

## **PAPER 4: CORPORATE AND ECONOMIC LAWS**

### **PART – I: RELEVANT MATERIALS FOR MAY 2021 EXAMINATION**

For May 2021 examinations for Paper 4: Corporate and Economic Laws, relevant material is of November 2020 edition containing relevant amendments made latest by 31<sup>st</sup> October 2020.

Besides, refer booklet on MCQS and Case scenarios of January 2021 edition containing Independent MCQs and Case Scenarios on the topics covered under the study material for 30 marks segment of MCQs in the Examination.

Read thoroughly the study material first and then go with the said booklet to have practice and revision of concepts with an analytical and application approach with the thorough understanding of the subject.

### **PART – II : QUESTIONS AND ANSWERS**

#### **DIVISION A: CASE SCENARIO BASED MCQS/ INDEPENDENT MULTIPLE CHOICE QUESTIONS**

##### **Case scenario 1**

Balfor Ltd., is an unlisted company, having total 70 members, with a paid up capital of ₹ 42,00,000, having turnover of ₹ 200 crore, as per the audited financial statements for the year ended on 31st March, 2020.

5 members holding in total 4% stake in the company, met in person to discuss about the oppression and mismanagement going on in Balfor Ltd. and to do something about it. One of the members, Mr. Ravi, suggested that we five members should file a class action application to the Tribunal to get a resolution in this matter, to which another member, Mr. Jay, told that he is in contact with 3 other members of the company, holding in total 3% stake, who are also finding the activities going on in the company to be unjust. So, five plus three other members i.e. 8 members in total, will be able to file an application to the Tribunal under section 244 of the Companies Act, 2013.

The application of complaint for oppression and mismanagement was filed to the Tribunal on 4<sup>th</sup> June, 2020, with the consent of aforesaid 8 members of the company. The said application provided the details of an agreement made by Balfor Ltd. with Mr. Dev, a relative of director of Balfor Ltd., Mr. Raj, with respect to continuous supply of raw materials to Balfor Ltd., for which Mr. Raj, had received certain commission from Mr. Dev, in cash, for offering the contract to him. Also, another director, Mr. Jayesh, had improperly transferred a property of Balfor Ltd. on 6<sup>th</sup> March, 2020, to Mr. Prakash.

The Tribunal on receipt of such application, made an order, directing investigation into the affairs of Balfor Ltd. Also, the agreement made with Mr. Dev was ordered to be terminated after giving notice to Mr. Dev and obtaining his consent. However, no compensation was ordered to be paid to Mr. Dev for such cancellation of agreement. The contract with respect to property transferred by Mr. Jayesh was also ordered to be set aside, as it would have been deemed to be a fraudulent preference, in case such transaction was made by an individual in his insolvency.

Simultaneously, the Central Government ordered for the investigation into the affairs of Balfor Ltd., on receipt of the order from the Tribunal and the task of such investigation was assigned to the Serious Fraud Investigation Office. The Director of Serious Fraud Investigation Office, on getting such order from the Central Government, designated 3 inspectors for such investigation and soon, the investigation got started by the designated persons.

One of the Investigating officers, Mr. Vaibhav, issued summons, to 2 employees, of Balfor Ltd., Mr. Karan and Mr. Arjun, respectively, as well as, to Mr. Daya, an employee of Kafor Ltd., an associate company of Balfor Ltd., after taking the requisite approvals.

The aforesaid persons attended at the place at which they were summoned by Mr. Vaibhav and were examined on oath, one after the other. During the said examination, Mr. Vaibhav, took down notes in writing and he read over the notes taken by him, to all the persons examined, after the end of examination. After hearing the said notes, Mr. Karan and Mr. Arjun, signed the document on which such notes were written but Mr. Daya, refused to sign such document without any reasonable cause for the same, on the same day, but then he thought there would be no issue in signing and so he signed the same after 20 days.

Mr. Vaibhav, forwarded the notes taken by him to the Assistant Director of Serious Fraud Investigation Office, Mr. Ramanuj, and on the basis of such notes, he derived that Mr. Arjun has committed an offence under section 447 of the Companies Act, 2013 which Mr. Ramanuj reconfirmed with Mr. Vaibhav, via email.

