SCC 104, it was contended that when supplier and consumer have entered into an agreement then the Commission, in order to hold the supplier guilty of unfair trade practice on the basis of allegations made against it, is required to go into the terms and conditions agreed between the parties for finding out whether there was unfair trade practice so as to require further action on the basis of complaints. On behalf of appellant, reliance was also placed upon judgment of this Court in the case of M/s Lakhanpal National Limited v. M.R.T.P. Commission & Anr (1989) 3 SCC 251, particularly, paragraph 7 and 9 thereof. In paragraph 7 it was held that the definition of "Unfair Trade Practice" in Section 36A is not inclusive or flexible, but specific and limited in its contents. The Court also considered the object of this provision with a view to resolve the issue as to whether particular acts can be condemned as unfair practice or not.

A scrutiny of the judgment under appeal discloses that the Commission failed to keep in mind the precise allegations against the appellant with a view to find out whether the facts could satisfy the definition of Unfair Trade Practice(s) alleged against the appellant in the Notice of Enquiry. Hence, we are left with no option but to set aside the order under appeal. Thus there was no Unfair Trade Practice by the Company. Tata Eng & Locomotive Co. Ltd. v. Director (Research) [SC]

(c) (i) The provisions governing the acquisition and transfer of immovable property outside India.

(1) A person resident in India may acquire immovable property outside India:

(a) By way of gift or inheritance from a person referred to in sub-section (4) of Section 6 of the FEMA or referred to in clause (b) of regulation 4 acquired by a person resident in India on or before 8th July, 1947 and continued to be held by him with the permission of Reserve Bank.

(b) by way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account maintained in accordance with the foreign exchange management (Foreign Currency accounts by a person resident in India) Regulations 2015.

(c) Jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India.

(2) A person resident in India may acquire immovable property outside India, by way of Inheritance or gift from a person resident in India who has acquired such property in accordance with the foreign exchange provision in force at the time of such acquisition.

(3) A Company incorporated in India having overseas offices, may acquire immovable property outside India for its business and for residential purposes of its staff, in accordance with the direction issued by the Reserve Bank of India from time to time.

(ii) In the light of above discussions in 1(c), it is quite clear that Mr. Mittal, a resident in India, can join his daughter who is a resident outside India, In acquiring a Flat at Australia.

(iii) Advance payment against export:

The following are the provisions governing the advance payments against exports :

(1) Where an exporter receives advance payments (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 the 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 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 or towards, no remittance towards refund of un-utilised portions 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 of India.

(2) Notwithstanding anything contained in clause (i) of sub-regulation (1), 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.

(d) Managing Director [Section 2(54)] : Section 2(54) of the Companies Act, 2013 defines a "Managing Director" as a director who is entrusted with substantial powers of management of the affairs of the company by:

(i) virtue of articles of a company or

(ii) an agreement with the company or

(iii) a resolution passed in its general meeting, or by its Board of Directors, and includes a director occupying the position of the managing director, by whatever name called.

Explanation to Section 2 (54) clarifies that substantial powers of the management shall not be deemed to include the power to do such administrative acts of a routine nature when so authorised by the Board such as:

(i) the power to affix the common seal of the company to any document or

(ii) to draw and endorse any cheque on the account of the company in any bank or

(iii) to draw and endorse any negotiable instrument or

(iv) to sign any certificate of share or

(v) to direct registration of transfer of any share.

In the instant case, Mr. Rao, a director in Two Squares Ltd. has been authorized to draw and endorse cheque or other negotiable instruments on account of the company and also to direct registration of transfer of shares and signing the share certificates etc.

Hence, according to explanation to section 2(54), Mr. Rao will not be treated as managing director of the company as he is authorized to do administrative acts of a routine nature.

Procedure of appointment of a managing director [Section 196(4)]

(1) Subject to the provisions of section 197 and Schedule V, a managing director shall be appointed, and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting.

(2) The terms and conditions and remuneration approved by Board of Directors as above shall be subject to the approval of shareholders by a resolution at the next general meeting of

the company.

(3) In case such appointment is at variance to the conditions specified in the Schedule V of the Companies Act, 2013, the appointment shall be approved by the Central Government.

(4) The notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any.

(5) A return in the prescribed form (Form No. MR.1) along with the prescribed fee shall be filed with the Registrar within sixty days of such appointment.

