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CA Final 2022 Suggested Answers · Paper 4 Corporate and Economic Laws (Old Scheme)

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Suggested Answers

SUBJECT
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PAPER- 4 – CORPORATE AND ECONOMIC LAWS

*Question No. **1** is compulsory.*

*Answer any **four** out of the remaining **five** questions*

Question 1

(a) *TY Limited has borrowed a sum of ₹25,00,000 from its director Mr. Tanmay. The company fails to obtain prior approval of Audit Committee constituted under the provisions of Section 177 of the Companies Act, 2013 (the Act). Auditors of the company expressed the view that the approval of Audit Committee was mandatory being a related party transaction. However, the Company Secretary submitted his comment that since this transaction is not covered under the related party transaction as per Section 188 of the Act, approval of Audit Committee was not required and hence, the company has not committed any violation of the provisions of the Act. Referring to the provisions of the Companies Act, 2013, examine:*

(i) *Whether omnibus approval of Audit Committee was needed to the borrowings, if the transaction was not a related party transaction under Section 188 of the Act?*

(ii) *Can a post transaction approval of Audit Committee be obtained for related party transaction and if not done so, what will be the effect on the transaction?* ***(4 Marks)***

(b) *APC Limited has held four board meetings during a period of twelve months. All board meetings were held at the registered office of the company situated in Chennai. Mr. Prakash, the non-executive, non-independent director, has not attended any board meeting in person but attended only one meeting through audio-video means.*

Mr. Akash was appointed as independent director of the company on 31st August, 2022 and as required, obtained the Director Identification Number (DIN) immediately on the next day and attended all board meetings held after his appointment. Referring to the provisions of the Companies Act, 2013 examine the following issues arising out of the above scenarios:

(i) *Vacation of office of director of Mr. Prakash, if he has not attended any board meeting in person.*

(ii) *Validity of attending the board meetings by Mr. Akash in his capacity of a director.*

(4 Marks)

(c) *Mary Limited is a company listed on National Stock Exchange. The company's Articles empower the Board of Directors to appoint additional directors. Accordingly, the Board of directors appointed Mr. Kamlesh as an additional director. It may, however, be pointed out that earlier, the proposal to appoint Mr. Kamlesh as a director on the company's Board was rejected by the members of the company at an Annual General Meeting.*

Examining the provisions of the Companies Act, 2013, answer the following questions:

(i) *Whether Mr. Kamlesh's appointment as an additional director by the Board of director is valid?*

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(ii) Can members exercise the power of appointing Mr. Kamlesh as an additional director at the Annual General Meeting (AGM) when the proposal to appoint comes before the AGM for the first time?

(iii) In case the company's Annual General Meeting is not held within the stipulated time and adjourned to a later date, decide whether Mr. Kamlesh, who was appointed validly by the Board as additional director for the first time, can continue to act as a director.

(6 Marks)

Answer

(a) As per section 2(76) read with sections 177(4)(iv), 188 of the Companies Act, 2013, and Rule 6A of the Companies (Meetings of Board and its Powers) Rules, 2014 following shall be the answers:

(i) As per Rule 6A of the Companies (Meetings of Board and its Powers) Rules, 2014, all related party transactions shall require approval of the Audit Committee and the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to the certain conditions.

As per section 177(4)(iv), every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include approval or any subsequent modification of transaction of the company with related parties.

Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed.

Provided further that in case of transactions, other than transactions referred to in section 188 and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board.

In the instant case, borrowings of sum of ₹ 25,00,000 from TY Limited from its director Mr. Tanmay reflects that they are related parties as per section 2(76) and the transaction is a related party transaction though the transaction i.e. borrowings of ₹ 25,00,000 between them is not Related Party Transaction as per section 188(1).

Hence, in the given case, said transaction of borrowings, was a Related Party Transaction other than the transaction given under Section 188(1).

Note: Students may also conclude answer stating "said transaction of borrowings, was not a Related Party Transaction as per section 188(1), so no omnibus approval of Audit Committee was needed to such the borrowings by TY Limited from its director Mr. Tanmay.

(ii) As per Rule 6A of the Companies (Meetings of Board and its Powers) Rules, 2014, all related party transactions shall require approval of the Audit Committee. Where

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the need for related party transaction cannot be foreseen and no information related to that are available, the audit committee may make omnibus approval for such transactions subject to their value not exceeding ₹ 1 Crore per transaction.

In case of a transaction which does not involve an amount exceeding one crore rupees and which is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and if it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee.

In view of above, a post transaction approval of the Audit Committee can be obtained for related party transaction and if not done so, such transaction shall be voidable at the option of the Audit Committee.

Further, in case such transaction is with the related party to any director, the director concerned shall indemnify the company against any loss incurred by it.

(b) (i) According to section 167 (1) of the Companies Act, 2013, the office of a director shall become vacant in case he absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board.

