PAPER 4: CORPORATE AND ECONOMIC LAWS

RELEVANT AMENDMENTS FOR MAY 2022 EXAMINATION

The October 2021 Edition of the Study Material on Final Paper 4: Corporate and Economic Laws [comprising of 3 Modules – Modules 1 – 2 on Part I: Corporate Laws and Module 3 on Part II: Economic Laws] contains amendments made uptil 30th April, 2021. Besides, notifications, circulars and other legislative amendments made uptill 31st October 2021 shall also be relevant and applicable for May 2022 examination.

Here is the list of the amendments made during the period 1st May 2021 to 31st October 2021.

I. COMPANIES ACT, 2013

1. Ministry of Corporate Affairs Vide **Notification G.S.R. 409(E), dated 15th June, 2021** hereby amend the Companies (Meetings of Board and its Powers) Rules, 2014, through enforcement of **the Companies (Meetings of Board and its Powers) Amendment Rules, 2021**.

   According to which, in the Companies (Meetings of Board and its Powers) Rules, 2014, rule 4 shall be omitted. This rule 4 dealt with the "**Matters not to be dealt with in a meeting through video conferencing or other audio visual means"**

See Page no. 3.4 of the Study material

2. Ministry of Corporate Affairs Vide **Notification S.O. 3156(E), Dated 5th August, 2021**, in exercise of the powers conferred by section 393A of the Companies Act, 2013, **the Central Government hereby exempts, from the provisions of sections 387 to 392 (both inclusive), the following**:-

   (a) foreign companies;

   (b) companies incorporated or to be incorporated outside India, whether the company has or has not established, or when formed may or may not establish, a place of business in India, insofar as they relate to the offering for subscription in the securities, requirements related to the prospectus, and all matters incidental thereto in the International Financial Services Centres set up under section 18 of the Special Economic Zones Act, 2005.

See Page no. 9.17 of the Study material

3. Ministry of Corporate Affairs, Vide **Notification G.S.R. 538(E), dated 5th August, 2021**, in exercise of the powers conferred by clause (c) and clause (h) of sub-section (1) and sub-section (3) of section 380, clause (a) of sub-section (1) and sub-section (3) of section 381, section 385, clause (a) of section 386, section 389 and section 390, read with section 469 of the Companies Act, 2013, Central Government hereby enforces **the Companies (Registration of Foreign Companies) Amendment Rules, 2021** to amend the Companies (Registration of Foreign Companies) Rules, 2014.

In the Companies (Registration of Foreign Companies) Rules, 2014, in clause (c) of sub-rule (1) of rule 2, the following explanation shall be inserted, namely:-

"Explanation- For the purposes of this clause, electronic based offering of securities, subscription thereof or listing of securities in the International Financial Services Centres set up under section 18 of the Special Economic Zones Act, 2005 (28 of 2005) shall not be construed as 'electronic mode' for the purpose of clause (42) of section 2 of the Act."

See Page no. 9.2 of the Study material.

4. Ministry of Corporate Affairs Vide Notification **G.S.R. 579(E) , Dated 19th August, 2021,** in exercise of the powers conferred by section 149 read with section 469 of the Companies Act, 2013, the Central Government hereby amends the Companies (Appointment and Qualification of Directors) Rules, 2014, through the enforcement of **the Companies (Appointment and Qualification of Directors) Amendment Rules, 2021**.

Accordingly, in the Companies (Appointment and Qualification of Directors) Rules, 2014, in rule 6, in sub-rule (4),— (i) in the first proviso, for clause (B), the following clause shall be substituted, namely:—

"(B) in the pay scale of Director or equivalent or above in any Ministry or Department, of the Central Government or any State Government, and having experience in handling,—

(i) the matters relating to commerce, corporate affairs, finance, industry or public enterprises; or

(ii) the affairs related to Government companies or statutory corporations set up under an Act of Parliament or any State Act and carrying on commercial activities.".

(iii) after the second proviso, the following proviso shall be inserted, namely:— "Provided also that the following individuals, who are or have been, for at least ten years :—

(A) an advocate of a court; or

(B) in practice as a chartered accountant; or

(C) in practice as a cost accountant; or

(D) in practice as a company secretary, shall not be required to pass the online proficiency self-assessment test.".

See Page no. 1.45 of the Study material. For Clause (B), above clause shall be replaced with. Further after point (c) to explanation, second proviso is inserted.

II. SEBI (LODR), 2015

The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021 w.e.f. 5th May, 2021 and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2021, w.e.f. 7-9-2021

Through the enforcement of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021 w.e.f. 5th May, 2021 **and** the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2021, w.e.f. 7-9-2021, there are further amendment in the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Following are the relevant amendments made vide the above mentioned amendment regulations:

(A) In regulation 3

i. the existing provision under regulation 3 shall be numbered as sub-regulation (1).

ii. under the newly numbered **sub-regulation (1)**, the word "the" appearing after the word "to" and before the word "listed" shall be substituted with the word "a" and the word "who" shall be substituted with the word "which".

iii. under the newly numbered sub-regulation (1), **under clause (a)**, the words "Institutional Trading Platform" shall be substituted with the words "Innovators Growth Platform".

iv. after the newly numbered sub-regulation (1), a new **sub-regulation (2)** shall be inserted,

v. **Substituted clause (b) of sub-regulation (1), with the following:**

[(b) non-convertible debt securities, non-convertible redeemable preference shares, perpetual debt instrument, perpetual non-cumulative preference shares;" with the "non-convertible securities]

vi. Inserted the following **Sub-regulation (3)**:

[(3) The provisions of these regulations which become applicable to listed entities on the basis of the criterion of the value of outstanding listed debt securities shall continue to apply to such entities even if they fall below such thresholds as mentioned in sub-regulation (1A) of regulation 15.]

Amended Regulation 3

[3.(1) Unless otherwise provided, these regulations shall apply to ***a*** listed entity ***which*** has listed any of the following designated securities on recognised stock exchange(s):

(a) specified securities listed on main board or SME Exchange *or* ***Innovators Growth Platform;***

(b) non-convertible securities;

(c) Indian depository receipts;

(d) securitised debt instruments;

(da) security receipts

(e) units issued by mutual funds;

(f) any other securities as may be specified by the Board.

[(2) The provisions of these regulations which become applicable to listed entities on the basis of market capitalisation criteria shall continue to apply to such entities even if they fall below such thresholds.

(3) The provisions of these regulations which become applicable to listed entities on the basis of the criterion of the value of outstanding listed debt securities shall continue to apply to such entities even if they fall below such thresholds as mentioned in sub-regulation (1A) of regulation 15]

See Page no. 2.51 – Module 2 of the Study material. Replace Para under heading "Applicability" with this amended Regulation.

(B) In regulation 6

In regulation 6, in the heading, the symbol and word "/her" shall be inserted after the word "his".

Amended Regulation heading

[Compliance Officer and [***his/her]*** Obligations]

See Page no. 2.57 –Module 2 of the Study material. Heading of Regulation 6.

(C) In regulation 17A

The paragraph after clause (2) shall be converted as "Explanation" and the word "sub-regulation" in the paragraph shall be substituted with the word "regulation".

