

## PAPER – 4: CORPORATE AND ECONOMIC LAWS

### PART – I: RELEVANT AMENDMENTS APPLICABLE FOR MAY 2018 EXAMINATION

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

For May 2018 examinations for Paper 4: Corporate and Economic Laws, the significant amendments made in the respective subject for the period 1<sup>st</sup> May 2017 to 31<sup>st</sup> October, 2017 are relevant and applicable for said examinations.

This RTP of May 2018 examination is very important to the students to update themselves with the relevant amendments pertaining to the Corporate and Economic Laws. This publication will help the students to know of the significant changes, so that students may bring into line the changes in the principal provisions.

**Relevant amendments:** The given list of relevant amendments contains the gist of amendments, reference of page nos. of the study material alongwith the earlier law to enable the students an addition/deletion/modification in the principal law.

Relevant Legislative amendments from 1 <sup>st</sup> of May 2017 to 31 <sup>st</sup> of October 2017				
Corporate Laws				
Sl. No.	Heading of Amendments	Details of Amendments	Page no. of the Study material with reference to relevant provisions (Corporate and Economic Laws)	Earlier Law
1.	Exemptions to Government Companies Vide Notification G.S.R. 582(E) Dated 13 <sup>th</sup> June, 2017	The Central Government amends the Notification G.S.R. 463(E), dated 5 <sup>th</sup> June 2015. Following are the amendments: (i) According to the amendment, section 152(6) & (7), shall not apply to – (a) a Government company, which is not a listed company, in which	1.17	The Ministry of Corporate Affairs has clarified via Notification No. 463(E) dated 5 <sup>th</sup> June, 2015, that section 152(6) and (7) of the Companies Act, 2013, shall not apply to: (i) A Government company in which the entire paid up share capital is held by the Central Government, or

		not less than fifty-one per cent. of paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; (b) a subsidiary of a Government company, referred to in (a) above."		by any State Government or Governments or by the Central Government and one or more State Governments: (ii) A subsidiary of a Government company, referred above, in which the entire paid up share capital is held by the Government company.
		(ii) The word "Tribunal" wherever it occurs in sections 230 to 232, the words "Central Government" shall be substituted.	5.5-5.10	Usage of word "Tribunal" in the said sections.
	Insertion of Paragraph 2A in the principal notification G.S.R. 463(E), dated 5 <sup>th</sup> June 2015	The aforesaid exceptions, modifications and adaptations shall be applicable to a Government company which has not committed a default in filing of its financial statements under section 137 of the Companies Act or annual return under section 92 of the said Act with the Registrar.		
2.	Exemptions to Private Companies Vide Notification G.S.R. 583(E) Dated 13 <sup>th</sup> June, 2017	(1) With respect to Section 173(5), the following sub-section shall be substituted: (5) A One Person Company, small company, dormant company and <b>a private company (if such private company is a start-up)</b> shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of	3.2	173(5)- A One Person Company, small company and dormant company 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: Provided that nothing contained in this sub-section and in section 174 shall apply to One

		<p>Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days:</p> <p>Provided that nothing contained in this subsection and in section 174 shall apply to One person Company in which there is only one director on its Board of Directors.</p> <p>(2) With respect to section 174(3)-</p> <p>It shall apply with the exception that the interested director may also be counted towards quorum in such meeting after disclosure of his interest pursuant to section 184.</p>	3.10-3.11	<p>Person Company in which there is only one director on its Board of Directors</p> <p>174(3)- Where at any time the number of interested directors exceeds or is equal to two thirds of the total strength of the Board of Directors, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time.</p> <p>Explanation.—For the purposes of this sub-section, “interested director” means a director within the meaning of sub-section (2) of section 184.</p>
	<p>Insertion of Paragraph 2A in the principal notification G.S.R. 464(E), dated 5<sup>th</sup> June 2015</p>	<p>The aforesaid exceptions, modifications and adaptations shall be applicable to a Private company which has not committed a default in filing of its financial statements under section 137 or annual return under section 92 of the said Act with the Registrar.</p>		

3.	Exemptions to Companies covered section 8 of the Companies Act, 2013 Vide Notification G.S.R. 584(E) Dated 13 <sup>th</sup> June, 2017	The Central Government amends the Notification G.S.R. 466(E), dated 5 <sup>th</sup> June 2015. Following are the relevant amendments: (1) Section 149(1)(b) & first proviso shall not apply on section 8 companies. (2) In section 186(7)-following proviso shall be inserted-Provided that nothing contained in this sub-section shall apply to a company in which twenty-six per cent. or more of the paid-up share capital is held by the Central Government or one or more State Governments or both, in respect of loans provided by such company for funding Industrial Research and Development projects in furtherance objects as stated in its memorandum of association."	1.3 & 3.35	Earlier vide notification dated 5 <sup>th</sup> June 2015 it was said that Section 149 (1) and the first Proviso to Sub-section (1) shall not apply.
	Insertion of Paragraph 2A in the principal notification G.S.R. 466 (E), dated 5 <sup>th</sup> June 2015	The aforesaid exceptions, modifications and adaptations shall be applicable to a company covered under section 8 of the said Act which has not committed a default in filing of its financial statements under section 137 or annual return under section 92 of the said Act with the Registrar.		
4.	Enforcement of the Companies (Removal of Difficulties) Orders, 2017 Vide Order S.O. 2042(E) dated 29 <sup>th</sup> June, 2017	In the Companies Act, 2013, in section 434, in sub-section (1), in clause (c),- (a) in the third proviso, for "Provided further that-", the following shall be substituted, namely:- "Provided also that-";	12.17	Second proviso to section 434 (c) had start with the usage of the words "Provided further that". After this proviso, the third proviso is introduced

		(b) after the third proviso, the following proviso shall be inserted, namely:- “Provided also that proceedings relating to cases of voluntary winding up of a company where notice of the resolution by advertisement has been given under sub-section (1) of section 485 of the Companies Act, 1956 but the company has not been dissolved before the 1st April, 2017 shall continue to be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959.”		
5.	Enforcement of the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017 Vide Notification G.S.R. 839(E) dated 5 <sup>th</sup> July 2017	The Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014. In the Companies (Appointment and Qualification of Directors) Rules, 2014, rule 4 shall be numbered as sub-rule(1) and after sub-rule(1) as so renumbered, the following sub-rule shall be inserted namely :- “(2) The following classes of unlisted public company shall not be covered under sub-rule (1), namely:- (a) a joint venture; (b) a wholly owned subsidiary; and	1.4	According to the Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following class or classes of companies shall have at least 2 directors as independent directors: (1) the Public Companies having paid up share capital of 10 crore rupees or more; or (2) the Public Companies having turnover of 100 crore rupees or more; or (3) the Public

