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CA Final 2023 Suggested Answers · Paper 4 Corporate and Economic Laws (Old Scheme)

EXAM
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YEAR
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TYPE
Suggested Answers

SUBJECT
Paper 4 Corporate and Economic Laws (Old Scheme)

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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) Moon Light Ltd. proposes in May, 2023 to make investment of ₹ 40 Lakh in the equity shares of Sun Shine Investment (Pvt.) Ltd. The face value of the equity shares is ₹ 20 Lakh. The financial data related to Moon Light Ltd. and Sun Shine Investment (Pvt.) Ltd. as on 31.3.2023 is furnished below:

Particulars	***Moon Light Ltd. (₹ In Lakh)***	***Sun Shine Investments (Pvt.) Ltd. (₹ In Lakh)***
I. Authorized Capital	*400*	*200*
II. Subscribed and Paid- up capital		
(a) Equity shares	*120*	*150*
(b) Preference shares	*10*	*-*
III. Free Reserves	*10*	*15*
IV. Capital Reserves	*10*	*-*
V. Borrowings from Public Financial Institution	*20*	*-*

(A) Moon Light Ltd. furnished the following information related to it as on the date of proposition:

1. *No other body corporate has invested any money in its share capital.*
2. *There is default of only interest for 2 months on the loan borrowed from Public Financial Institution.*
3. *Moon Light Ltd. has granted guarantee to the tune of ₹ 50 Lakh to a Nationalized Bank in connection with the loan granted to Star Light Ltd.*
4. *Moon Light Ltd. has granted housing loan of ₹ 10 Lakh to its employees, other than its Managing or Whole Time Director.*

(B) Sun Shine Investment (Pvt.) Ltd. furnished the following other information related to it:

1. *The total assets as on 31.3.2023 were ₹ 165 Lakh including investment in shares & debentures of body corporate ₹ 100 Lakh.*
2. *The income derived from investment in shares & debentures was ₹ 15 Lakh out of the gross income of ₹ 50 Lakh.*

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Analyzing and referring to the relevant provisions of the Companies Act, 2013 and relevant notifications/ circulars issued by the Ministry of Corporate Affairs:

(i) Identify the authority and the mode of approval for the investment proposal of ₹ 40 lakh in the equity shares in the above scenario.

(ii) Identify the authority and the mode of approval for the investment proposal in case Moon Light Limited has provided security valuing ₹ 50 Lakh to Star Light Ltd. instead of guarantee.

(iii) Whether approval of the Public Financial Institution is required for the investment proposal?

(iv) Is there any exemption available to Moon Light Ltd. in case Moon Light Ltd. is a private company?

(v) Whether Sun Shine Investment (Pvt.) Ltd. is an investment company based on the data given above?

(b) AA Ltd. an unlisted company, is engaged in manufacturing ultra-powered guns. The Company has 12 directors on its Board as on 31.3.2022. The Articles of Association of the Company contain provisions for appointment of directors according to the principle of proportional representation and enabling procedure. At the last Annual General Meeting (AGM) held on 24th September, 2022, eight directors were appointed for a period of 3 years according to the principle of proportional representation by a system of cumulative voting. This is the first time the company adopted the principle of proportional representation. The company has three independent directors complying the provisions of the Companies Act, 2013. A group of members has given a special notice of resolution to remove the following three directors.

1. A (non- executive director), who was appointed according to the principle of proportional representation at the AGM held on 24th September, 2022.

2. B (non- executive Independent Director) who was appointed at the AGM held on 20th September, 2021 for a second term of 5 years.

3. C (non- executive Woman Director).

On receipt of the special notice of the resolution to remove the above three directors, the company sought your opinion on the following matters in accordance with the provisions of the Companies Act, 2013:

(i) Whether the appointment of eight directors according to the principle of proportional representation at the AGM held on 24th September, 2022 is valid?

(ii) Can the above three directors be removed by the Company? If so, state the procedure of removal?

(iii) Is it necessary for the Company to send the copy of the Special notice of resolution to remove the directors to all the twelve directors?

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Answer

(a) (i) Authority and the mode of approval for the investment proposal of ₹ 40 lakh in Sun Shine Investment (Pvt) Ltd.

Section 186 of the Companies Act, 2013, (the Act) deals with the provisions relating to Loan and Investment by a Company. According to Section 186(2) of the Act, no Company shall directly or indirectly -

(a) give any loan to any person or other body corporate;

(b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and

(c) acquire, by way of subscription, purchase or otherwise, the securities of any other body corporate,

exceeding sixty percent of its paid-up share capital (equity and preference), free reserves and securities premium account or one hundred percent of its free reserves and securities premium account, whichever is more.