Answer 3

(a) According to section 2(45) of the Companies Act, 2013, "Government company" means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

(i) The Central Government and Government of Maharashtra together hold 40% of the paid-up share capital of MN Limited. A government company also holds 20% of the paid-up share capital in MN Limited.

In this case, MN Limited is not a Government company because the holding of the Central Government and Government of Maharashtra is 40% which is less than the 51% prescribed under the definition of Government Company. The holding of the government company in MN Limited of 20% cannot be taken into account while counting the prescribed limit of 51%.

(ii) PQ Limited is a subsidiary but not a wholly owned subsidiary of a government company

In this case, PQ Limited is a government company as the definition of Government Company clearly specifies that a Government Company includes a company which is a subsidiary company of a Government company. Whether the subsidiary should be a wholly owned subsidiary or not is not clearly mentioned under the definition of the Government company under section 2(45).

(b) SARFAESI is applicable to only those notified NBFC which has an asset base of 500 crore or above, hence in this case the XYZ Finance Ltd. shall be able to sell the bad loans to ARCs through SARFAESI.

Further SARFAESI is applicable to secured loans only, therefore only 45 crore of bad loans can be sold to ARC under SARFAESI.

As per section 26D no secured creditor shall be entitled to exercise the rights of enforcement of securities under Chapter III unless the security interest created in its favour by the borrower has been registered with the Central Registry, therefore the buyer may not be keen to take over the unregistered loan of 5 crore.

Further NBFCs can invoke SARFAESI for only those cases which are over 1 crore, therefore the 10 cases of 50 lacs each cannot be sold to ARC under SARFAESI.

Therefore, XYZ Finance Ltd. are left with 8 cases of 5 crore each which can be sold to ARC subject to meeting all other conditions of the law.

(c) As per section 411 of the Companies Act, 2013 the qualification of chairperson of NCLAT shall be a person who is or has been a judge of the Supreme Court or the Chief Justice of a High Court. In the given case, chairperson is a judge and not a chief justice of a High Court, so his appointment is invalid. However, Section 431 of the Companies Act, 2013 provides of the provisions that no act or proceeding of the Tribunal or the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Tribunal or the Appellate Tribunal, as the case may be.

Accordingly, the act or proceeding of the Appellate Tribunal (NCLAT) shall not be invalid on the basis of defect in the constitution of the Appellate Tribunal.

(d) The directors of the company act together as a body and generally at the meeting of the Board duly convened, unless special powers are delegated to an individual director or the managing director. Where it is not possible to hold board meetings because the directors are busy elsewhere or the time for convening such a meeting is short, it is possible that the

required resolution can be passed by way of circular resolution as provided in section 175 of the Companies Act, 2013.

However under section 179 of the Companies Act, 2013, certain powers can be exercised by the Board of directors by means of a resolution passed at meeting convened for this purpose.

They are:

(1) to make calls on shareholders in respect of money unpaid on their shares

(2) to authorize buy back of securities under section 68

(3) to issue securities, including debentures, whether in or outside India

(4) to borrow monies

(5) to invest the funds of the company and

(6) to grant loans or give guarantee or provide security in respect of loans

(7) to approve financial statements and-the Board's report

(8) to diversify the business of the company

(9) to approve amalgamation, merger or reconstruction

(10) to take over a company or acquire a controlling or substantial stake in another company.

(11) Any other matter as prescribed in Rule 8 of the Companies (Meetings of the Board and its Powers) Rules, 2014.

(i) In view of the above, the Managing Director can go ahead and complete the joint venture agreement after obtaining the approval of the board by passing a circular resolution.

(ii) For this purpose, the proposed resolution has to be circulated in draft along with the other necessary papers, if any, to all the directors in India at their usual residential addresses.

(iii) The resolution will become valid if the same is approved by majority of the directors and who are entitled to vote on the resolution. There after the resolution as passed by way of circulation will be enterprises in the minutes book of the Board of Directors and is enough compliance of provisions of the Companies Act, 2013in this regard.

Answer 4

(a) (i) As per Section 2(42) of the Companies Act, 2013, a 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 in any other manner.

A company incorporated outside India and have not established a place of business in India, is not deemed to be a Foreign Company. Thus establishing a place of business is an essential ingredient in the definition. In the given case, the company has not established a place of business India though employs agents in India. It will not be deemed to be a foreign company:

(ii) A company incorporated outside India, will not be deemed to be a Foreign Company even though all the shareholders are Indian citizens, unless it has a place of business in India.