Amended Regulation

[Explanation]: For the purpose of this [***regulation]***, the count for the number of listed entities on which a person is a director/independent director shall be only those whose equity shares are listed on a stock exchange.

See Page no. 2.53 –Module 2 of the Study material.

(D) In regulation 18(1)(d)

In regulation 18, in sub-regulation (1), in clause (d), the symbol and word "/she" shall be inserted after the word "he".

Amended Regulation

[(d) The chairperson of the audit committee shall be an independent director and he/she shall be present at Annual general meeting to answer shareholder queries.]

See Page no. 2.63 –point (d) –Module 2 of the Study material.

(E) In regulation 21

i. The existing **sub-regulation (2)** shall be substituted with the following -

[The Risk Management Committee shall have minimum three members with majority of them being members of the board of directors, including at least one independent director and in case of a listed entity having outstanding SR equity shares, at least two thirds of the Risk Management Committee shall comprise independent directors.]

ii. In **sub-regulation (3A)**, the word "once" shall be substituted with the following word ***[twice]***

iii. after sub-regulation (3A) and before sub-regulation (4), the following new **sub-regulations (3B) and (3C)** shall be inserted –

[(3B) The quorum for a meeting of the Risk Management Committee shall be either two members or one third of the members of the committee, whichever is higher, including at least one member of the board of directors in attendance.

(3C) The meetings of the risk management committee shall be conducted in such a manner that on a continuous basis not more than one hundred and eighty days shall elapse between any two consecutive meetings.]

iv. after **sub-regulation (4),** the following new proviso shall be inserted--

[Provided that the role and responsibilities of the Risk Management Committee shall mandatorily include the performance of functions specified in Part D of Schedule II.]

v. in **sub-regulation (5)**, the number "500" shall be substituted with ***["1000"]***

vi. after sub-regulation (5), the following new **sub-regulation (6)** shall be inserted.

Amended regulation

Risk Management Committee.

21. **(1)** The board of directors shall constitute a Risk Management Committee.

(2) ***The Risk Management Committee shall have minimum three members with majority of them being members of the board of directors, including at least one independent director and in case of a listed entity having***

outstanding SR equity shares, at least two thirds of the Risk Management Committee shall comprise independent directors.

(3) The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.

(3A) The risk management committee shall meet at least ***[twice]*** in a year.

(3B) The quorum for a meeting of the Risk Management Committee shall be either two members or one third of the members of the committee, whichever is higher, including at least one member of the board of directors in attendance.

(3C) The meetings of the risk management committee shall be conducted in such a manner that on a continuous basis not more than one hundred and eighty days shall elapse between any two consecutive meetings.

(4) The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit such function shall specifically cover cyber security:

Provided that the role and responsibilities of the Risk Management Committee shall mandatorily include the performance of functions specified in Part D of Schedule II.

(5) ***The provisions of this regulation shall be applicable to:***

i. the top 1000 listed entities, determined on the basis of market capitalization as at the end of the immediate preceding financial year; and,

ii. a 'high value debt listed entity'.

(6) ***The Risk Management Committee shall have powers to seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.***

See Page no. 2.65 –Module 2 of the Study material.

(F) Regulation 24(5)

In regulation 24, in sub-regulation (5), the words "or equal to" shall be inserted after the words "less than" and before the words "fifty percent".

Amended Regulation

[(5) A listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to

less than ***[or equal to]*** fifty per cent or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal , or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event is disclosed to the recognized stock exchanges within one day of the resolution plan being approved]

See Page no. 2.54 –Module 2 of the Study material.

(G) Regulation 26

i. in **sub-regulation (1),** the symbol and word "/she" shall be inserted after the word **"he"**.

ii. **In Sub-regulation (1)(a), the word "high value debt listed entities"** has been added after the word "foreign companies".

Amended Regulation

26. (1) A director shall not be a member in more than ten committees or act as chairperson of more than five committees across all listed entities in which ***he/she*** is a director which shall be determined as follows:

(a) the limit of the committees on which a director may serve in all public limited companies, whether listed or not, shall be included and all other companies including private limited companies, foreign companies ***['high value debt listed entities']*** and companies under Section 8 of the Companies Act, 2013 shall be excluded;

See Page no. 2.53 –Module 2 of the Study material.

(H) Regulation 27(2)

Substituted for word **"fifteen"** and inserted the word **"the end of each"** before the quarter.

(2) (*a*) The listed entity shall submit a quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognised stock exchange(s) within ***[twenty one]*** days from **[*the end of each*]** the quarter.

See Page no. 2.57 –Module 2 of the Study material.

(I) Regulation 29(1)(f)

Words ***"where such proposal is communicated to the board of directors of the listed entity as part of the agenda papers."*** is omitted.

See Page no. 2.65- bullet point 5 - Module 2 of the Study material.

(J) In Schedule V,

i. In Paragraph C, clause (5), shall be substituted with the following, namely, -

["(5) Stakeholders' relationship committee

(a) name of the non-executive director heading the committee;

(b) name and designation of the compliance officer;

(c) number of shareholders' complaints received during the financial year;

(d) number of complaints not solved to the satisfaction of shareholders;

(e) number of pending complaints."

ii. In Paragraph C, after clause (5) a new clause shall be inserted, namely, -

"(5A) Risk management committee:

(a) brief description of terms of reference;

(b) composition, name of members and chairperson;

(c) meetings and attendance during the year;"]

See Page no. 2.55 –point 5 -Module 2 of the Study material.

III. FOREIGN EXCHANGE MANAGEMENT ACT, 1999

Reserve Bank of India, Vide Notification No. FEMA 23(R)/(5)/2021-RB, Dated September 08, 2021 through the enforcement **of the Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021** the following amendments in the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 [Notification No. FEMA 23(R)/2015- RB dated January 12, 2016] (hereinafter referred to as 'the Principal Regulations') has been amended:

In the Principal Regulations, in Regulation 15, in sub-regulation 1, for clause (ii), the following shall be substituted, namely: -

["(ii) the rate of interest, if any, payable on the advance payment shall not exceed 100 basis points above the London Inter-Bank Offered Rate (LIBOR) or other applicable benchmark as may be directed by the Reserve Bank, as the case may be; and".]

See Page no. 1.58 of the Study material.

PART – II : QUESTIONS AND ANSWERS

QUESTIONS

DIVISION A: CASE SCENARIO/ MULTIPLE CHOICE QUESTIONS

Case Scenario-1

Mr. Charan, with qualification in MBA Finance, thought of setting up a finance business. He discussed his thought process with his relatives and friends and decided to start a Nidhi company as this was the most easy and affordable way to start a loan business in India which required only seven members with easy documentation. No approval, whatsoever, was also required from Reserve Bank of India as in the case of other finance companies. Further, the Nidhi company would be able to accept deposits from members and lend to them as well, besides earning periodical interests on loans while its main expenditure would be to pay interests on deposits and establishment charges, etc.