Mr. Ramanuj, accordingly, passed an order for arrest of Mr. Arjun, after recording in writing the reasons for such arrest and he immediately forwarded the copy of order of such arrest to the concerned authority along with the document containing notes taken by Mr. Vaibhav at the time of examination of Mr. Arjun, which indicated that he has committed an offence under section 447 of the Companies Act, 2013.

Balfor Ltd., on coming to know of such arrest of Mr. Arjun, wanted to give termination to him and also wanted to demote Mr. Karan to position of junior assistant from his position of senior assistant in the company, during the pendency of investigation and for that purpose it made an application to the Tribunal for the same on 10<sup>th</sup> October, 2020.

In response to the said application from Balfor Ltd., the Tribunal passed an order on 26<sup>th</sup> October, 2020 allowing the termination to be given to Mr. Arjun but it objected to the decision of

the company for reduction in rank of Mr. Karan from his current position, against which Balfor Ltd. filed an application with the appellate tribunal on 15<sup>th</sup> November, 2020.

**Multiple Choice Questions:**

1. State in the light of the given facts , whether, the five members holding in total 4% stake in Balfor Ltd., or the eight members, holding in total 7% stake in Balfor Ltd., were eligible for filing application for class action or/ and u/s 244, respectively, of the Companies Act, 2013?
  - (a) For filing application for class action, 5 members were eligible and also for filing application u/s 244 of the Companies Act, 2013, 8 members were eligible.
  - (b) For filing application for class action, 5 members were not eligible and also for filing application u/s 244 of the Companies Act, 2013, 8 members were not eligible .
  - (c) For filing application for class action, 5 members were eligible but for filing application u/s 244 of the Companies Act, 2013, 8 members were not eligible.
  - (d) For filing application for class action, 5 members were not eligible but for filing application u/s 244 of the Companies Act, 2013, 8 members were eligible .
2. Whether the decision of Tribunal can be considered as valid with respect to termination of agreement made by Balfor Ltd. with Mr. Dev as well as setting aside the contract of transfer of property, respectively?
  - (a) The decision of tribunal for termination of agreement made by Balfor Ltd. with Mr. Dev can be considered as valid. Also, the decision of setting aside the contract of transfer of property, can be considered as valid as such transfer was made within 6 months before the date of making application to the tribunal.
  - (b) The decision of tribunal for termination of agreement made by Balfor Ltd. with Mr. Dev cannot be considered as valid as no compensation was ordered to be paid to Mr. Dev. Also, the decision of setting aside the contract of transfer of property, cannot be considered as valid as such transfer was not made within 90 days before the date of making application to the tribunal.
  - (c) The decision of tribunal for termination of agreement made by Balfor Ltd. with Mr. Dev can be considered as valid. Also, the decision of setting aside the contract of transfer of property, can be considered as valid as such transfer was made within 3 months before the date of making application to the tribunal.
  - (d) The decision of tribunal for termination of agreement made by Balfor Ltd. with Mr. Dev cannot be considered as valid as no compensation was ordered to be paid to Mr. Dev. However, the decision of setting aside the contract of transfer of property,

can be considered as valid as such transfer was made within 3 months before the date of making application to the tribunal.