Also, Section 173(2) of the Act allows the directors of a company to attend Board meetings either in person, through video conferencing or other audio-visual means as prescribed under Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014.

In the instant case, Mr. Prakash has attended only one meeting of APC Limited through audio- video means during a period of twelve months and has not attended any other board meeting in person.

Hence, taking into account the above provisions, the office of Mr. Prakash is not to be vacated even though he has not attended any Board Meeting in person, as he has attended one meeting through audio- video means.

(ii) As per section 152(3) of the Companies Act, 2013, a person shall be appointed as a director of a company only when he has been allotted DIN under section 154.

Further, as per section 164(1), a person shall not be eligible for appointment as a director of a company, if he has not complied with sub-section (3) of section 152.

In light of the above provisions, the appointment of Mr. Akash as an independent director is invalid as he obtained DIN after his appointment.

Hence, attending of board meetings by Mr. Akash is not valid.

(c) As per section 161(1) of the Companies Act, 2013, following legal aspects are to be taken into consideration for appointment of additional director:

(a) The articles of a company may confer on its Board of Directors the power to appoint

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any person as an additional director at any time.

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

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

Taking into account the above provisions:

(i) The appointment of Mr. Kamlesh as an additional director by the Board of Directors is not valid, as earlier the proposal to appoint Mr. Kamlesh as a director on the company's Board was rejected by the members of the company at an AGM.

(ii) No, the members cannot exercise the power of appointing Mr. Kamlesh as an additional director at the AGM as section 161(1) clearly specifies that the said power can be conferred by Articles of company only on the Board of Directors.

(iii) If company's AGM is not held within the stipulated time and adjourned to a later date, Mr. Kamlesh cannot continue to act as a director as he can hold the office upto the last date on which the AGM should have been held.

Question 2

(a) Mr. Sunil is the Legal Manger in Sonata Limited. Sonata Limited is under investigation for alleged falsification of accounts. During investigation, Mr. Sunil disclosed some confidential information to the investigating officer. Now the company wants to suspend Mr. Sunil from his services. What is the remedy available to Mr. Sunil? What procedure should be adopted by Sonata Limited to implement its decision to suspend Mr. Sunil? Explain with the provisions of the Companies Act, 2013. ***(4 Marks)***

(b) On direction of the National Company Law Tribunal a meeting is held to adopt the scheme of compromise between DTC Limited and its 10,000 creditors representing in value of ₹ 100 crore. The Chairman of the meeting declared the voting details, as below:

(1) Total votes casted in favour of the schemes:

In person	*2,000 creditors representing in value ₹ 35 crore*
By proxy	*1,000 creditors representing in value ₹ 15 crore*
By postal ballot	*2,000 creditors representing in value ₹ 20 crore*

(2) Total votes casted against the scheme:

In person	*3,000 creditors representing in value ₹ 5 crore*
By proxy	*1,000 creditors representing in value ₹ 15 crore*

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(3) Total 1,000 creditors representing in value ₹10 crore did not attend the meeting

Referring to the provisions of the Companies Act, 2013 analyse, whether the scheme of compromise has been adopted by the meeting and its binding effect on the dissenting and absent creditors. ***(4 Marks)***

(c) ADL Limited is eligible for External Commercial Borrowing (ECB). It raised ECB of INR 100 crore on 01.01.2021 from eligible foreign lender to establish a power plant in India. As the forest and other government clearances are getting delayed, the implementation of the project is likely to be deferred by one year. Hence, the company dropped down the ECB amount of INR 100 crore and parked the proceeds, as detailed below:

(i) INR 80 crore were parked in capital market, the break-up of which is that - INR 20 crore in equity shares, INR 40 crore in secured debentures and INR 20 crore in mutual funds.

(ii) INR 20 crore in term deposits with AD Category 1 bank in compliance with all conditions.

Referring to the provisions of the Foreign Exchange Management Act, 1999. examine the validity of the parking of ECB proceeds in the manner as detailed above. ***(3 Marks)***

(d) A Flying Club in Indore, India was established in the year 2016. The principal activity of the club is to impart classroom and field training to the aspiring pilots. After running smoothly for first five years the club became defunct. With the initiative and support of the Government it could be revived during the year 2021. To restart the training activity the club exported two aircraft engines and spare parts for repairs abroad and getting them back to India within six months for functioning of the club activities.

The club had with it one imported aircraft on lease basis which was also re-exported abroad permanently by cancelling the lease agreement and obtaining the requisite approvals / permissions of the government agencies. However, the club failed to furnish declaration to the Reserve Bank of India and other authorities with respect to this export. Referring to the provisions of the Foreign Exchange Management Act, 1999, analyse, whether the club has contravened the provisions of the Act relating to export and re-export of the said goods. ***(3 Marks)***

Answer

(a) The provision of section 218 of the Companies Act, 2013 states that, the company shall require to take approval of the Tribunal before taking action against the employee during the course of any investigation of the affairs.