Mr. Charan with his six other trusted friends and relatives incorporated a Nidhi company under the name Laxmi Nidhi Limited, on 20th August, 2015 at Indore (MP). It was duly notified as Nidhi in the Official Gazette. It was mentioned in the Memorandum that as Nidhi, the company would cultivate the habit of thrift and savings amongst its members, receive deposits from and lend to, its members only, for their mutual benefit and it shall comply with Nidhi Rules, 2014. The authorised capital of the company was ₹ 1,00,00,000 divided into 10,00,000 equity shares of ₹ 10 each.

All the members of the Board of Laxmi Nidhi Limited possessed a very strong background in terms of financial stability as also expertise in business. Mr. Charan was throughout supported by the extraneous efforts of his younger brother, Mr. Param who was the executive president of Laxmi Nidhi Limited and possessed administrative talent to govern the organisation without compromising ethical practices.

With a dedicated team of staff, the company was on its growth path with utmost courteous services rendered with able management. The company encouraged rural savings habit and believed in rendering all financial assistance to its members by receiving both short-term and long-term deposits.

The deposits raised by Laxmi Nidhi Limited were in the form of fixed deposits, recurring deposits and savings deposits. While extending loans to its members, the Nidhi provided Laxmi Jewel Loan against pledge of gold jewellery for productive and consumption purposes with minimum documentation and utmost safety of their gold. It also provided mortgage loans and loans against deposits. In addition, it provided locker facilities to its members.

As on 31st March 2021, the issued, subscribed and paid-up share capital of Laxmi Nidhi Limited was ₹ 95,00,000 (9,50,000 equity shares of ₹ 10 each). Its deposits were to the extent of ₹ 315 crore with 12,000 members. The loans aggregated to ₹ 275 crore. Keeping in view the sufficiency of profits, the company declared a dividend of ₹ one per share. In near future, Laxmi Nidhi Limited, plans to open its branches which proves the fact that they are securing trust of more and more members as the years go by.

Multiple Choice Questions

1. It is evident from the case scenario that Laxmi Nidhi Limited started its business with paid-up share capital of ₹ 95,00,000. Keeping in view the minimum paid-up share capital with which a Nidhi can be started, how much is the excess paid-up share capital Laxmi Nidhi Limited had when it started its operations with effect from 20th August, 2015:

   (a) Laxmi Nidhi Limited had excess paid-up share capital of ₹ 75,00,000 when it started its operations with effect from 20th August, 2015.

   (b) Laxmi Nidhi Limited had excess paid-up share capital of ₹ 80,00,000 when it started its operations with effect from 20th August, 2015.

   (c) Laxmi Nidhi Limited had excess paid-up share capital of ₹ 90,00,000 when it started its operations with effect from 20th August, 2015.

   (d) Laxmi Nidhi Limited had excess paid-up share capital of ₹ 93,00,000 when it started its operations with effect from 20th August, 2015.

2. For the Financial Year 2021-22, Laxmi Nidhi Limited declared a dividend of ₹ one per share. What is the maximum amount of dividend it is permitted to declare without seeking approval from the jurisdictional Regional Director? Choose the correct option from those given below:

   (a) Since Laxmi Nidhi Limited has declared maximum permitted dividend of Re. one per share, it cannot declare dividend in excess of ₹ one per share without seeking approval from the jurisdictional Regional Director.

   (b) Laxmi Nidhi Limited can declare maximum permitted dividend of ₹ two per share without seeking approval from the jurisdictional Regional Director.

   (c) Laxmi Nidhi Limited can declare maximum permitted dividend of ₹ two and fifty paise per share without seeking approval from the jurisdictional Regional Director.

   (d) Laxmi Nidhi Limited can declare maximum permitted dividend of ₹ three per share without seeking approval from the jurisdictional Regional Director.

3. The case scenario states that Laxmi Nidhi Limited also provided locker facilities to its members. What is the maximum rental income that the company can generate from locker facilities provided to its members.

   (a) Laxmi Nidhi Limited can generate rental income from locker facilities provided to its members maximum upto ten per cent of its gross income at any point of time during a financial year.

   (b) Laxmi Nidhi Limited can generate rental income from locker facilities provided to its members maximum upto twenty per cent of its gross income at any point of time during a financial year.

(c) Laxmi Nidhi Limited can generate rental income from locker facilities provided to its members maximum upto twenty-five per cent of its gross income at any point of time during a financial year.

(d) Laxmi Nidhi Limited can generate rental income from locker facilities provided to its members maximum upto thirty per cent of its gross income at any point of time during a financial year.

4. By declaring dividend of ₹ one per share, Laxmi Nidhi Limited is required to pay ₹ 9,50,000 as dividend amount to its members. How much amount it is required to transfer to General Reserve when it declares dividend of ₹ 9,50,000? Select the correct alternative from the following options:

(a) Laxmi Nidhi Limited is not required to transfer any amount to General Reserve when it declares dividend of ₹ 9,50,000.

(b) Laxmi Nidhi Limited is required to transfer minimum ₹ 9,50,000 (i.e. 100% of ₹ 9,50,000) to General Reserve when it declares dividend of ₹ 9,50,000.

(c) Laxmi Nidhi Limited is required to transfer minimum ₹ 4,75,000 (i.e. 50% of ₹ 9,50,000) to General Reserve when it declares dividend of ₹ 9,50,000.

(d) Laxmi Nidhi Limited is required to transfer minimum ₹ 14,25,000 (i.e. 150% of ₹ 9,50,000) to General Reserve when it declares dividend of ₹ 9,50,000.

Case Scenario 2

Chitra Furnitures Ltd., is engaged in the business of manufacturing of wooden furniture and has been classified under the MSME sector. The company made a default under section 4 of the IBC.

The company put the matter of initiation of the pre-packaged insolvency resolution process (PPIRP) before the members for their approval, through a resolution.

The financial creditors of the company proposed the name of Vidisha, as Resolution Professional for conducting the pre-packaged insolvency resolution process (PPIRP).

The directors of the corporate debtor have made a declaration, stating *inter alia,* that the corporate debtor shall file an application for initiating pre-packaged insolvency resolution process within a definite time period.

An application for initiation of the PPIRP was made before the Adjudicating Authority, which was accepted.

Based on the above scenario, answer the following questions:

5. Which among the following is not the eligibility criteria for applying for initiation of PPRIP by the Corporate Debtor, if it:

(a) Is eligible to submit a resolution plan under section 29A of the IBC

(b) Has not undergone a PPIRP during the 3 years preceding the initiation date

(c) Has completed a CIRP during the 3 years preceding the initiation date

(d) Is not required to liquidated by an order under section 33 of the IBC

6. The PPIRP may be made in respect of a corporate debtor, who commits a default subject to the condition that the majority of the directors of the corporate debtor have made a declaration, stating *inter alia,* that the corporate debtor shall file an application for initiating pre-packaged insolvency resolution process within a definite time period:

(a) not exceeding 60 days

(b) not exceeding 90 days

(c) not exceeding 120 days

(d) not exceeding 150 days

7. An application for initiating PPIRP may be made in respect of a corporate debtor, who commits a default subject to the condition that the members of the corporate debtor have passed _____, approving the filing of an application for initiating pre-packaged insolvency resolution process:

(a) An Ordinary Resolution

(b) A Simple Resolution

(c) A Special Resolution

(d) A Concurrent Resolution

8. The corporate debtor shall obtain an approval from its financial creditors, not being its related parties, representing _____ due to such creditors, for the filing of an application for initiating pre-packaged insolvency resolution process, in such form as may be specified:

(a) less than 66% in value of the financial debt

(b) not less than 66% in value of the financial debt

(c) less than 66% in value of the operational debt

(d) not less than 66% in value of the operation debt

9. The Adjudicating Authority shall, within a period of _____ of the receipt of the application for initiation of PPIRP, by an order, admit the application, if it is complete; or reject the application, if it is incomplete:

(a) 7 days

(b) 14 days

(c) 21 days

(d) 28 days

Independent MCQs

10. A-One Software Limited is facing continuous losses and financial crunch for the last four years or so. In order to save company from the impending liquidation, it proposed a scheme of compromise to its creditors worth ₹ 1,50,00,000 and accordingly filed the said Scheme with the jurisdictional Tribunal. Minimum how many creditors in value must agree and confirm to the scheme of compromise so that Tribunal may dispense with calling of a meeting of the creditors:

    (a) In order that the Tribunal may dispense with calling of a meeting of the creditors, it is required that creditors having value of minimum ₹ 1,35,00,000 must agree and confirm to the scheme of compromise.

    (b) In order that the Tribunal may dispense with calling of a meeting of the creditors, it is required that creditors having value of minimum ₹ 1,20,00,000 must agree and confirm to the scheme of compromise.

    (c) In order that the Tribunal may dispense with calling of a meeting of the creditors, it is required that creditors having value of minimum ₹ 1,27,50,000 must agree and confirm to the scheme of compromise.

    (d) In order that the Tribunal may dispense with calling of a meeting of the creditors, it is required that creditors having value of minimum ₹ 1,42,50,000 must agree and confirm to the scheme of compromise.

11. Shivdeep submitted his claim as an operational creditor to the liquidator of Chiranjeevi Food Products Limited which is under liquidation. After submission of his claim, Shivdeep is desirous of altering it. Out of the following four options, which one correctly indicates the time period within which he can alter his claim after its submission.

    (a) Shivdeep can alter his claim within five days of its submission to the liquidator of Chiranjeevi Food Products Limited.

    (b) Shivdeep can alter his claim within ten days of its submission to the liquidator of Chiranjeevi Food Products Limited.

    (c) Shivdeep can alter his claim within fourteen days of its submission to the liquidator of Chiranjeevi Food Products Limited.

    (d) Shivdeep can alter his claim within thirty days of its submission to the liquidator of Chiranjeevi Food Products Limited.

12. Nandeesh, a resident Indian, remitted USD 1,00,000 on 7th June, 2021, to his son Ishaan who is settled in California, USA, since he urgently required funds. On 9th July, 2021, Nandeesh again remitted USD 71,000 to meet expenses to be incurred in respect of his ailing wife, Medhavi who had recently gone to USA to meet his son Ishaan but had developed serious coronary disease. For specialised treatment of Medhavi at a specialised hospital, a sum of USD 79,000 was remitted for the second time on 30th July, 2021 by Nandeesh. Within next 10 days, Medhavi recovered and was allowed to return to her son's

residence from the hospital. Choose the correct option from those stated below as to when Nandeesh can send further foreign exchange to his son Ishaan for the purpose of purchasing a house without obtaining the prior approval of Reserve Bank of India:

(a) Without obtaining the approval of Reserve Bank of India, Nandeesh can send further foreign exchange to his son Ishaan only in the month of April, 2022 or thereafter.

(b) Without obtaining the approval of Reserve Bank of India, Nandeesh can send further foreign exchange to his son Ishaan only in the month of January, 2022 or thereafter.

(c) Without obtaining the approval of Reserve Bank of India, Nandeesh can send further foreign exchange to his son Ishaan only in the month of July, 2022 or thereafter.

(d) Without obtaining the approval of Reserve Bank of India, Nandeesh can send further foreign exchange to his son Ishaan only in the month of November, 2021 or thereafter.

13. After five years of stay in USA, Mr. Umesh came to India at his paternal place in New Delhi on October 25, 2019, for the purpose of conducting business with his two younger brothers Rajesh and Somesh and contributed a sum of ` 10,00,000 as his capital. Simultaneously, Mr. Umesh also started a proprietary business of selling artistic brassware, jewelry, etc. procured directly from the manufacturers based at Moradabad. Within a period of two months after his arrival from USA, Mr. Umesh established a branch of his proprietary business at Minnesota, USA. You are required choose the appropriate option with respect to residential status of Mr. Umesh and his branch for the financial year 2020-21 after considering the applicable provisions of the Foreign Exchange Management Act, 1999:

(a) For the financial year 2020-21, Mr. Umesh and his branch established at Minnesota, USA, are both persons resident outside India.

(b) For the financial year 2020-21, Mr. Umesh is a resident in India but his branch established at Minnesota, USA, is a person resident outside India.

(c) For the financial year 2020-21, Mr. Umesh and his branch established at Minnesota, USA, are both persons resident in India.

(d) For the financial year 2020-21, Mr. Umesh is a person resident outside India but his branch established at Minnesota, USA, is a person resident in India.

14. Akshara Builders and Developers Ltd., a company listed on BSE Limited, is contemplating upper revision in the rate of interest of its existing 12% bonds by 1% so as to make them 13% bonds with effect from August 14, 2021. The said proposal is to be laid before the Board of Directors at a Board Meeting to be held on July 14, 2021. From the following options, choose the one which correctly indicates the latest date by which Akshara Builders and Developers Ltd. is required to intimate the BSE Limited about the Board Meeting where increase in rate of interest is being considered, keeping in view the Regulation 29 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015:

(a) Akshara Builders and Developers Ltd. is required to intimate BSE Limited about the Board Meeting, where increase in rate of interest is being considered, latest by July 1, 2021.

(b) Akshara Builders and Developers Ltd. is required to intimate BSE Limited about the Board Meeting, where increase in rate of interest is being considered, latest by July 3, 2021.

(c) Akshara Builders and Developers Ltd. is required to intimate BSE Limited about the Board Meeting, where increase in rate of interest is being considered, latest by July 5, 2021.

(d) Akshara Builders and Developers Ltd. is required to intimate BSE Limited about the Board Meeting, where increase in rate of interest is being considered, latest by July 7, 2021.

15. Mr. X receives an antique statue from his best friend(who resides abroad)as a gift on his 50th Birthday of worth ₹ 70,000.State the nature of the gift given to Mr. X in the light of the FCRA:

(a) It's not a foreign contribution as it is not in excess of one lakh rupees.

(b) It's a foreign contribution being made by other than his relative

(c) It's not a foreign contribution, as it is not informed to the Central Government

(d) It's a foreign contribution as is within the limit of one lakh rupees.

Descriptive Questions

16. Vibhuti Mechanics Limited, having Registered office at Rajendra Place, New Delhi, was incorporated on 17 February, 2016 with five directors who are responsible for managing the affairs of the company. Harshit, one of the directors, looks after the marketing function but his understanding with the other four directors is dwindling day by day. Other four directors i.e. Nipun, Lakshita, Shreyas and Vidur are also suspecting that Harshit is involved in some illegal activities which may cause a huge loss to the company in future. Now they are contemplating removal of Harshit from the office of directorship before the expiry of his term.