3. Prior approval of which authority would have been sufficient for Mr. Vaibhav for examining Mr. Daya, on oath, and how much maximum amount of fine could be levied on Mr. Daya for refusing to sign the document containing the notes taken down by Mr. Vaibhav?
  - (a) Prior approval of Director of Serious Fraud Investigation Office would have been sufficient for Mr. Vaibhav and maximum amount of fine that could be levied on Mr. Daya is ₹ 1,00,000.
  - (b) Prior approval of Central Government would have been sufficient for Mr. Vaibhav and maximum amount of fine that could be levied on Mr. Daya is ₹ 40,000.
  - (c) Prior approval of Director of Serious Fraud Investigation Office would have been sufficient for Mr. Vaibhav and maximum amount of fine that could be levied on Mr. Daya is ₹ 1,40,000.
  - (d) Prior approval of Central Government would have been sufficient for Mr. Vaibhav and no fine that could be levied on Mr. Daya as he has signed the said document within 30 days of being examined on oath.
4. Whether Mr. Ramanuj was having the authority to exercise power to make an order of arrest of Mr. Arjun on the basis of notes of examination received from Mr. Vaibhav and to which authority, Mr. Ramanuj would have forwarded the copy of arrest order along with the document containing notes?
  - (a) No, as such notes can't be considered as a material or evidence in his possession to be used against Mr. Arjun and Mr. Ramanuj would have forwarded the copy of arrest order along with the document containing notes to the Serious Fraud Investigation Office.
  - (b) Yes, as such notes constitute valid evidence to be used against Mr. Arjun and Mr. Ramanuj would have forwarded the copy of arrest order along with the document containing notes to the Central Government.
  - (c) No, as such notes can't be considered as a material or evidence in Mr. Ramanuj's possession to be used against Mr. Arjun and Mr. Ramanuj would have forwarded the copy of arrest order along with the document containing notes to NCLT.
  - (d) Yes, as such notes constitute valid evidence to be used against Mr. Arjun and Mr. Ramanuj would have forwarded the copy of arrest order along with the document containing notes to the Serious Fraud Investigation Office.

5. What was the last date available with Tribunal to give response to the application made by Balfor Ltd. with respect to its employees as well as with Balfor Ltd. to file appeal with the appellate tribunal?
- (a) 10<sup>th</sup> November, 2020 and 26<sup>th</sup> November, 2020, respectively.
  - (b) 9<sup>th</sup> November, 2020 and 25<sup>th</sup> November, 2020, respectively.
  - (c) 10<sup>th</sup> November, 2020 and 25<sup>th</sup> December, 2020, respectively.
  - (d) 9<sup>th</sup> November, 2020 and 26<sup>th</sup> November, 2020, respectively.

**Case scenario 2**

Shri Hari Textiles Limited was incorporated in the year 2010. Its Registered Office is situated in Connaught Place, New Delhi. It filed its audited annual financial statements for the financial year 2019-20 well within time with the jurisdictional Registrar of Companies. The Registrar inspected the statements and after reviewing them, felt the need to seek clarifications on certain matters. Accordingly, a written notice was sent by the Registrar to the company and its officials directing them to comply with the notice within thirty days of its receipt. However, the company and its officials failed to reply within the time specified in the notice.

The Registrar initiated the inquiry and proceeded further for inspecting all the documents of the company. While conducting the inquiry, the Registrar on prudent grounds believed that some of the documents and other vital information in relation to the company would be destroyed or altered by the official of the company. With a view to safeguard the documents, the Registrar obtained an order from the Special Court and thereafter, seized all such material.

While inspecting some of the documents the Registrar came to know that the Board of Directors had passed a resolution in a Board Meeting held on 10-04-2019 and thereby, increased the remuneration payable to the directors including two whole-time directors and Managing Director to 12% of the net profits of the company which was a sharp increase of 5% from the preceding financial year.

Prior to the inquiry, two directors of the company, namely, Mr. X and Mr. D got retired. The Registrar found from the inspection of the documents that they were involved in certain dealings which included selling of the assets of the company. On the basis of such information gathered from the inspected documents, the Registrar sought some clarifications from both of them regarding the dubious transactions. However, both Mr. X and Mr. D refused to appear before him showing their non-availability in the town and also represented through a common representative that they were no more a part of the Board of Directors of Shri Hari Textiles Limited.

After the completion of inspection and inquiry, the Registrar submitted a written report to the Central Government in respect of his findings against the company. The reports mentioned that there were major discrepancies in the assets and liabilities as well as profit and loss statements filed by the company.

On receipt of report from the Registrar, the Central Government considered it necessary to investigate the affairs of the company by the Serious Fraud Investigation Office (SFIO). Accordingly, by an order SFIO was directed to conduct the investigation of Shri Hari Textiles Limited and submit its report within the stipulated time. As instructed by the Central Government, SFIO authorised some of its inspectors to investigate the affairs of the company. The team deputed by the SFIO included experts in the field of cost accounting, financial accounting, taxation, law and forensic auditing.