		(c) a dormant company as defined under section 455 of the Act.”		<p>Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding 50 crore rupees.</p> <p>However, in case a company covered as under the above rule is required to appoint a higher number of independent directors due to composition of its audit committee, such higher number of independent directors shall be applicable to it.</p> <p>Further, any intermittent vacancy of an independent director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later.</p> <p>However, where a company ceases to fulfill any of three conditions laid down above for three consecutive years, it shall not be required to comply</p>
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				<p>with these provisions until such time as it meets any of such conditions.</p> <p>For the purpose of the above assessment, the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account.</p> <p>A company belonging to any class of companies for which a higher number of independent directors has been specified in the law for the time being in force shall comply with the requirements specified in such law.</p>
6.	Enforcement of the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2017 vide	<p>The Central Government hereby makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014.</p> <p>Following are the amendments:</p>	3.4	<p>Earlier Rule 3(e) stated - The director, who desires, to participate may intimate his intention of participation through the electronic mode at</p>

	<p>Notification G.S.R. 880(E) Dated 13<sup>th</sup> July 2017</p>	<p>(1) In rule 3 for clause (e), the following shall be substituted, - “(e) Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year: Provided that such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person.”</p> <p>(2) In the principal rules, for rule 6, the following rule shall be substituted, namely:- "6. Committees of the Board. - The Board of directors of every listed company and a company covered under rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 shall constitute an 'Audit Committee' and a 'Nomination and Remuneration Committee of the Board'.</p>	<p>3.12</p>	<p>the beginning of the calendar year and such declaration shall be valid for one calendar year.</p> <p>Earlier Rule 6 prescribed that the Board of Directors of every listed companies and following class of companies shall constitute an Audit Committee and a Nomination and Remuneration Committee of the Board-</p> <p>(a) all public companies with a paid up capital of 10 crore rupees or more;</p> <p>(b) all public companies having turnover of 100 crore rupees or more;</p>
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				(c) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding 50 crore rupees or more.
7.	Enforcement of Section 212(8), (9), & (10) vide Notification S.O. 2751(E) dated 24 <sup>th</sup> of August, 2017	The Central Government notified the provisions of sub-sections (8), (9) and sub-section (10) of section 212 of the Companies Act, 2013 with effect from 24 <sup>th</sup> day of August, 2017.	4.14	Not notified
8.	Enforcement of the Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017 Vide Notification G.S.R. 1062(E) dated 24 <sup>th</sup> Of August 2017	In exercise of the powers conferred under sub-section (1) of section 469 read with section 212 of the Companies Act, 2013, Central Government enforced the Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017.  According to the Rule where any person has been guilty of any offence punishable under section 212 of the Act, he may be arrested as per the respective rules.  For details see <a href="http://www.mca.gov.in/Ministry/pdf/SFIORule_25082017.pdf">http://www.mca.gov.in/Ministry/pdf/SFIORule_25082017.pdf</a>	Reference of Relevant provision 212 on page no. 4.14 of the Study material	Earlier not notified
9.	Exemptions given to certain unlisted public	Vide Notification number G.S.R. 839(E) dated 5th July, 2017 an amendment was issued through the	Related to the amendment given in point no. 7 (Above)	Before amendment there was a single rule. It does not prescribe the

	companies under the Companies (Appointment and Qualification of Directors) Rules, 2014 from appointment of Independent Directors Vide notification of circular 09/2017 dated 5 <sup>th</sup> September 2017	<p>Companies (Appointment and Qualification of Directors) Amendment Rules, 2017 inter-alia amending rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014.</p> <p>The said amended Rule 4 provides that an unlisted public company which is a joint venture, a wholly owned subsidiary or a dormant company will not be required to appoint Independent Directors.</p> <p>Through the issue of this circular, it is hereby clarified that a "joint venture,, would mean a joint arrangement, entered into in writing, whereby the parties that have joint control of the arrangement, have rights to the net assets of the arrangement. The usage of the term is similar to that under the Accounting Standards.</p>		nature of unlisted public company and the meaning of joint venture.
10.	Enforcement of the Companies (Restriction on number of layers) Rules, 2017 in exercise of the powers conferred under proviso to clause (87) of section 2 Vide notification	<p><b>Restriction on number of layers for certain classes of holding companies-</b></p> <p>(1) On and from the date of commencement of these rules, no company, other than a company belonging to a class specified in sub-rule(2) , shall have more than two layers of subsidiaries: Provided that the provisions of this sub-rule shall not affect a company from acquiring a company incorporated</p>	Reference of relevant section 186 on page no. 3.32	Earlier not notified

	G.S.R. 1176(E), dated 20 <sup>th</sup> September 2017.	<p>outside India with subsidiaries beyond two layers as per the laws of such country:          Provided further that for computing the number of layers under this rule, one layer which consists of one or more wholly owned subsidiary or subsidiaries shall not be taken into account.</p> <p><b>(2) The provisions of this rule shall not apply to the following classes of companies, namely:—</b></p> <p>(a) a banking company as defined in the Banking Regulation Act, 1949</p> <p>(b) a non-banking financial company as defined in the Reserve Bank of India Act, 1934 which is registered with the Reserve Bank of India and considered as systematically important non-banking financial company by the Reserve Bank of India;</p> <p>(c) an insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 and the Insurance Regulatory Development Authority Act, 1999</p> <p>(d) a Government company referred to in clause (45)</p>		
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		<p>of section 2 of the Companies Act.</p> <p>(3) The provisions of this rule shall not be in derogation of the proviso to sub-section (1) of section 186 of the Act.</p> <p>(4) Every company, other than a company referred to in sub-rule (2), existing on or before the commencement of these rules, which has number of layers of subsidiaries in excess of the layers specified in sub-rule (1) –</p> <p>(i) shall file, with the Registrar a return disclosing the details specified therein, within a period of one hundred and fifty days from the date of publication of these rules in the Official Gazette;</p> <p>(ii) shall not, after the date of commencement of these rules, have any additional layer of subsidiaries over and above the layers existing on such date; and (iii) shall not, in case one or more layers are reduced by it subsequent to the commencement of these rules, have the number of layers beyond the number of layers it has after such reduction or maximum layers allowed in sub rule (1), whichever is more.</p> <p>(5) If any company contravenes any provision of these rules the company and every officer of the company who is in default shall be punishable with fine which</p>		
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		may extend to ten thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.		
11.	Notification of Section 247 vide Notification S.O. 3393(E) dated 18 <sup>th</sup> October 2017	The Central Government hereby appoints the 18 <sup>th</sup> October, 2017 as the date on which the provisions of section 247 of the said Act shall come into force.	-	Earlier Not notified
12.	Notification of the Companies (Registered Valuers and Valuation) Rules, 2017 vide notification G.S.R 1316(E) dated 18 <sup>th</sup> October, 2017	In exercise of the powers conferred by section 247, the Central Government hereby enforced the Companies (Registered Valuers and Valuation) Rules, 2017. Respective rule contains 6 chapters. For detailed rule click the following link <a href="http://www.mca.gov.in/Ministry/pdf/RegisteredValues_19102017.pdf">http://www.mca.gov.in/Ministry/pdf/RegisteredValues_19102017.pdf</a>	-	Earlier Not notified
13.	Notification of the Companies (Removal of Difficulties) Second Order, 2017 Vide Order S.O. 3400(E) dated 23 <sup>rd</sup> October 2017	In section 247(1), for the word “a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed”, the words “a person having such qualifications and experience, registered as a valuer and being a member of an organisation recognised, in such manner, on such terms and conditions as may	-	Earlier section 247(1) stated as follows: Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth

		be prescribed" shall be substituted.		of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.
<b>Economic Laws</b>				
14.	Enforcement of clause (a) to clause(d) of section 2 of the Code Vide notification S.O. 1570(E) , dated 15 <sup>th</sup> May , 2017	The Central Government hereby appoints the 1st April, 2017 as the date on which the provisions of clause (a) to clause (d) of section 2 of the Code relating to voluntary liquidation or bankruptcy shall come into force.	6.8	Earlier it was not notified
15.	Commencement of sections related to Fast Track Corporate Insolvency Resolution Process Vide Notification S.O. 1910(E) dated 14 <sup>th</sup> June 2017	The Central Government hereby appoints the 14th day of June, 2017 as the date on which the provisions of section 55 to section 58 (both inclusive) of the said Code shall come into force.	6.32	Not Notified