Analyse the following statements with reasons quoting relevant provisions of the Companies Act, 2013:

(a) Keeping in view his illegal activities, Nipun, Lakshita, Shreyas and Vidur can remove Harshit by passing Board Resolution.

(b) Harshit can be removed only by passing a Special Resolution.

(c) Nipun wants to appoint Dishant, an employee of the company but is very close to him, as director in place of Harshit after his removal as director.

17. Mr. Vasumadan Lal, one of the directors of Florence Shares (P) Ltd., was found to be guilty of contravention under the SEBI Act, 1992, under section 27 and was imposed a penalty of ₹ 70 lakhs vide order of SEBI dated 14th April, 2021. SEBI issued notice to Mr. Vasumadan for paying the penalty amount but he refrained from doing so and unfortunately, he passed away on 25th May, 2021 without paying the penalty amount.

    His estate worth ₹ 60 lakhs was inherited by his son, Mr. Rajgopal Lal, which included a property worth ₹ 25 lakhs which was mortgaged by him for taking a bank loan. Recovery proceedings under section 28A were initiated against Mr. Rajgopal by the Recovery Officer for recovering the penalty amount payable by Mr. Vasumadan.

    In the context of aforesaid situation, please answer the following questions:-

    (i) Whether it was valid to initiate the recovery proceedings against Mr. Rajgopal?

    (ii) What shall be the liability of Mr. Rajgopal in such recovery proceedings?

18. Mr. Tushar Maheshwari submitted his candidature for being a resolution applicant of Valt Chambers Ltd. in pursuant to an invitation made for the names of prospective resolution applicants under section 25(2)(h) of the Insolvency and Bankruptcy Code, 2016, by Mr. Manish Dave, the resolution professional.

    Mr. Tushar is a spouse of sister of Mr. Amit Dhariya who is going to be involved in the management of Valt Chambers Ltd. as a director at the time of implementation of the resolution plan and Mr. Tushar, being a person resident in India was convicted under the provisions of FEMA Act, 1999, for an act specified under the Twelfth Schedule of the IBC, 2016, with imprisonment for 2.5 years and only 1 year & 3 months has expired from the date of his release of imprisonment, for not paying penalty arose due to bringing into India from USA during his temporary visit, ₹ 2,00,00,000 worth Indian currency notes.

    In the light of the given facts, examine whether Mr. Tushar is eligible to be a resolution applicant?

19. Blue Star Inc. is a company incorporated in USA, four years back and has no established place of business in India. The company has entered into following contracts:-

Particulars	Contracts entered in the ordinary course of business	Material Contracts
F.Y. 2017-18	4	2
F.Y. 2018-19	6	1
F.Y. 2019-20	5	3
F.Y. 2020-21	3	4

    Apart from above, one contract has been entered into with its manager. The company intended to offer its securities in India. For that purpose, the secretary of the company, Mr. Berry Christan prepared the prospectus along with annexing the required documents

and got it registered. Expert's consent was issued in a separate statement, the reference of which was given in the prospectus.

Few application forms for securities of Blue Star Inc. were issued to prospective investors without the prospectus out of which one such form was issued in connection with bona fide invitation to the person to enter into an underwriting agreement with respect to securities of Blue Star Inc.

In the context of aforesaid case, please answer to the following questions:-

(i) Whether the expert's statement can be considered to be included in the prospectus?

(ii) What copy of contracts would have been annexed with the prospectus by Mr. Berry?

(iii) Whether it is valid on the part of Blue Star Inc. for issuing few application forms without prospectus?

20. Shaksharta Foundation, a trust, is running a renowned private school named, MK Triwam, engaged in the activities of providing education from primary to higher secondary.

For the financial year ended March 2020, it received an interest of ₹ 35 lakhs in its FCRA account from which it withdrew ₹ 5 lakhs for conducting an open workshop with participation of schools at the National level, for development of the children and the teachers in the school in tune with the today's education system. The income earned through such workshop was ₹ 12 lakhs.

Recently, the school collected its annual fees from the students, totaling to ₹ 5 crore which included fees from foreign students amounting to ₹ 40 lakhs.

For a training programme to be held, Shaksharta Foundation received sponsorship money of ₹ 10 lakhs from Krimerse (P) Ltd. in which 60% of the shares are held by Housder Inc., a USA company, within the limits specified under FEMA. Such money was deposited by it in its FCRA account.

In the context of aforesaid scenario, answer to the following questions:-

(i) Whether the amount received from Krimerse (P) Ltd. was to be deposited in FCRA account by Shaksharta Foundation?

(ii) Identify, in the given case, the foreign contributions received by Shaksharta Foundation.

21. Mr. Joshi was in possession of some cash (money) obtained from the offence of money laundering. He bought a property with that money and transferred such property to Mr. Keyur Pandya. Registration of the said property in the name of Mr. Keyur was pending and the Adjudicating Authority under the Prevention of Money Laundering Act, 2002, after issuing a show cause notice to Mr. Joshi and considering his reply, passed an order for provisional attachment of the said property.

During the trail of the said case by Special Court, Mr. Keyur came to know of such attachment of the property bought by him from Mr. Joshi and he made immediately claim

for such property with the Special Court. In his claim, he mentioned that he was not aware that the property which he bought was "proceeds of crime" as per the provisions of the Prevention of Money Laundering Act, 2002, and he was totally unrelated to Mr. Joshi and had bought the said property at fair market value by making payment through account payee cheques'. Further, he mentioned in his claim, that due to such provisional attachment of the property, he has suffered a business loss of ₹ 5 lakhs.

In the given context of facts, answer the following questions:-

(i) Whether the Special Court can consider the claim of Mr. Keyur and direct for restoration of property to him?

(ii) Whether Mr. Keyur could have made such claim at an earlier stage of the proceedings in respect of such property under the Prevention of Money Laundering Act, 2002?

(iii) What is the option available with Mr. Keyur, if the Special Court rejects his claim?

22. A dispute has been aroused between the management of Paras Furnishing Ltd. and its labours. The dispute was to provide the basic facilities at the workplace, air-conditioning environment and hours of work. The management of the company sent an invitation to leader of the labour union to conciliate on the issues raised by the labours. The union leader accepted the invitation.

Examine the give situation and answer the following:

(i) When the conciliation proceeding shall be said to be commenced in the given case?

(ii) How the settlement agreement will be arrived at by the conciliators?

23. Shine Jewellers Ltd., is engaged in the business of making and selling of gold ornaments. Recently, the Government of India has made it compulsory for the jewellers to put hallmarking on all the gold ornaments. However, the company is playing foul and not marking or wrong marking of hall marking on the gold jewellery.

The Central Government filed an application to the Tribunal stating therein that the affairs of the company are being conducted in a manner prejudicial in the public interest.

The Tribunal summoned the company, but the company didn't appeared. One more chance was given to the company to appear, but the company remained absent. The Tribunal passed an order vide dated 30th June, 2021, which provides the regulation of conduct of affairs of the company in future.

Based on the captioned facts, answer the following questions:

(i) Under what circumstances the Central Government can file application before the Tribunal?