The company shall require approval in the following circumstances:

- discharge or suspension of an employee; or
- punishment to an employee by dismissal, removal, reduction in rank or otherwise; or
- change in the terms of employment to the disadvantage of employee(s).

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The Tribunal shall notify its objection to the action proposed in writing.

In case, the company, other body corporate or person concerned does not receive the approval of the Tribunal within 30 days of making the application, it may proceed to take the action proposed against the employee. That means it can be considered as a deemed approval by the Tribunal.

Thus, Sonata Limited should adopt the above-mentioned procedure to implement its decision to suspend Mr. Sunil.

Remedy available to Mr. Sunil: Remedy to Mr. Sunil will be available only when objection has not been raised by the Tribunal to the action proposed in writing for his suspension of his services. As per the provision of the law, Mr. Sunil can refer an appeal to Appellate Tribunal only if an objection has not been raised by Tribunal within 30 days.

(b) As per section 230 (6) of the Companies Act, 2013 where majority of persons at a meeting held representing 3/4th in value, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors or class of creditors or members or class of members, as the case may be.

The majority of person representing 3/4th Value shall be counted of the following:

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

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

In this case, 9000 creditors attended the meeting representing in value ₹ 90 Crore. As 5000 creditors voted in favor of the scheme, the requirement relating to majority in number (i.e. 4501) is satisfied.

9000 creditors who participated in the meeting representing in value ₹ 90 Crore, three-fourth of which works out to ₹ 67.50 Crore while 5000 creditors who voted for the scheme representing in value is ₹ 70 Crore. The majority representing three-fourths in value is also satisfied.

As both the requirements are fulfilled, the scheme is adopted and approved by the requisite majority and the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be.

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Thus, the scheme of compromise is binding on all the creditors including the dissenting and absent creditors.

(c) ECB proceeds are permitted to be parked abroad as well as domestically.

Parking of ECB proceeds domestically: ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India.

ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months cumulatively. These term deposits should be kept in unencumbered position.

By looking at the above provisions,

(i) Parking of ₹ 80 crore in capital market is not valid.

(ii) Parking of ₹ 20 crore in term deposit with AD category 1 bank in compliance with all condition is valid.

(d) Export of goods / software may be made without furnishing the declaration in the following cases, namely:

(i) aircrafts or aircraft engines and spare parts for overhauling and/or repairs abroad subject to their reimport into India after overhauling /repairs, within a period of six months from the date of their export;

(ii) re-export of leased aircraft/helicopter under cancellation of the lease agreement between the lessor and lessee subject to permission by DGCA/Ministry of Civil Aviation for such export/s.

In the instant case, since Flying Club has fulfilled the requirement with respect to export and re- export of goods in compliance with FEM (Export of Goods and Services) Regulations, 2015, hence, not furnishing of the declaration to the RBI and other authorities with respect to this export and re-export, is not the contravention from Flying Club.

Question 3

(a) Ganga Textiles Limited incurred huge losses during the last three financial years and its financial position was quite bad. The Company created a legal mortgage on some of its immovable properties in favour of a bank on August 21, 2021, in the hope that by keeping good faith with the bank, it could get further advances from the bank and the same could be utilized to revive the Company. Some creditors filed a winding-up petition in the Tribunal on January 15, 2022 and the Tribunal passed an order of winding-up on August 1, 2022.

Referring to the relevant provisions of the Companies Act, 2013, explain whether the creation of a legal mortgage by the company in favour of the bank will amount to fraudulent preference. ***(4 Marks)***

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(b) CNC Limited is a foreign company having its places of business in Mumbai and Ahmedabad in India. It has amended its Memorandum of Association on 1st June, 2022 and closed branch office situated at Mumbai. Referring to the provisions of the Companies Act, 2013 advise the company on the following matters:

(i) Compliance procedure as regards to amendment of Memorandum of Association.

(ii) Compliance procedure as regards to closure of Mumbai office and discontinuing submission of documents to the Registrar of Companies afterwards. ***(4 Marks)***

(c) One NGO made a complaint before Special Court against Rishabh, alleged to be indulged into the money laundering activities. In the same complaint, he has been accused of other offences under the Code of Criminal Procedure, 1973.

Referring to the provisions of the Prevention of Money Laundering Act, 2002, examine the following:

(i) Can Special Court take cognizance of alleged offence complained of?

(ii) Can Police officer initiate investigation on receiving a Complaint?

(iii) Can Special Court initiate trial under the Code of Criminal Procedure, 1973 while trying an offence under this Act? ***(3 Marks)***

(d) Mr. Wilson, a notorious person, was caught in possession of Counterfeit Currency Notes, an offence specified under Part A- Paragraph I of the Schedule of the Prevention of Money Laundering Act, 2002. State the Punishment that can be awarded to him under the above Act. Also identify the Punishment for the offence specified under Part A Paragraph 2 of the Schedule of the Prevention of Money Laundering Act, 2002. ***(3 Marks)***

Answer

(a) Section 328 of the Companies Act, 2013 relates with when any transaction may be treated as fraudulent preference.