(iii) A company incorporated In India but having all foreign shareholders will be deemed to be an Indian Company as it is not incorporated outside India though it has a place of business in India.

(iv) According to the Companies (Registration of Foreign Companies) Rules, 2014, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to:

(a) Business to business and business to consumer transactions, data inter-change and other digital supply transactions

(b) Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in India or from citizens of India

(c) Financial settlements, web-based marketing, advisory and transactional services, data based services and products and supply chain management,

(d) Online services such as telemarketing, telecommuting, telemedicine, education and information research.

(e) All related data communication services whether conducted bye-mail, mobile devices, social media, cloud computing, data management, voice or data transmission or otherwise.

Therefore, looking to the above description, a company which has no place of business established in India, yet doing online business through telemarketing in India will be treated as a foreign company.

(b) As per section 53 of Insolvency and Bankruptcy Code, 2016, the proceeds from the sale of liquidation assets shall be distributed in the following order of priority:

Insolvency Resolution Process Cost and Liquidation cost to be paid in full

(i)	Fees payable to Resolution Professional in full	75,000
(ii)	Expenses incurred by the Resolution professional in running the business on going concern	25,000
(iii)	Workmen salary outstanding for a period of 24 months (proportionate to 24 months only). The balance ₹60,000 is considered as remaining debts and dues and will be settled before preference shareholder/equity shareholder.	2,40,000
(iv)	Secured creditor who has relinquished the security	5,00,000
(v)	Unsecured Financial Creditors	4,00,000
(vi)	Income- tax payable with in the period 2 years	50,000
(vii)	Cess to State Government payable with in a period of one year	20,000
(vii)	Balance amount in workmen salary	60,000
	Total distribution in the above priority	13,70,000
	Amount realized from the sale of liquidation of assets	14,00,000
	Balance available to Equity share holder on pro rata basis	30,000

(c) As per Regulation 3 of Insolvency and Bankruptcy (Insolvency Resolution) Regulation, 2016, an insolvency professional shall be eligible for appointment as a resolution professional for a corporate insolvency resolution process if he and all partners and directors of the insolvency professional entity of which he is partner or director are independent of the corporate debtor i.e.,

- He is eligible to be appointed as an independent director on the board of the corporate debtor u/s 149 of the Companies Act, 2013, where the corporate debtor is a company.

- He is not a related party of the corporate debtor.
- He is not an employee or proprietor or a partner of a firm of auditors or company secretaries in practice or cost auditors of the corporate debtor in the last three financial years.
- He is not an employee or proprietor or a partner of a legal or consulting firm that has or had any transaction with the corporate debtor amounting to ten per cent or more of the gross turnover of such firm in the last three financial years.

(d) The following class of companies shall file their financial statement in XBRL (Extensible Business Reporting Language) mode and by using the XBRL taxonomy:

- all companies listed with any stock exchange(s) in India and their Indian subsidiaries; or
- all companies having paid up capital of rupees 5 crores or above;
- all companies having turnover of rupees 100 crores or above; or
- all companies which were covered under the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011.

However, Banking Companies, Insurance Companies, Power Companies and Non- Banking Financial Companies (NBFCs) * and housing finance companies need not file financial statements under this rule.

Key benefits of XBRL filing are as under:

Relevant data has tags and selective information can be fetched for specific purposes by various government and regulatory agencies.

It is in conformity with Global Reporting Standards, which helps in improved data mining and relevant information search.

In view of the above it is necessary for ABC Ltd. To files its Financial Statement is XBRL mode.

[* Vide Notification G.S.R. 397(E) dated 4th April, 2016 the Ministry of Corporate Affairs amended the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015, through the enforcement of the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2016 with effect from 4th April, 2016 with the incorporation of marked changes in the Proviso.]

Answer 5

(a) Section 135 read with Companies (Corporate Social Responsibility Policy) Rules, 2014 of the Companies Act, 2013 deals with the provisions related to the Corporate Social Responsibility.

As per the given facts, following are the answers in the given situations-

(i) Amount that Company has to spend towards CSR:

According to section 135 of the Companies Act, 2013, the Board of every company shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy.