(ii) What are the powers of the Tribunal, after filing of application by the Central Government under section 241?

(iii) After the order of the Tribunal, what shall the company do?

24. Rudraksha Ayurveda Ltd. is engaged in the business of producing and selling of ayurvedic medicines. Its purchase department is headed by Jagriti. The purchase department of the company is responsible for purchasing various ingredients which are used for manufacturing of the ayurvedic medicines. Some of the ingredients like Swarna Bhasma, Rajat Bhasma involves heavy costs.

    Jagriti was delegated purchasing power of ingredients up to one lakh rupees individually for one lot and ten lakh rupees to committee. The committee consists of Head of Purchase department Head of Marketing department, Head of Finance and Accounts department and the Managing Director.

    Suppliers of the Swarna Bhasma and Rajat Bhasma raised their invoices and the amount due from the company was somewhere between 18 to 20 lakhs. Jagriti always negotiates with the suppliers to inflate the price by 10% of the actual price and pass on this 10% as commission to Jagriti. This practice was being in vogue since Jagriti was promoted to the Head of Purchase department i.e., from January 2019. The bills of suppliers were sent to the Finance and Accounts department only after recommendation for payment by Jagriti. Jagriti takes the commission of 10% upfront before recommending the invoices for payment.

    The management of the company was having some doubt on the integrity of Jagriti, so it entrusted the forensic audit since January 2019 to till date of the invoices recommended by her.

    The forensic auditor carried detailed investigation, market price prevailing of Swarna Bhasma and Rajat Bhasma on different times. The auditor also sent a bogus supplier to Jagriti for supply of the Swarna Bhasma and Rajat Bhasma. The bogus supplier was also told the same commission sharing story.

    The forensic auditor submitted the report to the Managing Director and narrated that by inflating the invoices by 10% the company since January 2019 has incurred a total loss of 25 lakh rupees. The turnover of the company for the year ended on 31st March, 2021 was 50 crore rupees.

    Based on the captioned facts, answer the following questions:

    (i) What punishment for fraud has been provided in the Companies Act, 2013?

    (ii) What would have been your answer, if the amount involved in the fraud done by Jagriti comes to ₹ 9 lakh only.

    (iii) If the fraud in question would have been of public interest, what would be the term of imprisonment?

25. Clause 36 of the Articles of Association of Swasth Medical Pharmacy Limited (SMPL) states the dates on which the Board Meetings shall be held every year and therefore, if Board Meetings are held as scheduled, there is no need to send notice of such meeting to every director. The notice of the meeting shall be sent to every director only if a particular

Board Meeting is held on a date which is otherwise than that mentioned in Clause 36. Raghav, one of the directors of the company, feels that it is mandatory to send notice of every Board Meeting to all the directors otherwise it shall be violative of the relevant provisions of the Companies Act, 2013.

Analyse the contention of Raghav with reference to the applicable provisions of the Companies Act, 2013.

SUGGESTED ANSWERS

DIVISION A: CASE SCENARIO/ MULTIPLE CHOICE QUESTIONS

Case Scenario-1

1. **Option (c):** Laxmi Nidhi Limited had excess paid-up share capital of ₹ 90,00,000 when it started its operations with effect from 20th August, 2015.
2. **Option (c):** Laxmi Nidhi Limited can declare maximum permitted dividend of ₹ two and fifty paise per share without seeking approval from the jurisdictional Regional Director.
3. **Option (b):** Laxmi Nidhi Limited can generate rental income from locker facilities provided to its members maximum upto twenty per cent of its gross income at any point of time during a financial year.
4. **Option (b):** Laxmi Nidhi Limited is required to transfer minimum ₹ 9,50,000 (i.e. 100% of ₹ 9,50,000) to General Reserve when it declares dividend of ₹ 9,50,000.

Case Scenario 2

5. **Option (c):** Has completed a CIRP during the 3 years preceding the initiation date
6. **Option (b):** not exceeding 90 days
7. **Option (c):** A Special Resolution
8. **Option (b):** not less than 66% in value of the financial debt
9. **Option (b)**:14 days

Independent MCQs

10. **Option (a):** In order that the Tribunal may dispense with calling of a meeting of the creditors, it is required that creditors having value of minimum ₹ 1,35,00,000 must agree and confirm to the scheme of compromise.
11. **Option (c):** Shivdeep can alter his claim within fourteen days of its submission to the liquidator of Chiranjeevi Food Products Limited.
12. **Option (a):** Without obtaining the approval of Reserve Bank of India, Nandeesh can send further foreign exchange to his son Ishaan only in the month of April, 2022 or thereafter.
13. **Option (c):** For the financial year 2020-21, Mr. Umesh and his branch established at

Minnesota, USA, are both persons resident in India.

14. Option (b): Akshara Builders and Developers Ltd. is required to intimate BSE Limited about the Board Meeting, where increase in rate of interest is being considered, latest by July 3, 2021.

15. Option (b): It's a foreign contribution being made by other than his relative

Descriptive Answers

16. In respect of removal of director, a reference to Section 169 of the Companies Act, 2013 is to be made.

(1) Sub-section (1) states a company may, **by ordinary resolution**, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard:

Provided that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard:

Provided further that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two-thirds of the total number of directors according to the principle of proportional representation.

(2) Sub-section (2) states that a **special notice shall be required of any resolution**, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

(3) Sub-section (3) requires that **on receipt of notice of a resolution** to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled **to be heard** on the resolution at the meeting.

(4) According to Sub-section (4), where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto **representation in writing** to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,--

(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company), and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting:

Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

(5) A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (2).

(6) A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed.

Note: Provisions regarding special notice are contained in Section 115. Further, Rule 23 of the Companies (Management and Administration) Rules, 2014 also specifies the provisions in respect of special notice.

In view of the above provisions, the given statements can be analysed as under:

(a) The other directors of Vibhuti Mechanics Limited i.e. Nipun, Lakshita, Shreyas and Vidur cannot remove Harshit by passing a Board Resolution.

For the purpose of removal of a director from the office of directorship, an ordinary resolution needs to be passed. In other words, only the shareholders of the company are empowered to remove a director.

Further, there is requirement of special notice when a director is to be removed. In case, a notice of a resolution to remove a director is received by the company, a copy of the notice shall be sent forthwith to the director concerned. In this case, Harshit is entitled to receive a copy of the special notice. Harshit is also entitled to be heard on the resolution to be passed for his removal at the meeting.

In case, Harshit makes a representation in writing to the company and requests its notification to members of the company, the company shall be obliged to do so if the time permits. In case a copy of the representation cannot be sent due to insufficient time or for the company's default, the director (i.e. Harshit in this case) may, without prejudice to his right to be heard orally, require that the representation shall be read out at the meeting.

There is a cushion for the company in respect of representation if it is suspected that the rights regarding representation conferred on the 'director to be removed' are being abused to secure needless publicity for defamatory matter. The cushion is in the form of proviso. Thus, it is provided that there is no need to send a copy of the representation and also there is no need to read out the representation at the meeting

if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by sub-section (4) are being abused to secure needless publicity for defamatory matter.