While inspecting the company, the team of SFIO came to know that the Income-tax authorities had already initiated investigation against Shri Hari Textiles Limited.

**Multiple Choice Questions (MCQs) [2 Marks each]**

6. Shri Hari Textiles Limited and its officials failed to submit any reply to the written notice issued by the Registrar within the time specified in the notice. How much fine can be imposed for such failure?
  - (a) The Company and every defaulting officer shall be punishable with a fine up to ₹ 1,00,000 and in case of continuing failure, with an additional fine up to ₹ 500 for every day after the first during which the failure continues.
  - (b) The Company and every defaulting officer shall be punishable with a fine up to ₹ 1,50,000 and in case of continuing failure, with an additional fine up to ₹ 1,000 for every day after the first during which the failure continues.
  - (c) The Company and every defaulting officer shall be punishable with a fine up to ₹ 1,00,000 and in case of continuing failure, with an additional fine up to ₹ 5,000 for every day after the first during which the failure continues.
  - (d) The Company and every defaulting officer shall be punishable with a fine up to ₹ 2,00,000 and in case of continuing failure, with an additional fine up to ₹ 5,000 for every day after the first during which the failure continues.
7. From the case scenario, it is observed that the Registrar seized certain important documents in the course of inquiry. After inspection what procedure is to followed pertaining to such documents?
  - (a) The Registrar is required to submit such documents in the Special Court which permitted seizure.

- (b) The Registrar is required to forward all such documents along with the inquiry report to the Central Government.
  - (c) The Registrar is required to return such documents back to the company after making, if considered necessary, the copies of them.
  - (d) The Registrar is required to retain such documents until further instruction is received from the Special Court.
8. What is the requisite requirement for increasing the remuneration of directors including whole-time directors and Managing Director to 12% so that it shall be in accordance with the relevant provisions of the Companies, Act, 2013?
- (a) Board Resolution increasing the remuneration to 12% needs to be authorised at the General Meeting and thereafter, duly sanctioned by the ROC.
  - (b) Board Resolution increasing the remuneration to 12% needs to be authorised at the General Meeting and thereafter, duly sanctioned by the Tribunal.
  - (c) Board Resolution increasing the remuneration to 12% needs to be authorised at the General Meeting subject to Schedule V.
  - (d) Board Resolution increasing the remuneration to 12% needs to be authorised at the General Meeting and thereafter, duly sanctioned by the Central Government through Regional Director.
9. The case scenario states that the Registrar of Companies had called ex-directors of the company for examining them during the inquiry. Is the Registrar empowered to call the ex-directors:
- (a) The Registrar cannot call ex-directors of the company, without the order of the court.
  - (b) The Registrar may, by issuing a written notice, call the ex-directors for seeking the requisite information.
  - (c) In case the Registrar is appointed by the Central Government to conduct investigation, then only he can call ex-directors of the company.
  - (d) Except the Tribunal, no other authority is empowered to call ex-directors of a company for any examination.
10. According to the case scenario, while inspecting the company, the team of SFIO came to know that the Income-tax authorities had already initiated investigation against the company. From the given options, choose the correct one that indicates as to how in amidst of such a situation, SFIO will be continuing with the investigation.
- (a) SFIO has to put its investigation on hold so long as the company is being investigated by Income-tax authorities.

- (b) SFIO will proceed with its investigation on the basis of report submitted by Income-tax authorities.
- (c) SFIO will proceed with its investigation while Income-tax authorities shall keep on hold its investigation.
- (d) SFIO will simultaneously continue its investigation along with the Income-tax authorities.