16.	Commencement of sections related to Fast Track Corporate Insolvency Resolution Process u/s 55(2) of the Code Vide Notification S.O.1911(E) dated 14 <sup>th</sup> June 2017	In exercise of the powers conferred by section 55(2) of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby notifies that an application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely :- (a) a small company as defined under clause (85) of section 2 of Companies Act, 2013, or (b) a Startup (other than the partnership firm) as defined in the notification of the Government of India in the Ministry of Commerce and Industry number G.S.R. 501(E), dated the 23rd May, 2017, or (c) an unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding rupees one crore.	6.32	Earlier Central Government has not notified any such notification as to the making of an application for fast track corporate insolvency resolution process
17.	Issue of clarification regarding approval of resolution plans under section 30 and 31 of Insolvency	Ministry of Corporate Affairs issued a clarification in view of the requirement under section 30(2)(e) of the Code for the resolution professional to confirm that each resolution plan received by him does not contravene any	6.28- 6.29	-

	<p>and Bankruptcy Code, 2016 vide general circular IBC/01/ 2017 dated 25<sup>th</sup> October 2017</p>	<p>of the provisions of the law for the time being in force.</p> <p>Accordingly clarification was sought whether approval of shareholders/ members of the corporate debtor/ company is required for a resolution plan at any stage during the process for its consideration and approval as laid down under section 30 &amp; 31 of the Insolvency and Bankruptcy Code and after approval during its implementation, for any actions contained in the resolution plan which would normally require specific approval of shareholders/ members under provisions of Companies Act, 2013 or any other law.</p> <p>Through the issue of this circular, it has been clarified that the approval of shareholders / members of the corporate debtor/company for a particular action required in the resolution plan for its implementation, which would have been required under the Companies Act, 2013 or any other law if the resolution plan of the company was not being considered under the Code, is deemed to have been given on its approval by the Adjudicating Authority.</p>		
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## PART – II: QUESTIONS AND ANSWERS

## QUESTIONS

## CORPORATE LAWS

## SECTION – A: COMPANY LAW

**Appointment and Qualifications of Directors & Remuneration of Managerial Personnel**

1. (i) The composition of the Board of Directors of a listed company as on 31-03-2017 comprised of (i) Mr. A, Director, (ii) Mr. B, Director (iii) Mr. C, Director (iv) Mr. D, Director, (v) Mrs. E, Independent Director, (vi) Mr. F, Independent Director and (vii) Mr. G, Independent Director.

Mr. D & Mrs. E vacated their office of Director on 15-04-2017.

You are required to **examine** with reference to the provisions of the Companies Act, 2013 the vacations of the offices of Mr. D & Mrs. E and **discuss** the course of action that can be taken up by the Company in this regard?

- (ii) **Discuss** the legal position in the given situations with reference to the provisions of the Companies Act, 2013:
- (a) Mr. Arthav, a director resigns after giving due notice to the company and he forwards a copy of resignation in e-form DIR-11 to the Registrar of Companies (RoC) within the prescribed time. Besides, the company fails to intimate about the resignation of Mr. Arthav to RoC.
- (b) The Board of Directors of Superwood Limited decides to appoint on its Board, Mr. Ramakant as a nominee director upon the request of a bank which has extended a long term financial assistance to the company. The Articles of Association of the company do not confer upon the Board any such power. Also, there is no formal agreement between the company and the bank for any such nomination.
2. (i) There are four directors in Shine Paper Limited. Mr. Madhav, being the director in station, 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. **Evaluate** whether he will be treated as managing director of the company? Also **recommend** the procedure of appointment of a managing director in a company in the light of the Companies Act, 2013.
- (ii) Excel limited is a listed company with a turnover of ₹ 60 crores in the FY 2016-2017. The company appoints Ms. R as the women director on 1<sup>st</sup> March 2017. Ms. R is

already a director in twelve companies including ten public companies. Also, Ms. R is chartered accountant in practice.

Further, also, Ms. R, is a director in Supreme Ltd. where he is acting in a professional capacity. Since lots of proposal for the holding of directorship in various companies are lined up before the Ms. R, so in order to retain him, Remuneration and nomination committee proposed to enhance the remuneration of Ms. R from 4 Lac per month to 6 Lac per month. However, Supreme Limited was running in losses for last 2 years.

**Evaluate** in the light of the given facts, the following situations with reference to the provisions of the Companies Act, 2013-

- (1) The validity of an appointment of Ms. R in Excel Limited.
- (2) Analysis the proposition of enhancement of the remuneration of Ms. R in Supreme Ltd.

#### **Meetings of Board and its powers**

3. **Examine** the following aspect related to convening of board meeting with reference to the provisions of the Companies Act, 2013:
  - (i) The Chairman of Greenhouse Limited convened a board meeting and two weeks' notice was served on all directors of the company. Two of the independent directors on the board objected on the grounds that no proper agenda for the meeting was circulated.
  - (ii) Purple Florence Limited proposes to hold its board meeting at a shorter notice through video conferencing.

#### **Inspection, inquiry and Investigation**

4. Origin paper Ltd. has been incurring business losses for past couple of years. The company therefore, passes a special resolution for voluntary winding up. Meanwhile, complaints were made to the tribunal and to the Central Government about foul play of the directors of the company, which adversely affected the interests of shareholders of the company as well as public. In this situation **advise** whether investigation may be initiated against the company under the provision of the Companies Act, 2013. Further **decide** whether application can be made to Tribunal for Relief in the above affairs of the company once the investigation is initiated against the company.

#### **Compromises, Arrangements and Amalgamations**

5. A meeting of members of Evergreen Limited was convened under the orders of the Court for the purpose of considering a scheme of compromise and arrangement. The meeting was attended by 300 members holding 9,00,000 shares. 120 members holding 7,00,000 shares in the aggregate voted for the scheme. 140 members holding 2,00,000 shares in aggregate voted against the scheme. 40 members holding 1,00,000 shares abstained from

voting. **Determine** with reference to the relevant provisions of the Companies Act, 2013 whether the scheme was approved by the requisite majority?