Prior approval by a Special Resolution for exceeding limit [Section 186(3)]:

Where the aggregate of the loan and investment so far made, the amount for which guarantee or security so far provided to all or in all other bodies corporate along with the investment, loan guarantee or security proposed to be made or given by the Board, exceed the limits specified under Section 186(2) of the Act, no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorized by a **special resolution** passed in a general meeting.

Unanimous Resolution of the Board [Section 186(5)]

Any investment shall be made or loan or guarantee or security given by the Company **only** after when the resolution sanctioning it is passed at a meeting of the Board **with the consent of all the directors present** at the meeting.

The prior approval of the public financial institution concerned where any term loan is subsisting shall also be obtained.

Calculation

According to the information given in the problem:

60% of paid-up share capital (equity and preference), free reserves and securities premium account is **₹ 84 Lakh**

(i.e. 60% of [₹ 120 + 10+10] = ₹ 84 Lakh) or

100% percent of its free reserves and securities premium account is **₹ 10 Lakh** and whichever is more **= ₹ 84 Lakh** without seeking prior authority by special resolution passed in a general meeting.

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Moon Light Ltd. has already given guarantee to the tune of ₹ 50 Lakh to a Nationalized Bank in connection with the loan granted to Star Light Ltd.

The aggregate of the loans and investments so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made is **₹ 90 Lakh** (₹ 50 Lakh guarantee + proposed investment ₹ 40 Lakh= ₹ 90 Lakh) which is exceeding the limit of ₹ 84 Lakh.

Conclusion: Therefore, the proposed investment shall be first approved by the Board with the consent of all the directors present at the meeting and then approved by the members by passing a special resolution.

Note: The MCA has clarified that loans and/or advances made by the companies to their employees, other than the Managing or Whole-Time Directors are not governed by the requirements of Section 186 of the Act.

(ii) Authority and the mode of approval for the investment proposal in case Moon Light Limited has provided security of ₹ 50 Lakh to Star Light Ltd instead of guarantee

Section 186 of the Act is applicable for providing security also. Hence, the answer will remain the same as above. The investment proposal of ₹ 40 Lakh (with the existing investment and loans) is exceeding the limits of investment i.e. 84 lakhs (i.e. 60 % of the paid-up share capital, free reserves and securities premium account). No investment shall be made even if security is given by the company instead of a guarantee unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting on the previously authorized special resolution passed in a general meeting.

(iii) Approval of Public Financial Institution (PFI) for the investment proposal:

In terms of **Section 186(5)** of the Act, prior approval of the Public Financial Institution (PFI) shall not be required where:

- the aggregate of the loan and investment so far made, the amount for which guarantee or security so far provided to all or in all other bodies corporate along with the investment, loan guarantee or security proposed to be made or given by the Board, does not exceed the limits specified under Section 186(2) of the Act and
- there is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the PFI.

As per the facts given in the question, Moon Light Limited has defaulted in payment of interest. **Therefore, the prior approval of the PFI is required.**

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(iv) Exemption to Moon Light Limited, if it is a Private Company:

Section 186 of the Companies Act is applicable to both public and private companies. **Hence, no exemption is available to Moon Light Ltd in case it is a private company.**

(v) Whether Sun Shine Investment (Pvt.) Ltd. is an Investment Company?

It is clarified by way of **clause (a) of Explanation** to Section 186 of the Act that the expression 'investment company" means a company whose principle business is the acquisition of shares, debentures or other securities.

Further, a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitutes **not less than fifty per cent of its total assets** or if its **income** derived from investment business constitutes **not less than fifty percent as a proposition of its gross income.**

Investment Test

The total assets of Sun Shine Investment (Pvt) Ltd as on 31.03.2023 is ₹ 165 Lakh.

Investment in shares and debentures of a body corporate is ₹ 100 lakh which is more than 50% of the total assets.

Income Test

Income derived from investment in shares and debentures is ₹ 15 Lakh which is less than 50% of the gross income.

Since Sun Shine Investment (Pvt) Ltd. satisfies the Investment Test, hence, it is an Investment Company.