Where a company has given preference to a person who is-

- one of the creditors of the company, or
- a surety or guarantor for any of the debts or other liabilities of the company,

and the company does anything or suffers anything done which has the effect of putting that person into a position which, in the event of the company going into liquidation, will be better than the position he would have been in if that thing had not been done prior to 6 months of making winding up application, the Tribunal, if satisfied that, such transaction is a fraudulent preference may order as it may think fit for restoring the position to what it would have been if the company had not given that preference.

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As per the facts given, Ganga Textiles Limited was running in loss for last three financial years and its financial position was also bad. The company created a legal mortgage on some of its immovable properties in favour of bank in good faith that it could get further advances from the bank that could be utilized to revive the company.

Some creditors filed a winding up petition in the Tribunal and also an order of the winding up has been passed.

According to above stated provision in the light of the given situation, creation of mortgage on immovable property with the bank with an intent of getting further advances from the bank for its revival was done by the company in good faith in the ordinary course of business. Further, as per requirement of the law, the said legal mortgage was neither in favour of any creditor of the company nor for a surety or guarantor of the company for any debts/liabilities.

Therefore, here the creation of legal mortgage by the company in favour of the Bank will not amount to fraudulent preference.

(b) **According to section 380 of the Companies Act, 2013 read with Rule 8 of** the Companies (Registration of Foreign Companies) Rules, 2014, following shall be the compliances duly required to be fulfilled by the CNC Limited, a foreign company, for closure of one of its branch of Mumbai office.

(i) **W.r.t. Compliance procedure as regards to amendment of Memorandum of Association**

According to Section 380 (3) of the Act which provides that where any alteration is made or occurs in the documents delivered to the Registrar under section 380, the foreign company shall, within 30 days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form. The Companies (Registration of Foreign Companies) Rules, 2014, has prescribed that the return containing the particulars of the alteration shall be filed in form *FC-2* along with prescribed fees.

As in the instance, the CNC Limited has amended its Memorandum of Association on 1st of June 2022 and closed its branch office of Mumbai. This altered document is required to be delivered to Registrar by CNC Limited within 30 days i.e. latest by 1st of July 2022.

(ii) **W.r.t. compliance procedure as regards to closure of Mumbai office and discontinuing submission of documents to the registrar of companies afterwards**

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If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and from the date on which such notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India.

Here, in the given case, CNC Limited has still Ahmedabad as a place of business in India. So, will continue the submission of document to the Registrar even after the closure of Mumbai office.

(c) **(i)** **Cognizance of offence by Special Court:** According to section 45 of the Prevention of Money Laundering Act, 2002, the Special Court cannot take cognizance of any offence punishable under section 4 of the Act, unless a complaint in writing is made by:

(a) The Director or

(b) Any officer of the Central Government or a State Government authorized in writing by the Central Government by a general or special order made by that Government.

Accordingly, NGO is not eligible to file complaint before special court against Rishabh alleged to be indulged into the money laundering activities.

Therefore, Special court cannot take cognizance of alleged offence complained of against Rishabh.

(ii) As per the law, Police officer shall investigate into an offence under this Act only when specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.

Here in the given, Police officer cannot initiate investigation on receiving a compliant from NGO.

(iii) Section 44 of the Prevention of Money Laundering Act, 2002, provides that this Act overrides the provisions of the Code of Criminal Procedure, 1973. So, Special Court while trying Scheduled Offence or offence of money laundering shall hold trial in accordance with the provision of Code of Criminal Procedure as it applies to a trial before a court of session.

(d) According to section 4 of the Prevention of Money Laundering Act, 2002, whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Accordingly, Mr. Wilson, a notorious person, was caught with the possession of counterfeit currency notes, is an offence specified under Part A-Paragraph 1 of the Schedule of the PMLA. So, he will be punished with rigorous imprisonment for a term of three years to seven years with fine.

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Where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the punishment will be for a term of three years to ten years with fine.