Accordingly, net profits of Super Real Estate Ltd. for three immediately preceding financial years is 150 crores (30+70+50) and 2% of the average net profits of the company made during these three immediately preceding financial years will constitute 1 crore, can be spent towards CSR in financial year 2016-2017.

(ii) Composition of CSR Committee:

(a) In the case of listed company, the CSR Committee shall consist of three or more directors, out of which at least one director shall be an independent director.

(b) Whereas in case of an unlisted public company or a private company, is not required to appoint an independent director and shall have its CSR Committee without such director. A private company having only two directors on its Board shall constitute its CSR Committee with two such directors.

(iii) In case of failure to incur expenditure for CSR: If the company fails to provide such amount or incur expenditure for CSR, the Board shall, in its report, under section 134 of the Companies Act, 2013 specify the reasons for not spending the amount.

As no quantum of punishment is given under section 135, section 450 of the Companies Act, 2013 says that, the company and every officer of the company or any other person who is in default or contravenes in compliances with section 135 shall be punishable with fine which may extend to ` 10,000. In case of continuation of contravention with further fine extending to ` 1000 for every day after the first during which the contravention continues.

(iv) Activities not to be considered as CSR Activities: The Companies (CSR Policy) Rules, 2014 provides for some activities which are not considered as CSR activities:

(1) The CSR projects or programs or activities undertaken outside India.

(2) The CSR projects or programs or activities that benefit only the employees of the company and their families.

(3) Contribution of any amount directly or indirectly to any political party under section 182 of the Act.

(4) Expenses incurred by companies for the fulfillment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.

(b) Draft of special resolution under Section 180 (1) (c) of the Companies Act, 2013

"Resolved that the company hereby accords the consent of members to the Board of Directors for borrowing money together with the monies already borrowed by the company for an aggregate sum not exceeding ₹……(Rupees…..) in excess of the aggregate of the Paid-up capital of the company and its free reserves, that is to say reserves apart from temporary loans taken by the company from its bankers in the ordinary course of business, as provided in Section 180(1) (c) of the Companies Act, 2013.

Resolved further that the powers given as above shall be exercised by the Board of Directors at a duly convened meeting of the Board and not by passing resolution by circulation".

Borrowings excluded from the said limits under section 180(1) (c)

Section 180(1) (c) excludes from the prescribed limits of borrowing under section 180 (1) (c) those temporary loans taken by the company from its bankers in the ordinary course of business. Therefore, in calculating the limits stipulated in section 180 (1) (c), temporary loans obtained from the company's bankers in the ordinary course of business shall be excluded.

The expression 'temporary loans' means loans repayable and demand or within six months from the date of the loan such as short term cash credit arrangements, the discounting of

bills and the issue of other short terms loans of a seasonal character, but does not include loans raised for the purpose of financing expenditure of capital nature [Explanation to Section 180(1) (c)].

(c) According to the Companies Act, 2013, the Central Government under section 210 (1) may order an investigation into the affairs of the company, if it is of the opinion that it is necessary to do so:

(a) on the receipt of a report of the Registrar or Inspector under section 208;

(b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated;

(c) in public interest.

According to section 210 (3) of the Companies Act, 2013, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.

The shareholders' application will not be accepted as under 210 of the Companies Act, 2013, Central Government may order an investigation into affairs of the company on the intimation of a special resolution passed by a company that the affairs of the company ought to be investigated and then may appoint the inspectors. Here, 101 out of total 500 shareholders of the company have made an application to the Central Government to appoint an inspector to carry out investigation but it is not sufficient as the company has not passed the special resolution.

The shareholders' application will not be accepted as under 210 of the Companies Act, 2013, Central Government may order an investigation into affairs of the company on the intimation of a special resolution passed by a company that the affairs of the company ought to be investigated and then may appoint the inspectors. Here, 101 out of total 500 shareholders of the company have made an application to the Central Government to appoint an inspector to carry out investigation but it is not sufficient as the company has not passed the special resolution.

Answer 6

(a) (i) In the question default is made by Mr Right, the director and hence he is covered in Section 581Q (1)(c) of the Companies Act, 1956 which provide that the office of the director of a producer company shall become vacant if he has made default in repayment of any advances or loans taken from the producer companies in which he is a director. Assuming that 'a company' referred in the question is Strawberry Limited, a producer company where he is a director, he vacates the office even when the default is for 60 days.