**INDEPENDENT MCQS [Question 11-17]**

11. ABC Ltd incorporated in India want to register as an ARC to commence the business of asset reconstruction. The company made all the arrangement required for the realisation of the financial assets acquired for the purpose of reconstruction of the assets and shall be able to pay periodical returns on respective due dates on the investments made in the company. The directors are well qualified and had nearly 25 years of experience in finance, 10 years of experience in reconstruction and securitisation of assets. The company has also complied with all the requirement of regulations and guidelines issued by Reserve Bank of India. The details of the profits made during the past 3 years are 2016-17 ₹ 200 Cr (Loss), 2017-2018 ₹ 500 Cr (Profit), 2018-2019 ₹ 700Cr. (Profit).
- (a) The ARC can be registered and certificate be issued by RBI, but RBI may not prescribe any further conditions.
  - (b) The ARC can be registered and certificate be issued by RBI, but RBI may prescribe any further conditions.
  - (c) The ARC registration cannot be made.
  - (d) RBI has no power to register ARC, as ARC's are governed by SARFAESI Act, 2002.
12. Proceedings under the Prevention of Money Laundering Act, 2002 were initiated against Mr. Suraj. Through an order, property of Mr. Suraj has been attached under section 8. Mr. Suraj Preferred an appeal to the Appellate Tribunal. Mr. Suraj is adjudicated an insolvent during the pendency of the appeal. What will happen to the proceedings initiated under PMLA in the given case?
- (a) Proceedings will be dispensed with
  - (b) His legal representatives will continue proceedings before the Appellate Tribunal
  - (c) The official assignee or the official receiver, as the case may be, continue the appeal before the Appellate Tribunal.
  - (d) Creditors will continue the proceedings before the Appellate Tribunal



13. Who shall determine the amount of claim due to a creditor under the Insolvency and Bankruptcy Code during the Corporate Insolvency Resolution Process (CIRP)?
- (a) Committee of creditors
  - (b) Resolution professional
  - (c) Adjudicating Authority
  - (d) Corporate debtor
14. Can an Adjudicating Authority order the liquidation of a corporate debtor even after approving the resolution plan:
- (a) Yes, if the resolution plan is contravened.
  - (b) The Adjudicating Authority may order the liquidation of a corporate debtor even after approving the resolution plan on receiving an application from a third party who is unaffected by such liquidation
  - (c) Yes, the Adjudicating Authority may order for the liquidation of a corporate debtor if the committee of creditor does not approve the resolution plan after its approval by the Adjudicating Authority
  - (d) No, the Adjudicating Authority cannot order the liquidation of a corporate debtor after approving the resolution plan.
15. What is the periodicity of submission of report by company liquidator with respect to the progress of winding up of the company to the Tribunal:
- (a) Monthly
  - (b) Bi-monthly
  - (c) Quarterly
  - (d) Half yearly
16. Mr. X, a resident of India planned a tour of 15 days to visit Paris and to meet his niece living there. While returning to India, Mr. X was carrying with him INR 30,000. Her niece told him that limit is marked on bringing Indian currency notes at the time of return to India. Identify the correct limit :
- (a) INR 2000
  - (b) INR 5000
  - (c) INR 10,000
  - (d) INR 25,000

17. In the case of financing of a financial asset by more than one secured creditors, there secured creditor shall be entitled to exercise any of the rights conferred on him is agreed upon by the secured creditors representing -----in order to make such an action binding on all the secured creditors.
- Less 60% in value of the amount outstanding as on a record date
  - Not less than 60% in value of the amount outstanding as on a record date
  - At least 75% in value of the amount outstanding as on a record date
  - Not less than 75% in value of the amount outstanding as on a record date

**Descriptive Questions [Questions 18- 26]**

18. Dharma Ltd. in the light of prospective developments in the infrastructure of company decided to have borrowing on long term basis from financial Institutions. In the Board Meeting held on 15th September, 2020, following proposal of borrowing 2,00,00,000 from Financial institutions on long-term basis was also presented for consideration. As per the given information, in the light of relevant provisions of the Companies Act, 2013, examine the eligibility of the amount up to which the Board can borrow from Financial institution and the state on the validity of the said proposal.