(b) (i) Aappointment of eight directors according to the principle of proportional representation:

Option to adopt principle of proportional representation for appointment of directors [Section 163 of the Companies Act, 2013]: Notwithstanding anything contained in the Companies Act, 2013, the Articles of a Company need to contain provisions for the appointment of directors by proportional representation.

The Article need to provide for the appointment of not less than **two-thirds** of the total number of the directors of a Company in accordance with the principle of proportional representation by using the following methods of voting:

(a) Voting according to the single transferable vote.

(b) Voting according to a system of cumulative voting or otherwise

and such appointments may be made **once in every three years.**

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Conclusion: Appointment of 8 eight directors by AA Ltd constitutes 2/3rd of the total number of directors (12) and also for a period of three years. Further, as per Section 152 of the Companies Act, 2013, save as otherwise expressly provided in this Act, every director shall be appointed by the Company in a general meeting. **Accordingly, appointment of said 8 directors at AGM, is valid.**

(ii) **Removal of three Directors by the Shareholders: Section 169** of the Companies Act, 2013 contains provisions for removal of directors by the shareholders. The procedure of removal may be in the following manner:

Requirement of an Ordinary Resolution: A Company may, by an ordinary resolution, remove a director before the expiry of the period of his office **except** the following:

(a) When a director is appointed by the Tribunal under Section 242 of the Act.

(b) When as per Section 163, two-thirds or more of the total number of directors are appointed according to the principle of proportional representation, then such directors cannot be removed.

An independent director re-appointed for a second term under Section 149(10) shall be removed by the Company only by passing a special resolution.

In view of the above provisions,

Mr. A cannot be removed by the Company,

Mr. B can be removed by the Company by passing a special resolution and

Mr. C can be removed by passing an ordinary resolution in the members meeting.

Procedure:

(1) The director to be removed shall be given a **reasonable opportunity of being heard** before his removal.

(2) A **Special Notice** as per Section 115 of the Companies Act, 2013 shall be required for proposing any resolution to remove a director.

(3) The Director concerned may give a **written representation** to the Company and request that it should be notified to members and the Company shall, do so.

(4) On receipt of the special notice of a resolution to remove a director, 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 **[Section 169(3)]**.

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(iii) Whether the Special Notice of resolution to remove the directors needs to be sent to all the 12 directors?

In view of the provisions of Section 169(3) of the Act as stated above, the Company is **not required** to send the copy of the Special Notice of resolution to remove the directors to all the 12 directors. **It is required to be sent only to the three directors (A, B and C) sought to be removed.**

Question 2

(a) An investigation was ordered by the Central Government under Section 216 of the Companies Act, 2013 against KVS Ltd. for determining the true ownership to decide who are really financially interested and who are in real control of the Company. In connection with investigation, it appears to the Tribunal that there is good reason to find out the relevant facts about two lakh equity shares issued by the Company on 10th September, 2021. The Tribunal is of the opinion that unless restrictions are imposed on transfer of equity shares, the purpose cannot be achieved. Accordingly, the Tribunal by an order, directed the company that transfer of equity shares shall be subject to restrictions for a period of one year.

Referring to the provisions of the Companies Act, 2013 examine and decide:

(i) Whether the Tribunal has the power to restrict transfer of equity shares for a period of one year?

(ii) Whether the Tribunal has the power to restrict further issue of equity shares for a period of four years instead of restriction on transfer of equity shares for a period of one year?

(iii) Whether the stakeholders of KVS Ltd. can make a complaint to the Tribunal to put restrictions upon securities of the Company?

(b) Examine the merits of the following petitions made under the provisions of the Companies Act, 2013 for relief in case of oppression and mismanagement in the light of the said Act and judicial pronouncements:

(i) VR has been acting as Managing Director of ABC Limited, though he was not appointed by the Company as Managing Director. This fact is well known to a group of minority shareholders. The same group filed an application with the National Company Law Tribunal claiming that the functions discharged by VR amounted to oppression & mismanagement and sought relief.

(ii) IK, legal heir of the deceased shareholder of RSM Ltd. filed an application to the National Company Law Tribunal seeking relief against oppression & mismanagement in relation to RSM Ltd. IK is in the position of minority shareholder. But his name is

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not in the register of members of the company.

(iii) RR, a practicing advocate, representing all the depositors of On Road Limited, a listed company, filed an application with the National Company Law Tribunal for relief as they are of the opinion that the management of the company and affairs of the company are being managed or conducted in a manner which is prejudicial to the interest of the depositors and being oppressive.