### Prevention of Oppression and Mismanagement

6. The issued and paid up capital of Crown Jewels Limited is ₹ 5 crores consisting of 5,00,000 equity shares of ₹ 100 each. The said company has 500 members. A petition was submitted before the Tribunal signed by 80 members holding 10,000 equity shares of the company for the purpose of relief against oppression and mismanagement by the majority shareholders. Examining the provisions of the Companies Act, 2013, **decide** whether the said petition is maintainable. Also **explain** the impact on the maintainability of the above petition, if subsequently 40 members, who had signed the petition, withdrew their consent.

### Winding Up

7. Winding up proceedings has been commenced by the Tribunal against Paramount Limited, a government company (Central Government is a member). Even after completion of one year from the date of commencement of winding up proceedings, it has not possible to conclude the same. The liquidator is of the opinion that the statement shall be filed with tribunal and registrar only.
- (i) **Decide** validity to the opinion made by the liquidator and penalty that can be imposed on the liquidator for contravention of the provision as per the Companies Act, 2013.
  - (ii) **Discuss**, if the Paramount Limited is a non-government company?

### Producer Companies

8. **Discuss** the following aspects of the working of a PQR Producer Company Ltd. under the Companies Act, 1956:-
- (i) Criteria for appointment of Secretary as also the legal position, if its financial position is unsatisfactory.
  - (ii) Can the Board of Directors of the company direct its member to surrender his shares to the company, if so, under what circumstances?
  - (iii) Provisions relating to donation to any institution, as also to a political party.
  - (iv) Provisions relating to investment of general reserves, as also investment in the shares of a company, other than a Producer company.

### Companies incorporated outside India

9. (i) As per provisions of the Companies Act, 2013, **define** the status of Hillways Ltd., a Company incorporated in London, which has a share transfer office at Mumbai?
- (ii) LMP Paper Ltd. is a company registered in Thailand. Although, it has no place of business established in India, yet it is doing online business through telemarketing in India. **Explain** whether it will be treated as a Foreign Company under the Companies Act, 2013?

- (iii) In case, a foreign company does not deliver its documents to the Registrar of Companies as required under section 380 of the Companies Act, 2013, **state** the penalties prescribed under the said Act, which can be levied.

#### Miscellaneous Provisions

10. (i) An officer of a company was allotted one room for two years in a guest house owned by the Company at some other city where he used to stay while on tour. It came to notice of the company that he had not vacated the said room after the expiry of two years and is holding the unauthorized possession of that room and has been permitting to stay outsiders in the said room, at a rent of ₹ 500 per day. The record shows that he had permitted the outsider for 45 days and collected ₹ 22,500 and retained the said amount with him. As per the letter of allotment, there was no such clause which can be invoked against him for making any recovery on account of such wrongful occupation. **Analyse** in the given situation whether manager of the company can seek recovery from the officer of the company under any of the provisions of his employment or the Companies Act.
- (ii) Mr. Z, a director of Southern Highway Tolls Private Limited, is duly authorized by the Board of directors to prepare and file returns, report or other documents to the Registrar of Companies on behalf of the company. Though he filed all the required documents to Registrar in time, however, subsequently it was found that the filed documents were false and inaccurate in respect to material particulars (knowing it to be false) submitted to the Registrar. **Discuss** the penal provision under the Companies Act, 2013 in the light of the given situation.

#### Compounding of offences, Adjudication, Special Courts and National Company Law Tribunal and Appellate Tribunal

11. (i) Mr. D was appointed as a Technical Member of the National Company Law Tribunal (NCLT) on 1<sup>st</sup> July, 2012 for a period of 5 years. He will be completing 62 years on 30<sup>th</sup> June, 2017. **Explain** whether he can be re-appointed on the NCLT on completion of his tenure in 2017?
- (ii) **Identify** the powers of the Central Government under the Companies Act, 2013 regarding:
- (a) To appoint company prosecutors
  - (b) To Appeal against acquittal

#### Corporate Secretarial Practice–Drafting of Notices, Resolutions, Minutes and Reports

12. (i) Mr. Shukla is working as General Manager (Finance and Accounts) in Target Limited. The Board of directors of the said company propose to entrust him with the duty of ensuring compliance with the provisions of the Companies Act, 2013 so that the books

of accounts, balance sheet, statement of profit and loss and the cash flow statements can be prepared and maintained in accordance with law. **Prepare** a Board Resolution for the said purpose considering the above facts.

- (ii) Mr. N is appointed as an additional Director by the Board of Directors of MNR Company Limited at its meeting held on 1st October, 2017 for a period as permitted by law. The Articles of Association has conferred the power to appoint the additional director on the Board of Directors of MNR Company Limited. **Prepare** a Board resolution for the said purpose in the light of the given facts.

### SECTION – B: SECURITIES LAWS

#### The Securities Contract (Regulation) Act, 1956 and the Securities Contract (Regulation) Rules, 1957

13. (i) A company Cookies Private Limited has two shareholders, Mr. Rock and Mr. Salt. Mr. Rock decides to sell his part of shares in Cookies Private Limited to another company, Crispy Private Limited for a specified monetary consideration. **State** how should Mr. Rock proceed to document the transaction so as to make it legally binding on both the parties under the Securities Contract (Regulation) Act, 1956?
- (ii) Mr. Vivaan is having 400 shares of Travel Everywhere Limited and the current price of these shares in the market is ₹ 100. Vivaan's goal is to sell these shares in 6 months' time. However, he is worried that the price of these shares could fall considerably, by then. At the same time, Vivaan doesn't want to sell off these shares today, as he conjectured that the share price might appreciate in the near future. **Determine** how should Mr. Vivaan protect his security and reduce the risk of loss on the share price under the Securities Contract (Regulation) Act, 1956?

#### The Securities Exchange Board of India Act, 1992, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015

14. (i) On completion of 60 years of age as on 31<sup>st</sup> March 2014, Mr. Jain retired as Professor from a university. From 1<sup>st</sup> April 2014, he was appointed as Chairman of the Securities and Exchange Board of India for a period of three years. Under the provisions of the Securities and Exchange Board of India Act, 1992, **decide** whether he can be re-appointed on the same post after expiry of the original tenure? Also **discuss** whether it could be possible for him to relinquish the office before expiry of his tenure?
- (ii) **List** the quarterly compliances for a listed entity under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015?

**ECONOMIC LAWS****The Foreign Exchange Management Act, 1999**

15. Ms. Ashima daughter of Mr. Mittal (an exporter), is residing in Australia since long. She wants to buy a flat in Australia. Since she is unmarried, she wants to make her father Mr. Mittal a joint holder in that flat, for which entire proceeds are to be paid by her.
- (i) **State** the provisions of FEMA governing such type of transaction?
  - (ii) On **Applying** the relevant provisions, can Mr. Mittal join her daughter in acquiring such a flat in Australia?
  - (iii) Mr. Mittal, wants to receive advance payments against his exports from a buyer outside India. **Explain** the relevant provisions?

**The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002**

16. Popular Limited defaulted in the repayment of term loan taken from a Bank against security created as a first charge on some of its assets. The bank issued notice pursuant to Section 13 of the SARFAESI Act, 2002 to the Company to discharge its liabilities within a period of 60 days from the date of the notice. The company failed to discharge its liabilities within the time limit specified.