Following were the Balance Sheets of last three years of Dharma Ltd., containing following facts and figure of financial information :

Particulars	As at 31.03.2018 ₹	As at 31.03.2019 ₹	As at 31.03.2020 ₹
Paid up capital	60,00,000	60,00,000	85,00,000
General Reserve	50,00,000	52,50,000	60,00,000
Credit Balance in Profit & Loss Account	6,00,000	8,50,000	20,00,000
Securities Premium	3,00,000	3,00,000	3,00,000
Secured Loans	20,00,000	25,00,000	40,00,000

19. Mr. Shariff who was a Key Managerial Personnel (Manager) of XYZ Ltd. retired on 12<sup>th</sup> May 2020. An examination of the final accounts of the company for the year ended on 31<sup>st</sup> March 2020, the Registrar of Companies found some serious irregularities in writing off of the huge amounts of bad debts and no satisfactory explanation was provided for the same from the company. In such a situation the Registrar of Companies wants some explanation from the company and Mr. Shariff. In the light of the Companies Act, 2013, examine the situation and advice on the act of Registrar seeking explanation from Mr. Shariff.

20. Mr. M, a member of XYZ Ltd. filed an application before the Tribunal complaining of oppression and mismanagement w.r.t. an agreement entered by XYZ Ltd. effecting the interest of the company. Vide order passed by the Tribunal under section 242 of the Companies Act, 2013, terminated the said agreement. The agreement was entered by Mr. H and Mr. G who was managing director and the executive director of the XYZ Ltd. Mr. Rasik, with whom the XYZ Ltd entered the agreement, filed a petition claiming the loss caused due to termination of the said agreement. Also state the legal position of Mr. H and Mr. G holding their place of office in the said situation. Examine the given facts and address the issues in terms of the relevant provisions of Companies Act, 2013.
21. Mr. Ingenious, who is registered as an Intermediary fails to enter into an agreement with his client and hence penalised by SEBI under the SEBI Act 1992. Advise Mr. Ingenious as to what remedies are available to him against the order of SEBI.
22. A foreign tourist comes to India and he purchases a antiques from a shop. He would like to pay US\$ 30 in cash to the shopkeeper. Comment in the light of the FEMA, whether shopkeeper is permitted to accept foreign currency?
23. Comment upon nature of offence committed under the Prevention of Money Laundering Act? In the case, a spouse sold their property in 175 lakh to Mr. Y. In lieu of the sale, they obtained amount 100 lakh through RTGS in his account and rest amount of 75 lakh in cash which he transferred to wife's offshore bank account . Examine the liability of the spouse in the given case in the light of the PMLA, 2002. Also state whether they will be liable to be released on bail.
24. X, a registered association transfers the Foreign Contribution received by it to another person? Comment upon the validity of said act of X in terms of Foreign Contribution (Regulation) Act, 2010?
25. Anil, who is a Chartered Accountant with his own independent practice, is the arbitrator in an arbitration between Tata Tea Inc., and Suzuki Ltd.

scenarios I - Prior to starting his practice, Anil had worked for five years with Tata Tea Inc.

II – During the proceedings before the arbitral tribunal, Anil would allow Tata Tea to take many liberties, for instance taking as much time for making oral arguments, cross examining the witnesses, for submitting documents, etc. Also the proceedings were adjourned (postponed) whenever so requested by Tata Tea. When Suzuki Motors wanted to take extra time they were not allowed. In few instances when they were permitted, they are asked to pay heavy cost to Tata Tea for delaying the proceedings..

Suzuki Ltd. on the basis of above scenarios wanted to challenge the appointment of Mr. Anil. State whether the appointment of Mr. Anil as an arbitrator can be challenged?

26. X Inc Ltd is a holding company of Y Infrastructure Ltd. Insolvency resolution process was initiated against the X Inc Ltd on 15<sup>th</sup> December 2020. In the mean time another financial creditor initiated corporate insolvency resolution process against Y Infrastructure Ltd. Later X Inc Ltd filed an appeal contending that resolution process against Y Infrastructure Ltd. should not continue till corporate insolvency resolution process is decided in the case of X Inc Ltd. on the basis of initiation of moratorium. Also the Resolution plan of X Inc Ltd. approved by CoC, was still pending before the Adjudicating authority for its approval. In the light of given situation, examine whether corporate insolvency resolution process initiated against the X Inc Ltd., can bar the corporate insolvency resolution process initiated against the Y Infrastructure Ltd.?