(ii) The office of director of a producer company shall become vacant if the Annual General Meeting or extraordinary general meeting of the producer company, in which he is a director, is not called in accordance with the provisions of this Act except due to natural calamity or such other reason. In the given case, since the Annual General

Meeting could not be held due to some natural calamity, the office of Mr. Pure, the director shall not fall vacant.

(b) (A) Allotment of DIN : According to Section 154 of the Companies Act, 2013, the Central Government shall, within one month from the receipt of the application under section 153, allot a Director Identification Number (DIN) to the applicant in such manner as may be prescribed

The status of the DIN applications showing "Put under resubmission": According to Rule 10 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 of the Companies Act, 2013, if the DIN application is put under Resubmission due to following reasons, one can submit additional documents for rectifying DIN application, within a period of 15 days from the date on which it is marked as Resubmission

(i) Proof of Identity/ residence is not enclosed or expired.

(ii) Proof of Date of Birth is not enclosed.

(iii) Supporting documents are not properly attested.

(iv) Non-submission of affidavit (if required).

On resubmitting with the additional documents, same DIN will be approved, if documents are found in correct order as per marked in resubmission.

So, accordingly the application of Mr. Vinay Kumar has not been rejected and does not require to obtain a fresh DIN.

(B) Process and Relevance of back office in MCA 21 Programme: The back office process relates to:

- Dynamic routing of documents that have been electronically filed to the concerned official within MCA based on the type of service request.
- Electronic workflow systems to support speed and certainty in service delivery
- Supporting all routine tasks such as registrations and approvals
- Storing of all approved documents of companies as part of electronic records, including provision of access to electronic records for the stakeholders
- Enhancing identification of defaulters
- Increasing efficiency of Technical Scrutiny
- Ensuring close follow-up on matters related to compliance management including prosecutions
- Enabling quicker responses to investor grievances
- Providing alerts when the tasks are not carried out within stipulated period

(c) In order to prevent undesirable transactions in securities and to promote healthy stock market, the Securities Contracts (Regulation) Act, 1956 was enacted and all the Stock Exchanges in the country are registered under this Act. Section 73 of the Companies Act, 1956 states that offer of shares or debentures to public for subscription shall be made only after the permission of a Stock exchange.

Section 28(1) of the Securities Contracts (Regulation) Act, 1956 states that the provisions of this Act shall not apply to the Government, the Reserve Bank of India, any local authority, or corporation set up by a special law or any person who has effected any transaction with or through the agency of any such authority as stated earlier.

As stated in the question Industrial Finance Corporation of India is a corporation set up under the Industrial Finance Corporation Act, 1948 i.e. under a special statue enacted by the Parliament. Therefore, this Corporation does not need any permission from a Stock

Exchange to issue any Bond or other securities. Accordingly, it has not violated the provisions of the Securities Contracts (Regulation) Act, 1956. The nature and tenure of the Bonds are immaterial.

(d) Section 348 of the Companies Act, 2013 states that, if the winding up of a company is not concluded within one year after its commencement then the Company Liquidator shall file a statement in such form containing such particulars as may be prescribed. Such statement shall be filled within two months of the expiry of such year and it shall be filled continuously thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals as may be prescribed. The statement shall be duly audited, by a person qualified to act as auditor of the company and position of with respect to the proceedings in the liquidation,

The statement shall be filled with the tribunal in the case of a winding up by the Tribunal. a copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.

Where a statement relates to a Government company in liquidation, the Company Liquidator shall forward a copy thereof,

- to the Central Government, if that Government is a member of the Government company;
- to any State Government, if that Government is a member of the Government company; or
- to the Central Government and any State Government, if both the Governments are members of the Government company.

DEF Limited is a Government Company

In the current scenario, we can understand that the DEF Limited is a government company in which Central Government is a member and hence statement is also required to file to the Central Government along with the Tribunal and Registrar. So, the opinion by the Company Liquidator is not tenable in the eyes of the law and he is liable for penal action under the act.

The company liquidator shall be punishable with fine which may extend to five thousand

rupees for every day during which the failure continues.

DEF Limited is a Non-Government Company

In the current scenario, the DEF Limited is a non-government company hence statement is only required to file with the Tribunal and Registrar only. So, the opinion by the Company Liquidator is tenable in the eyes of the law and he is not liable for any penal action under the act.