**Identify and explain** the measures to be taken by the Bank to enforce its security interest under the said Act.

**The Prevention of Money Laundering Act, 2002**

17. (i) The Adjudicating Authority appointed under the Prevention of Money Laundering Act, 2002 issued an order attaching certain properties of XYZ Limited alleged to be involved in money laundering for a specified period. The company aggrieved by the order of the Adjudicating Authority seeks your advice about the remedy that is available under the Act. **Analyse and apply** the relevant provisions of the Prevention of Money Laundering Act, 2002 in relation to the above given situation.
- (ii) Sohan Lal, a farmer, was found involved in embezzlement of opium cultivated by him. **State** the punishment that can be awarded to him under the Prevention of Money Laundering Act, 2002.

**Foreign Contribution Regulation Act, 2010**

18. (i) **Discuss** whether foreign remittances received from a relative are to be treated as foreign contribution as per the FCRA, 2010?
- (ii) In the light of the Foreign contribution Regulation Act, 2010, **discuss** whether foreign contribution be received in and utilised from multiple Bank Accounts?

**The Arbitration and Conciliation Act, 1996**

19. In 2016, Company Amar, food processor manufacturing unit entered into a joint venture agreement with Company USHA, the largest manufacturer of Food processors for supply of parts of mixer & grinder for manufacturing its latest model. Both the companies are registered under the Companies Act 2013. Agreement carries the term that all disputes shall be arbitrated in Mumbai. **Discuss** the type of arbitration agreement made between them.

**Examine** what will happen if the agreement does not have any clause relating to arbitration and disputes arose between them concerning quality of material supplied in 2017?

**The Insolvency and Bankruptcy Code, 2016**

20. (i) Wisdom Ltd. commits a default against the debts taken from the financial creditors. Mr. F, a financial creditor initiated the corporate insolvency resolution process against the Wisdom Ltd. Mr. X, another financial creditor, thereof files an application for initiating corporate insolvency resolution process with the Adjudicating Authority. **Examine** with reference to the validity as to the filing of an application by Mr. X for initiation of corporate insolvency resolution process?
- (ii) Standard International Ltd. who is a foreign trade creditor having its office in Hong Kong wanted to file a petition under insolvency and bankruptcy code 2016 on default of the debtor in India. It moved a petition under section 9 of the code seeking commencement of insolvency process. The foreign company was not having any office or bank account in India. Because of this, it couldn't submit a "certificate from financial institution "as required under the code. **Examine** whether the petition is permissible under the Insolvency & Bankruptcy Code, 2016?

**SUGGESTED ANSWER/HINTS**

1. (i) The provision of the Companies Act, 2013 governing the appointment of Women Director and Independent Directors are as under:
- (a) The second proviso to section 149(1) of the Companies Act, 2013 provides that such class or classes of companies as may be prescribed, shall have atleast one women director. Rule 3 of *Companies (Appointment and Qualification of Directors) Rules, 2014* provides that the following class of companies shall appoint at least one women director –
- (1) every listed company;
  - (2) every other public company having-
    - paid-up share capital of one hundred crore rupees or more; or
    - turnover of three hundred crore rupees or more:

It further provides that any intermittent vacancy of a women director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

In this case the Company is a listed and under the provisions of the Companies Act, 2013, it is required to have at least 1 Women Director in its Board.

- (b) The provision of section 149(4) provides that every listed company shall have at least 1/3<sup>rd</sup> of the total number of Directors as Independent Directors.

As per the facts stated in the question, composition of board of directors of listed company as on 31-3-2017 comprised of total 7 directors. Out of which 4 were directors and 3 were independent directors. Later Mr. D (Director) and Mrs. E (Independent Director) vacated their offices of director on 15-4-2017.

So accordingly, listed company as stated above, shall have at least one women director and one-third of the total number of directors as independent directors in the Board. However, on 15-4-2017, total number of directors left were 5 due to vacation of Mr. D and Mrs. E. Further, Rule 3 of the *Companies (Appointment and Qualification of Directors) Rules, 2014*, provides that if there is an intermittent vacancy of a women director, it shall be filled up by the Board at the earliest but not later than immediate next board meeting or three months from the date of such vacancy whichever is later.

As per the requirement of the above sections, there is compliance of section 149(4) as 1/3<sup>rd</sup> of the total number of directors comprises of (1/3x5) 1.6 rounded off as 2, which complies with the minimum requirement of 2 independent directors in the board, however, pertaining to women director, Board have to fill up the intermittent vacancy at the earliest but not later than immediate next board meeting or three months from the date of such vacancy whichever is later.

- (ii) (a) Resignation of Director (Section 168 of the Companies Act, 2013)

A director may resign from his office by giving a notice in writing to the company. The Board shall on receipt of such notice take note of the same. The company shall within 30 days from the date of receipt of notice of resignation from a director, intimate the Registrar in *Form DIR -12* and post the information on its website, if any.

Such director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30 days from the date of resignation in *Form DIR-11* along with the prescribed fee. The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

In the present case, Mr. Arthav, a director resigns after giving due notice to the company and he forwards a copy of resignation in e-form DIR-11 to the RoC

within the prescribed time.

If the company fails to intimate about the resignation of Mr. Arthav to RoC, even then the resignation of Mr. Arthav shall take effect from the date on which the notice is received by the company or the date, if any, specified by Mr. Arthav in the notice, whichever is later.

- (b) According to section 161 (3) of the Companies Act, 2013, subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company.

The Articles of Association of Superwood Limited do not confer upon the Board of Directors any such power. Hence, the Board cannot appoint Mr. Ramakant as a nominee director even on the request of a bank which has extended a long term financial assistance to the company.

- 2. (i) **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:
  - (a) virtue of articles of a company, or
  - (b) an agreement with the company, or
  - (c) 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. Madhav, a director in Shine Paper Limited 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. Madhav 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.
- (ii) (1) **Number of directorships:** As per section 165(1) of the Companies Act, 2013, no person shall hold office as director, including any alternate directorship, in more than 20 companies at the same time.

Out of the limit of 20, the maximum number of public companies in which a person can be appointed as a director shall not exceed 10. [Proviso to section 165(1)]

Private companies that is either holding or subsidiary company of a public company shall be included in reckoning the limit of public companies in which a person can be appointed as a director.

In the instant case, Ms. R was appointed as a women director on 1<sup>st</sup> March, 2017 in Excel Limited. She was already holding directorship in twelve companies including ten public companies.

As Ms. R was already a director in ten public companies, her appointment in Excel Limited is not valid as it will lead to her directorship in 11 public companies.

In this case, either she can choose between the companies in which she wishes to continue to hold the office of director or resign her office as director in the other remaining companies to maintain the limit of holding of directorship.

- (2) **Remuneration :** In the given case, since, the company has suffered losses in

the last two years, the company will pay remuneration to its directors in accordance with the provisions of Schedule V to the Companies Act, 2013.