In addition, the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it. Thus, Harshit can be deprived of his right in respect of representation if the Tribunal passes an order.

(b) The statement that 'Harshit can be removed only by passing a Special Resolution' is not correct. As noticed in answer (a) above, an ordinary resolution needs to be passed for removal of a director and there is no need to pass a special resolution for this purpose. The procedure as stated in answer (a) is required to be followed for passing an ordinary resolution for the removal of a director before the expiry of the period of his office after giving him a reasonable opportunity of being heard.

(c) Yes. Nipun can get appointed Dishant, an employee of the company who is very close to him, as director in place of Harshit after his removal as director.

As regards appointment of another director, Sub-section (5) stipulates that a vacancy created by the removal of a director under Section 169 may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (2).

To get Dishant appointed as director in place of Harshit, Nipun has to ensure that the company receives a special notice of the intended appointment of Dishant as required by Sub-section (2).

If Dishant is so appointed, he shall hold office till the date up to which his predecessor Harshit would have held office if he had not been removed.

17. (i) As per section 28B of the Securities and Exchange Board of India Act, 1992, where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased:

Provided that, in case of any penalty payable under this Act, a legal representative shall be liable only in case the penalty has been imposed before the death of the deceased person.

For the above purposes, any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, which could have been initiated against the deceased if he had survived, may be initiated against the legal representative and all the provisions of this Act shall apply accordingly.

As per the given facts, here, penalty of ₹ 70 lakhs was imposed on Mr. Vasumadan Lal vide order of SEBI dated 14th April, 2021, and he passed away on 25th May, 2021. So, the penalty had been imposed before his death.

Further, he had refrained from paying the penalty for which recovery proceedings could have been initiated against him by the Recovery Officer but as he passed away because of which as per section 28B(2), as aforesaid, such recovery proceedings might be initiated against his legal representative and all the provisions of the SEBI Act, 1992, would apply accordingly.

Mr. Rajgopal Lal would be considered as the legal representative of Mr. Vasumadan as he inherited his estate.

Thus, it was valid for the Recovery Officer to initiate the recovery proceedings against Mr. Rajgopal as per section 28B of the SEBI Act, 1992.

(ii) As per section 28B of the Securities and Exchange Board of India Act, 1992, every legal representative shall be personally liable for any sum payable by him in his capacity as legal representative if, while his liability for such sum remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

The liability of a legal representative under this section shall be limited to the extent to which the estate of the deceased is capable of meeting the liability.

As per the facts in the given instant, though the penalty amount recoverable is ₹ 70 lakhs but the amount that would be recovered from of Mr. Rajgopal shall be limited to the extent to which the estate of the deceased was capable of meeting the liability i.e. to the extent of ₹ 60 lakhs.

However, the said estate included a property of ₹ 25 lakhs which was mortgaged by Mr. Rajgopal for taking a bank loan. So for paying the sum of ₹ 25 lakhs, Mr. Rajgopal would be personally liable as he has created a charge in the property included in the estate and the remaining amount i.e. ₹ 35 lakhs (₹ 60 lakhs - ₹ 25 lakhs) would be required to be paid by him from the charge free assets of the estate.

18. As per clause (d) of Section 29A of the Insolvency and Bankruptcy Code, 2016, a person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person has been **convicted for an offence** punishable with imprisonment for two years or more under the FEMA Act, 1999, specified under the Twelfth Schedule.

However, this clause is not applicable to person who is a connected person referred to in clause (iii) of Explanation I.

As per Explanation I — the expression "connected person" means—

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Further, as per section 5(24A) of the Code, "relative", with reference to any person, inter-alia, includes son, daughter, sister or brother and their spouses, respectively.

Here in the given case, Mr. Tushar being sister's spouse will be considered as a related party to Mr. Amit as per section 5(24A) of the Code and consequently will be considered as a 'connected person' to Mr. Amit who is going to be involved in the management of Valt Chambers Ltd. as a director at the time of implementation of the resolution plan.

Accordingly, the provisions of clause (d) of Section 29A of the Insolvency and Bankruptcy Code, 2016, will not be applicable to Mr. Tushar as the case is covered by proviso to the said clause.

Thus, Mr. Tushar will be eligible to be a resolution applicant of Valt Chambers Ltd. in view of the facts given in the present case.

19. (i) According to section 388(2) of the Companies Act, 2013, a statement shall be deemed to be included in a prospectus, if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

In the given case, the reference of expert's consent statement was given in the prospectus. Thus, the expert's statement shall be deemed to be included in a prospectus.

(ii) According to the Companies (Registration of Foreign Companies) Rules, 2014, the following documents shall be annexed to the prospectus, inter-alia, namely:-

(a) a **copy of contracts for appointment** of managing director or manager and in case of a contract not reduced into writing, **a memorandum** giving full particulars thereof;

(b) a **copy of any other material contracts**, not entered in the ordinary course of business, but entered **within preceding 2 years.**

In the given case, during the preceding 2 years, i.e. F.Y. 2019-20 and F.Y. 2020-21, respectively, the material contracts entered into by Blue Star Inc. are 3 + 4 = 7 and apart from it, one contract has been entered into with its manager. So, in total 8 copies of contracts would have been annexed with the prospectus by Mr. Berry.

(iii) According to section 387(3) of the Companies Act, 2013, no person shall issue to any person in India a form of application for securities of such a company or intended company as is mentioned in section 387(1), unless the form is issued with a prospectus which complies with the provisions of this Chapter (Chapter XXII) and such issue does not contravene the provisions of section 388:

Exception: If it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to securities.

Blue Star Inc. has, thus, violated provisions of section 387(3) by issuing few application forms without prospectus. However, the application form issued in connection with bona fide invitation to the person to enter into an underwriting agreement with respect to securities of Blue Star Inc. can be considered as valid as such a case is covered by the exception to the said sub-section.

20. (i) According to section 2(1)(j) of the Foreign Contribution (Regulation) Act, 2010, Foreign Source, inter-alia, includes,— a company within the meaning of the Companies Act, 1956 (presently, the Companies Act, 2013) and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely:-

A. the Government of a foreign country or territory;

B. the citizens of a foreign country or territory;

C. corporations incorporated in a foreign country or territory;

D. trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory;

E. Foreign company;

Provided that where the nominal value of share capital is within the limits specified for foreign investment under the Foreign Exchange Management Act, 1999, or the rules or regulations made there under, then, notwithstanding the nominal value of share capital of a company being more than one-half of such value at the time of making the contribution, such company **shall not be a foreign source**.

According to section 17 of the Foreign Contribution (Regulation) Act, 2010, every person who has been granted certificate or prior permission under section 12 shall receive foreign contribution only in an account designated as "FCRA Account" by the bank.

No funds other than foreign contribution shall be received or deposited in any such account.

Here it is given that, 60% of the shares of Krimerse (P) Ltd. are held by Housder Inc., a USA company, within the limits specified under FEMA. So, even though more than

50% shares held by a foreign company, Krimerse (P) Ltd. cannot be considered as a foreign source as per the proviso of Section 2(1)(j)(vi).

Any donation, delivery or transfer received from a 'foreign source' whether in rupees or in foreign currency is construed as 'foreign contribution' under FCRA, 2010, and as per Section 17, only foreign contribution has to be deposited in FCRA account.