Question 4

(a) *Meera is a highly qualified professional and independent director in several listed companies. Referring to the provisions of the Securities and Exchange Board of India Act, 1992 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, answer the following questions:*

(i) *In how many listed companies she can be appointed as a director and independent director?*

(ii) *Whether the above number will be changed if she is serving as a whole-time director in a listed entity?*

(iii) *In how many committees she can be member?*

(iv) *In how many committees she can be appointed as Chairperson?* ***(4 Marks)***

(b) *The Central Government has issued directions on the question of policy from time-to-time to the Securities and Exchange Board of India (SEBI / Board). However, SEBI defied the orders on many occasions and hence, the Central Government superseded the Board. Referring to the provisions of the Securities and Exchange Board of India Act, 1992 analyse the validity of the order of the Central Government and answer the following:*

(i) *The powers of the Central Government to supersede the Board and reasons therefor.*

(ii) *Eligibility of person's who vacated their office on supersession of the Board for appointment on the reconstituted board.* ***(4 Marks)***

(c) *Mr. Mustafa is contesting an election as an authorised candidate of a registered political party. He has received, during the financial year 2021-22, a contribution of INR 25,00,000 from his brother Mr. Rehman who is a citizen of and living in UAE. Mr. Mustafa has obtained this money to defray his election expenditure. Referring to the provisions of the Foreign Contribution (Regulation) Act, 2010 (FCRA) advise whether Mr. Mustafa, by accepting foreign contribution, has violated the provisions of FCRA.* ***(3 Marks)***

(d) *There was some dispute between Mr. Pankaj and Mr. Arun which could not be resolved smoothly by them and was referred to the Arbitral Tribunal having three arbitrators, by virtue of the arbitration agreement between them. Two of the arbitrators were of the opinion that Mr. Pankaj has to pay a compensation of ₹ 2 crore to Mr. Arun. The third arbitrator was of the opinion that Mr. Arun is not eligible to get any compensation from Mr. Pankaj. The award was then written and signed by the first two arbitrators, while the third arbitrator refused to sign. The fact that the third arbitrator refused to sign and the reason behind that was stated in the award. Mr. Pankaj contended that since all the arbitrators did not sign, the award is invalid. Decide whether the contention of Mr. Pankaj is tenable as per the provisions of the Arbitration and Conciliation Act, 1996.* ***(3 Marks)***

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Answer

(a) As per the given information, Meera is a highly professional and independent director in several listed companies. Following are the answers as per the Regulations 17A and 26 of the SEBI (LODR), Regulation 2015:

(i) Regulation 17A(1) of the SEBI (LODR) Regulations, 2015 provides that a person shall not be a director or independent director in more than seven listed entities.

Hence, Meera can be appointed as a director and independent director in maximum 7 listed companies.

(ii) Regulation 17A(2) of the SEBI (LODR) Regulations, 2015 provides that any person who is serving as a WTD / MD in any listed entity shall serve as an independent director in not more than 3 listed entities.

Hence Meera, besides holding the position of WTD, can serve as an Independent Director maximum up to 3 listed companies only.

(iii) As per Regulation 26 of the SEBI (LODR) Regulations, 2015, a director shall not be a member in more than ten committees across all listed entities.

So, Meera can be a member in maximum ten committees.

(iv) As per Regulation 26 of the SEBI (LODR) Regulations, 2015, a director shall not act as chairperson of more than five committees across all listed entities.

So, Meera can be appointed as chairperson in maximum five committees.

(b) (i) **Power of Central Government to supersede the Board**: According to section 17 of the Securities and Exchange Board of India Act, 1992, if at any time the Central Government is of opinion that the Board has persistently made default in complying with any direction issued by the Central Government under this Act or in the discharge of the functions and duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Board or the administration of the Board has deteriorated, then in such case the Central Government may, by notification, supersede the Board for such period, not exceeding six months, as may be specified in the notification.

Thus, the powers of Central Government to supersede the Board is valid due to persistent committing of default in complying with directions issued by the Central Government on the question of policy from time to time.

(ii) Further section 17(3) of the Securities and Exchange Board of India Act, 1992 states that on the expiration of the period of supersession specified in the notification issued, the Central Government may reconstitute the Board by a fresh appointment and in

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such case any person or persons who vacated their offices, shall not be deemed disqualified for appointment.

Provided that the Central Government may, at any time, before the expiration of the period of supersession, take action under this sub-section and appoint such person/s by a fresh appointment.

Hence, the person/s who vacated their office on supersession of the Board will be eligible for appointment on reconstituted Board.

(c) As per section 3 of the Foreign Contribution (Regulation) Act, 2010, no foreign contribution shall be accepted by any candidate for election.

Further section 21 of the Act states that every candidate for election, who had received any foreign contribution, at any time within one hundred and eighty days immediately preceding the date on which he is duly nominated as such candidate, shall give, within such time and in such manner as may be prescribed, an intimation to the Central Government or prescribed authority or both as to the amount of foreign contribution received by him, the source from which, and the manner in which, such foreign contribution was received and the purposes for which and the manner in which such foreign contribution was utilised by him.

Accordingly, in the given case, though section 3 of the FCRA prohibits acceptance of foreign contribution by any candidate for election but in terms of section 21, it is permissible, to the duly nominated candidate contesting an election as an authorised candidate of a registered political party. He shall give, an intimation to the Central Government or prescribed authority or both as to the amount of foreign contribution received by him, the source from which, and the manner in which, such foreign contribution was received and the purposes for which and the manner in which such foreign contribution was utilised by him.