In case of a managerial person who is functioning in a professional capacity, no approval of Central Government is required, if such managerial person is not having any interest in the capital of the company or its holding company or any of its subsidiaries directly or indirectly or through any other statutory structures and not having any, direct or indirect interest or related to the directors or promoters of the company or its holding company or any of its subsidiaries at any time during the last two years before or on or after the date of appointment and possesses graduate level qualification with expertise and specialised knowledge in the field in which the company operates. [Item B of Section II of Schedule V]

The total remuneration that supreme Limited is intending to pay to Ms. R is 72 lakhs per annum, from the current remuneration of 48 lakhs per annum. Since Ms. R is working in professional capacity and the remuneration has been proposed by the remuneration Committee, no approval of Central Government is required. Also, the case shall be in compliant of Schedule V, Central Government approval will not be required even when there is increase in remuneration payable.

3. (i) According to section 173 (3) of the Companies Act, 2013, a meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

According to the question, two of the independent directors on the Board has objected on the grounds that no proper agenda for the meeting was circulated.

The Companies Act, 2013 does not specifically provide for sending agenda along with the notice of the meeting. However, generally as a good secretarial practice, the notice is accompanied with the agenda of the meeting. Thus, the contention of the independent directors objecting on the grounds that no agenda for the meeting was circulated, does not hold good.

Further, the Chairman of Greenhouse Limited has convened the Board meeting by serving a two weeks' notice (i.e. more than 7 days). Hence, the meeting shall be valid.

- (ii) According to section 173 of the Companies Act, 2013,
- (a) The directors can participate in a meeting of the Board either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time. Further, Central Government may provide for matters which cannot be dealt in a meeting through video conferencing or other audio visual means.

- (b) A meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company.

Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting. Further, in case the independent directors are not present at such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

Hence, Purple Florence Limited can hold a board meeting at a shorter notice through video conferencing, for transacting urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting. Further, if the independent directors are absent from the meeting of the Board, decision taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

4. According to section 226 of the Companies Act, 2013, an investigation may be initiated notwithstanding, and no such investigation shall be stopped or suspended by reason only of, the fact that—
- (i) an application has been made under section 241;
  - (ii) the company has passed a special resolution for voluntary winding up; or
  - (iii) any other proceeding for the winding up of the company is pending before the Tribunal.

In the instant case Origin Paper Ltd. has been incurring business losses for past couple of years. The company passed a special resolution for voluntary winding up. Meanwhile complaints were made to the Tribunal and to the Central Government about foul play of the directors of the company, which adversely affected the interests of shareholders of the company as well as the public.

As the company has passed a special resolution for voluntary winding up of the company, then also the investigation may be initiated against the company under section 226 of the Companies Act, 2013.

Yes as per the above provision, though investigation was initiated against the company, it shall not bar members to file an application to Tribunal for Relief under section 241 of the companies Act, 2013.

According to the said section, any member of a company may apply to the Tribunal for an order on the complains that—

- (i) 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; or

- (ii) the material change taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members,

The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order.

Where any members of a company are entitled to make an application, any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

5. As per section 230 (6) of the Companies Act, 2013 where majority of persons at a meeting held **representing 3/4<sup>th</sup> in value**, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order. The majority of person representing 3/4<sup>th</sup> Value shall be counted of the following:

- ◆ the creditors, or
- ◆ class of creditors or
- ◆ members or
- ◆ class of members, as the case may be,

The majority is dual, in number and in value. A simple majority of those voting is sufficient. Whereas the 'three-fourths' requirement relates to value. The three-fourths value is to be computed with reference to paid-up capital held by members present and voting at the meeting.

In this case 300 members attended the meeting, but only 260 members voted at the meeting. As 120 members voted in favor of the scheme the requirement relating to majority in number (i.e. 131) is not satisfied.

260 members who participated in the meeting held 9,00,000 shares, three-fourth of which works out to 6,75,000 while 120 members who voted for the scheme held 7,00,000 shares. The majority representing three-fourths in value is satisfied.

Thus, in the instant case, the scheme of compromise and arrangement of Evergreen Limited is not approved as though the value of shares voting in favor is significantly more, the number of members voting in favor do not exceed the number of members voting against.

6. **Right to apply for oppression and mismanagement:** 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.

The share holding pattern of Crown Jewels Limited is given as follows:

₹ 5,00,00,000 equity share capital held by 500 members

The petition alleging oppression and mismanagement has been made by some members as follows:

(i) No. of members making the petition – 80

(ii) Amount of share capital held by members making the petition – ₹ 10,00,000

The petition shall be valid if it has been made by the lowest of the following:

100 members; or

50 members (being 1/10<sup>th</sup> of 500); or

Members holding ₹ 50,00,000 share capital (being 1/10<sup>th</sup> of ₹ 5,00,00,000)

As it is evident, the petition made by 80 members meets the eligibility criteria specified under section 244 of the Companies Act, 2013 as it exceeds the minimum requirement of 50 members in this case. Therefore, the petition is maintainable.

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. (1956) Sc. 2013.*].

7. 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.

#### **Paramount Limited is a Government Company**

In the current scenario, we can understand that the Paramount 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.

#### **Paramount Limited is a Non-Government Company**

In the current scenario, the Paramount 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.

8. (i) **Secretary of a producer company (Section 581X of the Companies Act, 1956):** Every producer company having an average annual turnover exceeding five crore rupees in each of three consecutive financial years shall have a whole-time secretary, who possesses membership of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980. If a producer company fails to comply with this, the company and every officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.  
  
In any proceedings against a person in respect of an offence, under this section, it shall be a defence to prove that all reasonable efforts to comply with the provisions of section were taken or that the financial position of the company was such that it was beyond its capacity to engage a whole-time secretary.
- (ii) **Surrender of shares [Section 581ZD (5) of the Companies Act, 1956]:** Where the Board of a producer company is satisfied that—
  - (a) any member has ceased to be a primary producer; or
  - (b) any member has failed to retain his qualifications to be a member as specified in articles, the Board shall direct the surrender of shares together with special rights, if any, to the producer company at par value or such other value as may be determined by the Board.

Provided that the Board shall not direct such surrender of shares unless the member has been served with a written notice and given an opportunity of being heard.

- (iii) **Donations or subscription by producer company (Section 581ZH of the Companies Act, 1956):** A producer company may, by special resolution, make donation or subscription to any institution or individual for the purposes of—

- (a) promoting the social and economic welfare of producer member or producers or general public; or
- (b) promoting the mutual assistance principles.

Provided that the aggregate amount of all such donation and subscription in any financial year shall not exceed three per cent of the net profit of the producer company in the financial year immediately preceding the financial year in which the donation or subscription was made.

Further, no producer company shall make directly or indirectly to any political party or for any political purpose to any person any contribution or subscription or make available any facilities including personnel or material.

- (iv) **Investment in other companies, formation of subsidiaries, etc. (Section 581ZL):** The producer company has to follow the following provisions under this section.

- (1) The general reserves of any producer company shall be invested to secure the highest returns available from approved securities, fixed deposits, units, bonds issued by the Government or co-operative or scheduled bank or in such other mode as may be prescribed.
- (2) Any producer company may, for promotion of its objectives acquire the shares of another producer company.
- (3) Any producer company may subscribe to the share capital of, or enter into any agreement or other arrangement, whether by way of formation of its subsidiary company, joint venture or in any other manner with any body corporate, for the purpose of promoting the objects of the producer company by special resolution in this behalf.