### SUGGESTED ANSWER

#### DIVISION A: ANSWERS TO CASE SCENARIO BASED MCQS/ INDEPENDENT MULTIPLE CHOICE QUESTIONS

##### Answers Keys to MCQs

Question No.	Answer
1.	(a)
2.	(c)
3.	(c)
4.	(d)
5.	(b)
6.	(a)
7.	(c)
8.	(c)
9.	(b)
10.	(c)
11.	(c)
12.	(c)
13.	(b)
14.	(a)
15.	(c)
16.	(d)
17.	(b)

**DIVISION B: Descriptive Answers [Questions 18- 26]**

- 18. Borrowing from Financial Institutions:** As per Section 180(1)(c) of the Companies Act, 2013, the Board of Directors of a company, without obtaining the approval of shareholders in a general meeting, can borrow money including moneys already borrowed up to an amount which does not exceed the aggregate of paid up capital of the company, free reserves and securities premium. Such borrowing shall not include temporary loans obtained from the company's bankers in the ordinary course of business. Here, free reserves do not include the reserves set apart for specific purpose.

Since the decision to borrow is taken in a meeting held on 15<sup>th</sup> September, 2020, the figures relevant for this purpose are the figures as per the Balance Sheet as at 31.03.2020. According to the above provisions, the eligibility of Board of Directors of Dharma Ltd. to borrow up to an amount is calculated as follows:

Particulars	₹
Paid up Capital	85,00,000
General Reserve (being free reserve)	60,00,000
Credit Balance in Profit & Loss Account (to be treated as free reserve)	20,00,000
Securities Premium	3,00,000
Aggregate of paid-up capital, free reserves and securities premium	1,68,00,000
Total borrowing power of the Board of Directors of the company, i.e., 100% of the aggregate of paid-up capital, free reserves and securities premium	1,68,00,000
Less: Amount already borrowed as secured loans	40,00,000
Amount up to which the Board of Directors can further borrow	1,28,00,000

Dharma Ltd. is entitled to borrow ₹1,28,00,000 through board of directors. As in the given case proposal of borrowing was Rs. 2,00, 00, 000 which is more than eligibility to borrow, therefore, Dharma Ltd, have to seek approval of shareholders in general meeting. As the proposal of borrowing ₹ 2,00,00,000 from Financial institutions on long-term basis was presented for consideration in Board Meeting without approval of shareholders in general meeting, therefore said proposal is invalid.

- 19.** As per the provisions of Section 206(2) of the Companies Act, 2013, the Registrar can call for any information or explanation or any other further documents related to the company from the company or any officer if the company, which he thinks, is necessary for deciding any matter of the company. Proviso to Section 206(2) provides that, where such information or explanation relates to any past period, the officers who had been in the employment of the company for such period, if so called upon by the Registrar through a notice served on him, in writing, shall also furnish such information or explanation to the best of their knowledge. So, in the given case Mr. Shariff, the ex-manager of the company

can be called upon for such information/explanation which was related to their period of service.

20. As per section 243 of the Companies Act, 2013, where an order made under section 242 terminates, sets aside or modifies an agreement which was entered by the company, were in a manner prejudicial to the interests of the company,—

- (a) such order shall not give rise to any claims whatever against the company by any person for damages or for compensation for loss of office or in any other respect either in pursuance of the agreement or otherwise;
- (b) no managing director or other director or manager whose agreement is so terminated or set aside shall, for a period of five years from the date of the order terminating or setting aside the agreement, without the leave of the Tribunal, be appointed, or act, as the managing director or other director or manager of the company:

Accordingly, Mr. Rasik, with whom the XYZ Ltd entered the agreement, filed a petition claiming the loss caused due to termination of the said agreement, is not viable. Further, Mr. H and Mr. G, managing director and the executive director of the XYZ Ltd. who entered agreement with Mr. Rasik which was ordered to be terminated by the Tribunal, shall not act as the managing director or other director or manager of the company, for a period of five years from the date of the order terminating or setting aside the agreement, without the leave of the Tribunal.