Hence, Mr. Mustafa, if accepted foreign contribution in compliance with the requirement as provided under section 21, can be said to have not violated the provisions of FCRA.

(d) As per the Arbitration and Conciliation Act, 1996, all decisions, including an award, must be made through majority. An award must also be complete concerning all issues that are submitted to the Arbitral Tribunal for adjudication.

Further, section 31(1)(a) requires an award to be in writing and having the signature of the members of the arbitral tribunal.

It is not an award unless these two conditions are fulfilled.

A mandatory requirement for an award is that it should be reasoned. Failure to state reasons would make the award invalid. Presence of reason would show that the arbitrators had applied their minds to the matter, taken into consideration all materials put before them and only then arrived at a decision. The only exception is when the parties have agreed that no reasons need be given for the award.

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Thus, the award given is in compliance as it was written and signed by majority, with reason behind the refusal to sign by the third member. Accordingly, the contention of Mr. Pankaj is not tenable. Hence, the award is valid.

Question 5

(a) *Sujeet, a registered valuer, was appointed by Him Limited for valuation of its goodwill for the proposed joint venture with its suppliers. A sum of ₹ five lakh was given to him towards remuneration. Later, it was found that Sujeet had given lower valuation intentionally to defraud the company which caused a loss of ₹ one crore to the company. As per the Companies (Registered Valuers and Valuation) Rules, 2017 state the remedies available to Him Limited and also mention the consequences to be faced by Sujeet for the default.*

(4 Marks)

(b) *Mr. Sohel and Sushil, joint shareholders of Pragati (Nidhi) Limited have applied for a fresh loan whereas other member Mr. Sahil has applied for a further loan who has defaulted the repayment of earlier loan borrowed from the Nidhi. The name of Mr. Sohel appears first in the register of members. The latest audited financial statements of the Nidhi as on 31 March, 2022 show that the total amount of deposits from its members is ₹ 5 crore. The financial statements further show that the Nidhi is continuously in losses during the last three financial years 2019-20, 2020-21 and 2021-22. You are required to decide the eligibility and maximum quantum of loan that can be sanctioned to Mr. Sohel and Mr. Sahil as per the provisions of the Companies Act, 2013.* ***(4 Marks)***

(c) (i) *Star Bank of India Ltd. (SBI) has provided a loan of ₹ 50 Lakh to SMALL Private Limited which is a small company under the Companies Act, 2013. The Company defaulted the repayment as a result of which SBI wants to initiate the Corporate Insolvency Resolution Process (CIRP) against the company to settle the matter within a period of three months approximately. The Solicitor advised the Bank that the maximum period allowed for completion of CIRP is 270 days. Referring to the provisions of the Insolvency and Bankruptcy Code, 2016 advise the Bank the measures available, if any, for speedy disposal of the process as desired by it.*

(ii) *Harsha Fabrics Private Limited (Corporate Debtor) has taken a loan of ₹ 30 Lakh from a financial institution (Financial Creditor) for business purpose. On filing an application by the financial creditor, the Corporate Insolvency Resolution Process (CIRP) was commenced declaring moratorium by order of the Adjudicating Authority on 30th May, 2022. The High Court having jurisdiction, in disposing of the pending petition of some other creditors which was filed prior to 30th May, 2022, passed an order for auction of assets of the Corporate Debtor on 6th June, 2022.*

Referring to the provisions of the Insolvency and Bankruptcy Code, 2016 advise the financial creditor whether the order of High Court is valid and can it be challenged?

(6 Marks)

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Answer

(a) In the given question, Sujeet, a registered valuer, had given lower valuation of goodwill, with the intention to defraud the company. This caused loss to Him Limited. The remedies mentioned in Rule 9 of the Companies (Registered Valuers and Valuation) Rules, 2017, shall be applicable to Him Limited, which is stated below:

A complaint may be filed against a registered valuer or registered valuers organisation before the authority in person or by post or courier along with a non-refundable fees of ₹ 1,000 in favour of the authority and the authority shall examine the complaint and take such necessary action as it deems fit.

Further, the consequences/ liabilities to be faced by Sujeet, as per section 247 of the Companies Act, 2013, are mentioned below:

1. If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be liable to a penalty of fifty thousand rupees.

   However, if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to 1 year and with fine which shall not be less than ₹ 1 Lakh but which may extend to ₹ 5 lakh.

2. Where a valuer has been convicted for defrauding the company or member (as mentioned above), he shall be liable to—

   (a) refund the remuneration received by him to the company; and

   (b) pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

(b) Rule 15 of the Nidhi Rules, 2014, deals with Loans is as follows:

(a) A Nidhi shall provide loans only to its members.

(b) The loan given by a Nidhi to a member shall be subject to seven lakh fifty thousand rupees, where the total amount of deposits of such Nidhi from its members is more than two crore rupees but less than twenty crore rupees;

Provided that where a Nidhi has not made profits continuously in the three preceding financial years, it shall not make any fresh loans exceeding fifty per cent. of the maximum amounts of loans specified.