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

- (a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) Conducts any business activity in India in any other manner.

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

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

- (ii) As per Section 2(42) read with the *Companies (Registration of Foreign Companies) Rules, 2014* of the Companies Act, 2013, 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 is a foreign company.

Further the above said rules states the meaning of "electronic mode". It 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 interchange and other digital supply transactions;
- (b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities in India or from citizens of India;
- (c) financial settlements, web based marketing, advisory and transactional services, data base services and products, supply chain management;
- (d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- (e) all related data communication services whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

Looking to the above description, it can be said that being involved in business activity through telemarketing, LMP Paper Ltd., will be treated as foreign company.

- (iii) The Companies Act, 2013 lays down the governing provisions for foreign companies in Chapter XXII which is comprised of sections 379 to 393. The penalties for non-filing or for contravention of any provision for this chapter including for non-filing of documents with the Registrar as required by section 380 and other sections in this chapter are laid down in section 392 of the Act which provides that if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with a fine which shall not be less than ₹ 1,00,000 but which may extend to ₹ 3,00,000 and in the case of a continuing offence, with an additional fine which may extend to ₹ 50,000 for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine

which shall not be less than ₹ 25,000 but which may extend to ₹ 5,00,000, or with both.

**10. (i) Penalty for wrongful withholding of property:** Section 452 of the Companies Act, 2013 provides for Penalty for wrongful withholding of property. According to the section:

- (1) If any officer or employee of a company -
  - (a) Wrongfully obtains possession of any property, including cash of the company; or
  - (b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorized by this Act, he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than 1 lakh rupees but which may extend to 5 lakh rupees.
- (2) The Court trying an offence may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to 2 years.

Hence, as per the provisions of the Companies Act, 2013 and not giving any emphasis on the terms of employment, the manager of the company can recover possession of the room and the cash wrongfully obtained and the benefits that have been derived from such property or cash.

**(ii) Penalty for false statements (Section 448 of the Companies Act, 2013)**

According to section 448 of the Companies Act, 2013, save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made there under, any person makes a statement, -

- (a) which is false in any material particulars, knowing it to be false; or
- (b) which omits any material fact, knowing it to be material,

he shall be liable under section 447.

In the present case, Mr. Z, a director of Southern Highway Tools Private Limited filed returns, report or other documents to Registrar in time, however, subsequently it was found that the filed documents were false and inaccurate in respect to material particulars (knowing it to be false) submitted to the Registrar.

Hence, Mr. Z shall be liable under section 447 for false statements.

**Penal Provisions:** As per Section 447, any person who is found to be guilty under this section shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to 3 times the amount involved in the fraud, provided that, where the fraud involves public interest, the term of imprisonment shall not be less than 3 years.

Hence, Mr. Z a director of Southern Highway Tools Private Limited shall be punishable with imprisonment and fine prescribed as aforesaid.

11. (i) According to Section 413(1) of the Companies Act, 2013, the President and every other Member of the Tribunal shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re appointment for another term of five years.

Under section 413 (2), a Member of the Tribunal shall hold office as such until he attains, -

- (1) in the case of the President, the age of sixty-seven years;
- (2) in the case of any other Member, the age of Sixty-five years.

In the instant case, Mr. D was appointed as a technical Member of the NCLT on 1<sup>st</sup> July, 2012 for a period of 5 years. He will be completing 62 years on 30<sup>th</sup> June, 2017. He can also be re-appointed after his initial term of five years is over. But since he shall be attaining the age of 65 years as on 30<sup>th</sup> June, 2020, he will have to step down from the post on his attaining the age of 65 years i.e. on 30<sup>th</sup> June, 2020.

- (ii) (a) **Power of Central Government to appoint company prosecutors:** This section lays down the provisions seeking to provide that the Central Government may appoint company prosecutors with the same powers as given under the Cr. PC on Public Prosecutors.
- (1) **Appointment of company prosecutors:** The Central Government may appoint (generally, or for any case, or in any case, or for any specified class of cases in any local area) one or more persons, as company prosecutors for the conduct of prosecutions arising out of this Act; and
  - (2) **Powers and Privileges:** The persons so appointed as company prosecutors shall have all the powers and privileges conferred on Public Prosecutors appointed under section 24 of the Cr. PC.
- (b) **Appeal against acquittal:** According to section 444 of the Companies Act, 2013, the Central Government may, in any case arising under this Act, direct –
- (1) any company prosecutor, or
  - (2) authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any court, other

than a High Court.

Appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the Appellate Court.

**12. (i) Board Resolution**

Resolution passed at the meeting of Board of Directors of Target Limited held at its registered office situated at ..... on .....(date) at ..... (Time).

"Resolved that pursuant to section 128(6) and 129 of the Companies Act, 2013, Mr. Shukla, who is already the General Manager (Finance and Accounts) of the company, be and is hereby entrusted with additional duties of ensuring compliance with the provisions of the Companies Act, 2013 so that the books of accounts, balance sheet, statement of profit and loss and the cash flow statements are maintained in accordance with the provisions of law."

"Further Resolved that the said Mr. Shukla be and is hereby entrusted with the authority to do such acts things or deeds as may be necessary or expedient for the purpose of discharging his above referred duties."

Sd/

Board of Directors

Target Limited

**(ii) Board Resolution for appointment of Additional Director:**

"Resolved that pursuant to the Articles of Association of the company and section 161(1) of the Companies Act, 2013, Mr. N is appointed as an Additional Director of the MNR Company Limited with effect from 1st October, 2017 to 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.

Resolved further that Mr. N will enjoy the same powers and rights as other directors.

Resolved further that Mr. \_\_\_\_\_ Secretary of MNR Company Limited be and is hereby authorised to electronically file necessary returns with the Registrar of Companies and to do all other necessary things required under the Act."

**13. (i) As per the stated facts, Mr. Rock decides to sell his part of the share in other company. So, such an understanding of transfer of the shares of Cookies Private Limited held by Mr. Rock to Crispy Private Limited shall be recorded in Share Purchase Agreement (SPA), which is a legally binding contract, and lists down all the terms and conditions which are relevant to the sale of shares, such as –**

- ◆ the exact description of shares, i.e. the number of shares, price per share, premium amount, if any;

- ◆ the conditions that must be satisfied before the sale takes place;
- ◆ the date on which the sale will be completed;
- ◆ the manner in which the transfer will be made;
- ◆ any indemnities or protections available to the parties;
- ◆ the representations and warranties made by either party; and
- ◆ the conditions upon which the agreement will terminate.

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

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

14. (i) **Appointment of Chairman:** As per Section 5 of the SEBI Act, 1992 and the rules prescribed under the SEBI Act, 1992, the Chairman may hold office for a period of three years subject to the maximum age limit of 65 years and can be re-appointed by the Central Government.