21. **Remedies against SEBI order:** Section 15B of the Securities and Exchange Board of India Act, 1992 lays down that if any person, who is registered as an intermediary and is required under this Act or any rules or regulations made there under, to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Mr. Ingenious has been penalised under the above mentioned provision. Two remedies are available to Mr. Ingenious in this matter:-

- (i) **Appeal to the Securities Appellate Tribunal:** Section 15T of the SEBI Act, 1992 states that any person aggrieved,—
  - (a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or
  - (b) by an order made by an adjudicating officer under this Act; or
  - (c) by an order of the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order made by the Board or the Adjudicating Officer or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and

Development Authority, as the case may be, is received by him and it shall be in such form and be accompanied by such fee as may be prescribed :

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

The Securities Appellate Tribunal shall send a copy of every order made by it to the Board, or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be the parties to the appeal and to the concerned Adjudicating Officer.

The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

- (ii) **Appeal to the Supreme Court:** Section 15Z of the SEBI Act, 1992 provides that any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order to him on any question of fact or law arising out of such order. The Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

22. As per section 3 of the FEMA, save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall receive otherwise than through an authorised person, any payment by order or on behalf of any person resident outside India in any manner.

Where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorised person;

Here in the given case, the foreign tourist wanted to pay foreign currency in cash on purchase of antiques to shopkeeper which as per section 3, is not permissible to any person to receive any payment by order or on behalf of any person resident outside India in any manner except received through an authorised person. Therefore, the Shopkeeper cannot accept cash as it will be a receipt otherwise than through Authorised Person except where the shopkeeper have taken a money changers license to accept foreign currency.

**23. Nature of offence committed under the Act:** Section 45 of the PMLA, 2002, provides that the offences under the Act shall be cognizable and non-bailable. Person accused of an offence under this Act shall not be released on bail or on his own bond unless-

- (i) The Public Prosecutor has been given an opportunity to oppose the application for such release, and
- (ii) Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

**Exceptions:** In case of any person who is under the age of 16 years or in case of a woman or in case of a sick or infirm or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees, may be released on bail, if the Special Court so directs.

As per the said section the spouse, are liable for commission of an offence of money laundering by transferring an unaccounted money obtained through sale of their property to an offshore bank account of his wife with an intent to evade tax. As the husband and his wife, i.e., the spouse jointly acted in the commission of the act of money-laundering of a sum less than one crore rupees, so both the Husband and wife, are falling under the exception. Therefore, they shall be released on bail, if the Special Court so directs.

**24.** In the light of section 7 of the FCRA, 2010, no person who –

- is registered and granted a certificate or has obtained prior permission under this Act; and
- receives any foreign contribution,

shall transfer such foreign contribution to any other person.

According to the section, the act of X, an association of transferring the Foreign Contribution to another person, is not valid.

**25.** As per section 12 of the Arbitration and Conciliation Act, 1996, when a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances-

- a. such as existence either direct or indirect of any past or present relationship with or interest in any of the parties or in relation to the subject matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and



- b. which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

In the first case Anil had worked for five years with Tata Tea Inc. In this situation the law would deem Anil to be lacking independence.

In second case, arbitrator by his / her behaviour gives an impression that he is favouring one party over the other.

An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his independence or impartiality. In the given scenarios, it would be deemed that Anil to be lacking independence and whereas in the second case it clearly reflects that arbitral tribunal favours and is partial towards Tata Tea, and therefore lacks impartiality. Yes, appointment of Mr. Anil as an arbitrator can be challenged.

26. In the given case, both the X Inc Ltd. and Y Infrastructure Ltd. in the eyes of law are separate entity. Further section 14 of IBC, 2016 which deals with moratorium, no where prohibits initiation of corporate insolvency resolution process on the subsidiary company or its holding company. Further also that a separate CIRP has been initiated against another corporate debtor by another financial creditor, which is altogether separate and have no connection with the CIRP initiated against X Inc Ltd. or Y Infrastructure Ltd.

Therefore, in the given case, corporate insolvency resolution process initiated against the X Inc Ltd, which is a holding company, cannot bar the corporate insolvency resolution process initiated against the Y Infrastructure Ltd which is its subsidiary or vice versa.