Provided further that a member shall not be eligible for any further loan if he has borrowed any earlier loan from the *Nidhi* and has defaulted in repayment of such loan.

Here, the amount of deposits shall be calculated on the basis of the last audited annual financial statements.

In the light of the above provisions:

1. The maximum amount of fresh loans that the Nidhi may give to member = ₹ 7,50,000.

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Since, the company is incurring losses during the last three years, so, the eligible amount for giving fresh loans will be= 50% of 7,50,000= ₹ 3,75,000.

The maximum amount that can be given to Mr. Sohel is ₹ 3,75,000.

2. Mr. Sahil is not eligible for any further loan as he has defaulted in repayment of earlier loan borrowed from Pragati (Nidhi) Limited.

(c) Sections 55 to 58 of the Insolvency and Bankruptcy Code, 2016 deals with the fast track corporate insolvency resolution process for corporate persons.

(i) **Manner of initiating fast track corporate insolvency resolution process:** An application for fast track corporate insolvency resolution process may be filed by a creditor or corporate debtor as the case may be, along with:

(a) the proof of the existence of default as evidenced by records available with an information utility or such other means as may be specified by the Board; and

(b) such other information as may be specified by the Board to establish that the corporate debtor is eligible for fast track corporate insolvency resolution process.

Manner of initiating fast track corporate insolvency resolution process: An application under fast track insolvency resolution can be made in respect of prescribed corporate debtor, in which small company under section 2(85) of Companies Act is also prescribed.

Time period for completion of fast track corporate insolvency resolution process: The fast track corporate insolvency resolution process shall be completed within a period of ninety days from the insolvency commencement date. The period of CIRP can be extended by 45 days if required by Adjudicating Authority.

In line with above provisions Star Bank Limited can go in for speedy disposal of CIRP against SMALL Private Limited (a small company).

(ii) According to the section 14(1) of the Insolvency and Bankruptcy Code, 2016, on the insolvency commencement date, the Adjudicating Authority shall by order, declare moratorium prohibiting the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority.

In the given case, moratorium was declared by the order of the Adjudicating Authority commencing CIRP on 30th May, 2022. The High Court passed an order of pending petition on 6th June, 2022 (i.e. after the moratorium was declared). As, section 14(1) prohibits execution of decree or order of the court during moratorium period, therefore, the passing of order of High Court is not valid and yes it can be challenged.

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Question 6

(a) Mr. Ramesh was appointed as a whole-time director and was heading the marketing department in Sun Moon Pharma Limited. As a cost saving measure during pandemic he was removed from the office as whole-time director. Mr. Ramesh demanded compensation for loss of office. Explaining the relevant provisions of the Companies Act, 2013, state whether he is entitled to compensation. If yes, how the compensation amount will be calculated?

OR

Ms. Vishakha who is working as a Managing Director in MNO Limited has received an offer from Vishal Steel Limited for the post of the Managing Director. Effective capitals of MNO Limited and Vishal Steel Limited are ₹ 10 Crore and ₹ 20 Crore respectively as per the latest audited financial statements. While accepting the offer of Vishal Steel Limited she put a condition that she will work as a managing director in both companies simultaneously and draw remuneration from each of them. Referring to the provisions of the Companies Act, 2013 advise her about the total maximum yearly remuneration she can draw from both the companies together, if entitled? ***(4 Marks)***

(b) Modern Limited wants to borrow from banks an amount more than its paid-up share capital, free reserves and share premium. As per general rule of governance the companies are governed by directors, Whether the Board of directors is authorised to do so? If not, what would be the procedure to be followed by the company? Whether your answer would be different if total loans include temporary loans obtained from its banker in ordinary course of business? ***(4 Marks)***

(c) During the proceedings before Adjudicating authority under the Prevention of Money Laundering Act, 2002 a notice to attach the property (a car) was issued to Shyam. Shyam pleaded that his car was not used in the money laundering activities. Whether his plea can be accepted and the said notice be quashed under the said act? Explain. ***(3 Marks)***

(d) Explain the duties of Resolution Professional before initiation of pre-packaged insolvency resolution process as per the Insolvency and Bankruptcy Code, 2016. ***(3 Marks)***

Answer

(a) Compensation for loss of office of managing or whole-time director or manager [Section 202 of the Companies Act, 2013]

A company may make payment to a Managing Director (MD) or Whole-time director (WTD) or Manager (but not to any other director) by means of:

- compensation for loss of office, or
- as consideration for retirement from office, or
- in connection with such loss or retirement.

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Here, in the given instance Mr. Ramesh the whole time director was forced to be removed from office during pandemic as cost saving measure. Yes, he is entitled for compensation.