Also, as **per Section 4(5)** of the Act, the Chairman shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to securities market or have special knowledge or experience of law; finance; economics, accountancy, administration or in any other discipline which, in the opinion of the Central Government, shall be useful to the Board.

In the instant case, Mr. Jain retired as professor from a university on completion of 60 years of age as on 31<sup>st</sup> March, 2014 appointed as Chairman of SEBI from 1<sup>st</sup> April, 2014 for a period of 3 years.

This appointment is valid as on the date of appointment, he is of 60 years of age and he, as a retired professor, is a person of ability, integrity and standing and have special knowledge or experience of law; finance; economics, accountancy, administration or in any other discipline.

If Mr. Jain is reappointed as a chairman after expiry of the original tenure of 3 years, he can be re-appointed but only upto 65 years of age i.e. upto 31<sup>st</sup> March, 2019 (i.e. only for two years).

**Right to Relinquish the office:** The Chairman shall equally have the right to relinquish office at any time before the expiry of their tenure by giving a notice of three months in writing or salary and allowances in lieu thereof to the Central Government.

**(ii) Quarterly compliances– Listed Entity**

A Listed company has to comply with the following quarterly compliances under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015:

**1. Regulation 13(3):- Grievance Redressal Mechanism**

The listed entity shall file with the recognized stock exchange(s) on a quarterly basis, within 21 days from the end of each quarter, a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter.

**2. Regulation 27(2):- Other Corporate Governance Requirements**

A listed entity shall submit quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognized stock exchange(s), within 15 days from close of quarter.

**3. Regulation 31(1): Holding of Specified Securities and Shareholding Pattern.**

A listed entity shall submit a statement showing holding of securities and shareholding pattern separately for each class of securities:-

- (a) One day prior to listing of its securities on the stock exchange(s);
- (b) On a quarterly basis, within 21 days from the end of each quarter; and,
- (c) Within 10 days of any capital restructuring of the listed entity resulting in a change exceeding 2 % per cent of the total paid-up share capital.

**4. Regulation 33(3): Financial Results**

The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within 45 days of end of each quarter, other than the last quarter.

**5. Regulation 32(1): Statement of Deviation(S) Or Variation(S)**

A listed entity shall submit to the stock exchange the following statement(s) on a quarterly basis for public issue, rights issue, preferential issue etc. -

- (a) indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable;

- (b) indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilization of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilization of funds.

**15. (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 8<sup>th</sup> 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.

- 16. Sub-section (4) of section 13 of SARFAESI Act, 2002,** provides that if the borrower fails to discharge his liability in full within the 60 days, the secured creditor may take recourse to one or more of the following measures to recover his secured debt:

- (i) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;
- (ii) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;

- (iii) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;
- (iv) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

In the instant case, the Bank may take the above mentioned procedure to enforce its security interest in case Popular Limited has failed to discharge its liabilities within the time limit specified.

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

Section 26 deals with the right and time frame to make an appeal to the Appellate Tribunal. Any person aggrieved by an order made by the Adjudicating Authority may prefer an appeal to the Appellate Tribunal within a period of 45 days from the date on which a copy of the order is received by him. The appeal shall be in such form and be accompanied by such fee as may be prescribed. The Appellate Tribunal may extend the period if it is satisfied that there was sufficient cause for not filing it within the period of 45 days.

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

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

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

- (ii) Section 4 of the Prevention of Money Laundering Act, 2002 provides for the punishment for Money-Laundering. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine. But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to 10 years instead of 7 years.

Paragraph 2 of Part A of Schedule to the Prevention of Money Laundering Act, 2002, covers Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 Whereby, embezzlement of opium by cultivator (section 19) is covered under paragraph 2 of Part A.

In the present case, Sohan Lal, a farmer, who was involved in embezzlement of opium cultivated by him shall be liable for the rigorous imprisonment for a term which may extend to 10 years and shall also be liable to fine.

- 18. (i) No. As per Section 4(e) of the Foreign Contribution Regulation Act, 2010 and Rule 6 of Foreign Contribution Regulation Rules, 2011, even the persons prohibited under section 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 one lakh rupees or equivalent thereto in a financial year from any of his relatives shall inform the Central Government in prescribed Form within thirty days from the date of receipt of such contribution.
- (ii) The foreign contribution should be received only in the exclusive single foreign contribution account of a Bank (also called designated FC account), as mentioned in

the order for registration or prior permission granted and should be separately maintained by the associations. However, one or more accounts (called Utilization Account) in one or more banks may be opened by the association for 'utilising' the foreign contribution after it has been received in the designated FCRA bank account, provided that no funds other than that foreign contribution shall be received or deposited in such account or accounts and in all such cases, intimation is to be given online within 15 days of opening of such account.

19. There are two basic types of arbitration agreement are:

(a) **Arbitration clause** - a clause contained within a principal contract. The parties undertake to submit disputes in relation to or in connection with the principal contract that may arise in future to arbitration.

(b) **Submission agreement** - an agreement to refer disputes that already exist to arbitration. Such an agreement is entered into after the disputes have arisen.

In first case, the agreement already carries the term that all disputes shall be arbitrated in Mumbai at the time of entering into joint venture agreement. This would be an arbitration clause as it is contained in the principal contract (JVA) and no disputes have arisen till yet. It concerns future disputes that may arise.

In the second case, the Principal contract (JVA) does not have any term relating to arbitration. Disputes arose between the parties concerning quality of supplied goods in 2017. To resolve this dispute, parties later entered into an agreement "That all disputes including quality of goods supplied by Company USHA to Company Amar shall be submitted to arbitration. The parties hereby agree to abide by the decision of the arbitrator." Such an agreement that is made after the disputes have arisen would be called a submission agreement.

20. (i) 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 can be initiated by Mr. X., however he is entitled under the law to raise his claim in this case against the Wisdom Ltd.

- (ii) Section 1 of the Insolvency and Bankruptcy Code, 2016 specifies of the extent, commencement and applicability of the Code. According to this, it extends to the whole of India and shall apply for insolvency, liquidation, voluntary liquidation or bankruptcy of any company incorporated under the Companies Act, 2013 or under any previous law.

In view of this, the IBC Code, 2016 applies to the corporate debtor incorporated under the Companies Act, 2013 or under any previous laws.

As per the definition of the Creditor given in section 3(10) of the Insolvency and Bankruptcy Code, 2016, it means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor, and a decree holder. So, Standard International Ltd. is a creditor under the purview of the Code.

As per the facts given in question, Standard International Ltd., is a foreign trade creditor. He wanted to file a petition under the under Section 9 of the Insolvency and Bankruptcy Code, 2016 for commencement of Insolvency process against the defaulter in India. Standard International Ltd. was not having any office or bank account in India.

As per the requirement of section 9 of the Code, along with application certain documents were needed to be furnished by the creditor to the Adjudicating authority. Being a foreign trade creditor, Standard International Ltd was also required to provide a copy of certificate from the financial institutions maintaining accounts of the creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor. Since, Standard International Ltd. was not having any office or bank account in India, it cannot furnish certificate from financial institution as defined under the section 3(14) of the code. So, Petition under section 9 of the Code is not permissible.