Thus, the amount received from Krimerse (P) Ltd. was not to be deposited in FCRA account by Shaksharta Foundation as it was not a foreign contribution.

(ii) The following items can be considered as the foreign contributions received by Shaksharta Foundation:-

Sr. No.	Particulars	Amount (₹)	Explanation
1.	Interest received in FCRA account	35 lakhs	As per Explanation 2 to Section 2(1)(h) of the FCRA, 2010, - The interest accrued on the foreign contribution deposited in any bank referred to in section 17(1), or - any other income derived from the foreign contribution or interest thereon.
2.	Income earned from workshop	12 lakhs	Shall also be deemed to be foreign contribution within the meaning of this clause. Here, workshop was conducted from the amount of interest earned in the FCRA account and so it constitutes to other income derived from it.

Notes:-

(1) Fees collected from foreign students of ₹ 40 lakhs is not be considered as foreign contribution as per Explanation 3 to Section 2(1)(h) of the FCRA, 2010.

(2) Sponsorship money of ₹ 10 lakhs received from Krimerse (P) Ltd. would also be not considered as foreign contribution as per Section 2(1)(h) read with proviso of Section 2(1)(j)(vi), as explained above.

21. (i) Under section 8(5) of the Prevention of Money Laundering Act, 2002, the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering.

Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.

In the given case, it appears that Mr. Keyur in good faith had bought the property from Mr. Joshi without knowing that the said property was "proceeds of crime" as per the provisions of the Prevention of Money Laundering Act, 2002 and he also does not appear to be involved in the offence of money laundering because as per his claim he was totally unrelated to Mr. Joshi and had bought the said property at fair market value by making payment through account payee cheques'. Also, as per his claim, he has suffered a business loss of ₹ 5 lakhs due to such provisional attachment of the said property.

Thus, Special Court might consider the claim of Mr. Keyur during the trial of the case and direct Central Government for restoration of property to him.

(ii) As per Section 8(2) of the Prevention of Money Laundering Act, 2002, the Adjudicating Authority (AA) shall by an order, after—

(a) considering the reply, if any, to the notice issued;

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and

(c) taking into account all relevant materials placed on record before him,

record a finding whether all or any of the properties referred to in the notice issued, are involved in money-laundering.

If the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

Thus, Mr. Keyur could have made such claim to the Adjudicating Authority at the time of its adjudication in respect of such property and he would have been given an opportunity of being heard for the same by the Adjudicating Authority.

(iii) As per Section 26 of the Prevention of Money Laundering Act, 2002, the Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal.

Thus, if the Special Court rejects the claim of Mr. Keyur, he can file an appeal with the Appellate Tribunal against the order of provisional attachment made by the Adjudicating Authority.

22. (i) Section 62 of the Arbitration and Conciliation Act, 1996 provides that -

(1) The party initiating conciliation shall send to the other party a written invitation to conciliate under this Part, briefly identifying the subject of the dispute.

(2) Conciliation proceedings, shall commence when the other party accepts in writing the invitation to conciliate.

(3) If the other party rejects the invitation, there will be no conciliation proceedings.

In the given case the management of the company sent an invitation which has been accepted by the union leader, so the commencement of conciliation proceeding took place on acceptance of an invitation.

(ii) Following is the manner to arrive at the settlement agreement:

a. Terms of Settlement: When it appears to the conciliator that a settlement is possible, he should identify possible terms of settlement and submit them to the parties for their observations and suggestions. The parties may also make suggestions as to contents of the agreement.

b. Agreement – if the parties reach a settlement, then it has to be written down as an agreement. This agreement is known as settlement agreement (at times it is also referred to as Memorandum of Conciliation). It can be made by the parties or by the Conciliator on behalf of the parties. However the conciliator is required to authenticate the agreement without which the agreement would have no legal sanctity.

c. Enforcement -the settlement agreement has the same status as that of an arbitral award. It is final and binding on the parties and persons claiming under them.

23. (i) Section 241(2) of the Companies Act, 2013 provides that where the Central Government, 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 under Chapter XVI.

(ii) The powers of the Tribunal are contained in section 242 of the Companies Act, 2013.

Section 242(1)(a) provides that if, on any application made under section 241, the Tribunal is of the opinion that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

In the given case, the Tribunal has passed the order, which provided the regulation of conduct of affairs of the company in future.

(iii) In the given case, the Tribunal has taken a very liberal view. It has just asked the company to regulate the conduct of business in future, i.e., do hall marking of the jewellery as per the Government's notifications. No monetary penalty has been imposed there is no cause to make an appeal before the NCLAT.

The company should file a certified copy of the order of the Tribunal with the Registrar within 30 days of the order of the Tribunal.

24. (i) Section 447 of the Companies Act, 2013 provides that without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten 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 three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

In the given case:

The amount involved in fraud: ₹ 25 lakh

One percent. of Turnover of ₹ 50 crores: ₹ 50 lakh

Whichever is less, means ₹ 25 lakh

Imprisonment:

Minimum of 6 months

Maximum of 10 years

AND

Fine:

Minimum: ₹ 25 lakh

Maximum 3 times of fraud amount i.e., ₹ 75 lakhs.

(ii) The second proviso to Section 447 provides that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both.

If fraud amount is ₹ 9 lakh:

One percent of Turnover of ₹ 50 crores: ₹ 50 lakh

Whichever is lower i.e., ₹ 9 lakh

Imprisonment: May extend to 5 years

OR

Fine: May extend to ₹ 50 lakh

OR

With BOTH.

(iii) The first proviso to section 447 provides that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

In the given case, only the company has suffered loss and public interest has not been involved.

25. The contention of Raghav that the notice of every Board Meeting is to be mandatorily sent to all the directors of the company is to be analysed with reference to Section 173 of the Companies Act, 2013 which deals with 'Meetings of Board'.

According to Section 173 (3) of the said Act, a meeting of the Board shall be called by giving not less than seven 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:

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:

Provided further that in case of absence of independent directors from 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.

Section 173 (4) prescribes that every officer of the company whose duty is to give notice under Section 173 and who fails to do so shall be liable to a penalty of twenty-five thousand rupees.

It is worth noting that Section 173 (3) makes it mandatory to send written notice of a Board Meeting to every director. It states that a meeting of the Board shall be called by giving not less than seven 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.

In view of the above provisions, the contention of Raghav that the notice of every Board Meeting is to be mandatorily sent to all the directors of the company is valid. If the Board Meeting is held on a date prescribed by Clause 36 of the Articles of Association of Swasth Medical Pharmacy Limited and no notice is sent to the directors of the company, it shall be violative of Section 173 (3) of the Companies Act, 2013.

Even Sub-section (4) of Section 173 imposes a penalty of ₹ 25,000 on every officer of the company whose duty is to give notice under Section 173 and who fails to do so. Thus, notice of the Board Meeting must be sent as per the provisions of Section 173 (3) irrespective of what is contained in the Articles otherwise, the officer who is required to send notice but fails to fulfill his duty *i.e.* does not send notice, shall be liable to a penalty of ₹ twenty-five thousand.