Calculation of compensation: The compensation shall be calculated on the basis of the average remuneration earned by him during a period of three years immediately preceding the date on which he ceased to hold such office, or where he held the office for less than three years, then for such shorter period.

The above compensation shall not exceed the remuneration he would have earned if he would have been in office for the remainder of his term or three years, whichever is shorter.

OR

As per Schedule V Part II Section I, a company having profits in financial year may pay remuneration to a managerial person or persons not exceeding the limits specified in section 197 of the Companies Act, 2013.

According to section 197(1), the total managerial remuneration payable by a public company, to its directors including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven percent of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits.

Provided that the company in general meeting may authorize the payment of remuneration exceeding eleven percent of the net profits of the company, subject to the provisions of Schedule V.

Provided further that, except with the approval of the company in general meeting by a special resolution, the remuneration payable to any one managing director whole-time director or manager shall not exceed five percent of the net profits of the company and if there is more than one such director, remuneration shall not exceed ten percent of the net profits of the net profits to all such directors and manager taken together.

As per Schedule V Part II Section II where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may pay remuneration to the managerial person not exceeding the limits specified therein.

As per Schedule V Part II Section V, a managerial person shall draw remuneration from one or both companies, provided that the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial person.

According to the given facts, Ms. Vishakha is working as a Managing Director in MNO Limited. She received an offer from Vishal Steel Limited for the post of the Managing Director. The effective Capital of the MNO Limited and Vishal Steel Limited are ₹ 10 Crore and ₹ 20 Crore respectively.

In view of above, if the companies are having Profits, the remuneration payable will be as per section 197(1) of the Companies Act, 2013. Overall limit of managerial remuneration

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to the directors including managing director, whole time director and manager will be 11% of the net profits of the company for that financial year. If there is one Managing director, 5% of the net profits of the company for that financial year. However, these limits may be increased in compliance with requirement of law.

In case the companies have no profits or its profits are inadequate the maximum remuneration under the both companies, for which Ms. Vishakha is entitled will be Rs. 84 lakh as per Section II-–Part II- Schedule V of the Companies Act, 2013.

The question also provides that while accepting the offer of Vishal Steel Limited, Ms. Vishakha also put a condition that she will work as a managing director in both companies simultaneously and draw remuneration from each of them.

In light with the given provision contained in Section V –Part II- Schedule V of the Act, Ms. Vishakha is entitled to draw remuneration from one or both companies but the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any one of the companies.

(b) According to Section 180 (1)(c) of the Companies Act, 2013, the Board shall exercise the powers to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital, free reserves and securities premium apart from temporary loans obtained from the company's bankers in the ordinary course of business only with the consent of the company by a special resolution.

'Borrowings' (including loans raised for meeting financial expenditure of a capital nature) are not to include temporary loans which are obtained by the company from its bankers in the ordinary course of business.

Limit on 'borrowings' need to be specified: Section 180 (2) requires that every special resolution passed by the company in general meeting in relation to the 'borrowings' shall specify the total amount up to which monies may be borrowed by the Board of Directors.

Debt raised in excess of the specified limit [Section 180 (5)]: If a company incurs debt in excess of the limit imposed i.e. more than the 'total amount' specified in the special resolution, it shall not be valid or effectual from the point of view of lender unless such lender proves that he advanced the loan in good faith and without knowledge that the limit imposed had been exceeded. Thus, lender has to be fully cautious before extending any loan to a company. The loaned amount must not be in excess of the limit imposed otherwise it shall not be legally enforceable against the company. In other words, the lender must be aware in no uncertain terms the implications of Section 180 (5) and must carefully check the financial statements as well as the special resolution, if any, passed by the company before extending any loan facility to it.

In view of above, the Board is not authorised to borrow from banks an amount more than its paid-up share capital, free reserve and share premium. Hence, in the present case the Board need to pass a special resolution.

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Exclusion of temporary loans: Since, temporary loans are obtained from its bankers in ordinary course of business, so they are excluded from the limits computed for borrowings. So, it will not effect on the total borrowing power of the company.

(c) According to section 8 of the Prevention of Money Laundering Act, 2002, on receipt of a complaint under section 5 (5), if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached, the evidence on which he relies, and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government.

Thus, the plea of Shyam shall not be accepted and notice will be served on him, for attachment of property.

(d) **Duties of resolution professional before initiation of pre-packaged insolvency resolution process.**

According to section 54B of the Insolvency and Bankruptcy Code, 2016, the insolvency professional, proposed to be appointed as the resolution professional, shall have the following duties commencing from the date of the approval under clause (e) of sub-section (2) of section 54A, namely:—

(a) prepare a report in prescribed form, confirming whether the corporate debtor meets the requirements of section 54A, and the base resolution plan conforms to the requirements referred to in section 54A;

(b) file such reports and other documents, with the Board, as may be specified; and

(c) perform such other duties as may be specified.

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