Answer 7

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

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

But as per Section 13 of the Code, once an application is admitted by the Adjudicating authority, it shall by an order declare a moratorium for the purposes referred to in section 14. Then causes a public announcement of the initiation of CIRP by IRP and call for the submission of claims under section 15 and appoint an IRP in the manner as laid down in section 16 of the Code. Public announcement lays down all the relevant information related to the CIRP. So that the all creditors entitled under the law can raise their claim in this case.

So, no further application for initiation of CIRP against the same debtor (i.e., Wisdom Ltd.) can be initiated. So, Mr. X, cannot file an application on initiation of CIRP, however, is entitled under the law to raise his claim in this case against the Wisdom Ltd.

(b) Interpretation of the words "Means" and "Includes" in the definitions- The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to 'mean' such and such, the definition is 'prima facie' restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to 'include' such and such, the definition is 'prima facie' extensive, here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Example-

Definition of Director [section 2(34) of the Companies Act, 2013]- Director means a director appointed to the board of a company. The word "means" suggests exhaustive definition.

Definition of Whole time director [Section 2(94) of the Companies Act, 2013] - Whole time director includes a director in the whole time employment of the company. The word "includes" suggests extensive definition. Other directors may be included in the category of the whole time director.

(c)

(i) Conditions for qualified institutions placement [Chapter VIII of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009]: Shyamgarh Chemicals Limited, a listed company may make qualified institutions placement if it satisfies the following conditions:

(a) a special resolution approving the qualified institutions placement has been passed by its shareholders;

(b) the equity shares of the same class, which are proposed to be allotted through qualified institutions placement or pursuant to conversion or exchange of eligible securities offered through qualified institutions placement, have been listed on a recognised stock exchange having nation wide trading terminal for a period of at least one year prior to the date of issuance of notice to its shareholders for convening the meeting to pass the special resolution:

(c) it is in compliance with the requirement of minimum public shareholding specified in the Securities Contracts (Regulation) Rules, 1957;

(d) In the special resolution, it shall be, among other relevant matters, specified that the allotment is proposed to be made through qualified institutions placement and

the relevant date referred in the regulations shall also be specified.

(ii) Restrictions on amount raised: The aggregate of the proposed qualified institutions placement and all previous qualified institutions placements made by the issuer in the same financial year shall not exceed five times the net worth of the issuer as per the audited balance sheet of the previous financial year.

In the instant case, the net worth of Shyamgarh Chemicals Limited is ₹ 120 crore. Therefore, the maximum amount that can be raised by the company under the proposed issue of shares is ₹ 600 crore (5*120).

(iii) Restrictions on Pricing of issue and transferability of shares:

Pricing of issue: The qualified institutions placement shall be made at a price not less than the average of the weekly high and low of the closing prices of the equity shares of the same class quoted on the stock exchange during the two weeks preceding the relevant date.

Transferability of shares: The eligible securities allotted under qualified institutions placement shall not be sold by the allottee for a period of one year from the date of allotment, except on a recognised stock exchange.

(d) According to the Banking Regulation (Amendment) Act, 2017 vide Notification dated 25th August, 2017 w.e.f. 4th May 2017, Section 35AA have been inserted. This section deals with the Power of Central Government to authorise Reserve Bank for issuing directions to banking companies to initiate insolvency resolution process. According to the section, the Central Government may, by order, authorise the Reserve Bank to issue directions to any banking company or banking companies to initiate insolvency resolution process in respect of a default, under the provisions of the Insolvency and Bankruptcy Code, 2016.

The "default" has the same meaning assigned to it in clause (12) of section 3 of the Insolvency and Bankruptcy Code, 2016.

Accordingly, Shubham cooperative Bank can initiate the insolvency resolution process against Samridhi Pvt. Ltd. under the section 7 of the Insolvency & Bankruptcy Code, 2016, only when Reserve bank (authorized by Central Government) issues directions to Shubham cooperative Bank to any banking company to initiate insolvency resolution process in

respect of a default, under the provisions of the Insolvency and Bankruptcy Code, 2016.

(e) The Companies Act, 2013 vide section 197 (5) provides that the sitting fee payable to directors for attending meetings of the Board or committees thereof will be decided by the Board subject to limits prescribed by the Central Government in rules framed in this behalf. The limit prescribed by the Central Government is ₹ 1 Lakh per meeting and may be different for independent and non independent directors.

Hence, the clause in the Articles proposed in the case given, does not make any sense under the Companies Act, 2013.