(c) PSM Ltd. raised External Commercial Borrowings (ECB) with eligible lender through approval route after proper vetting of the application by their AD Category-I Bank. The Company failed to response for the e-mail numbering 8 sent by AD Category-I Bank during the last 2 quarters. As per the records available with AD Category-I Bank, PSM Ltd. is not found to be operative during the visit by the officials of AD Category-I Bank. However, the Company is regular in submitting its Statutory Auditor's Certificate.

Referring to the provisions of the Foreign Exchange Management Act, 1999, examine and decide:

(i) Whether PSM Ltd. is considered as an untraceable entity?

(ii) Whether it is necessary to inform Directorate of Enforcement about PSM Ltd. under the above circumstances?

(d) AX, resident in India had gone to London [UK] on a temporary visit in August, 2022 and to Bhutan in February, 2023. He brought in India at the time of his return, currency notes of Government of India and RBI Notes ₹ 20,000 from London and ₹ 1,00,000 from Bhutan in the denomination of ₹ 50. Referring to the provisions of the Foreign Exchange Management Act, 1999, examine and decide:

(i) Whether import of Indian currency in the above situations are prohibited?

(ii) What would be your answer in case ₹ 1,00,000 from Bhutan was brought in the denomination of ₹ 100 by AX?

Answer

(a) Imposition of restrictions upon Securities [Section 222 of the Companies Act, 2013]:

Where it appears to the Tribunal, in connection with any investigation under Section 216 or on a complaint made by any person in this behalf, that there is good reason to find out the relevant facts about any securities issued or to be issued by a Company and the Tribunal is of the opinion that such facts cannot be found out unless certain restrictions, as it may deem fit, are imposed, the Tribunal may, by order, direct that the securities shall be subject to such restrictions as it may deem fit for such period not exceeding three years as may be specified in the order.

Facts of the Case: In an investigation against KVS Ltd., it appears to the Tribunal that there is a good reason to find out the relevant facts about **two lakh equity shares** issued by the Company on **10th September, 2021**. Accordingly, the Tribunal, by an order, directed

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the Company that transfer of equity shares shall be subject to the restrictions for a period of one year.

Following are the answers to the questions:

(i) **Whether the Tribunal has the power to restrict transfer of equity shares for a period of one year?**

As per the above provision, **Yes, the Tribunal has the power to restrict transfer of equity shares for a period of one year** as the maximum period prescribed is **3 years**.

(ii) Whether the Tribunal has the power to restrict further issue of equity shares for a period of four years?

As the provision deals with respect to **"any securities issued or to be issued by a company"**, hence, Tribunal can also restrict further issue of equity shares subject to a maximum period of 3 years instead of restriction on transfer of equity shares for a period of 1 year. **However, the Tribunal has no power to restrict further issue of equity shares for a period of 4 years.**

(iii) Whether the stakeholders of KVS Ltd. can make a complaint to the Tribunal?

Yes, as per law, any person can make a complaint. **Therefore, stakeholders of KVS Ltd. can make a complaint to the Tribunal to put restrictions upon securities of the Company.**

(b) (i) Where a person without being so appointed, was acting as a Managing Director (MD) and discharging his functions with or without the knowledge of the members, then, members **cannot** file an application with the Tribunal claiming it as an act of oppression.

In this case, VR, has been acting as MD of ABC Limited, though not appointed by the Company as MD. This was known to the group of shareholders. Later, an application was filed by such group of shareholders before the NCLT claiming that the functions discharged by him amounted to oppression & mismanagement and sought relief. **Hence, the petition filed by the group of shareholders is not maintainable.**

(ii) IK, the legal heir of the deceased shareholder of RSM Ltd. filed a petition before the NCLT. Such legal heir was in the position of a minority shareholder. Here, the legal heir of the deceased shareholder with minority status **is entitled to file** the petition even if his name is not on the register of members of the Company.

(iii) As per **Section 245** of the Companies Act, 2013, such prescribed number of member/s, depositor/s or any class of them, as the case may be, if they are of the opinion that the management or conduct of the affairs of the Company are being conducted in a manner prejudicial to the interests of the Company or its members or depositors, can file an application before the Tribunal on behalf of the members.

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Accordingly, any person, group of persons or any association of persons representing the persons affected by the act of omission, under Section 245(10) can file an application before the Tribunal on behalf of the members or depositors for seeking remedies. **Hence, in this case, application filed by RR, a practicing advocate, representing all the depositors, to the Tribunal, is maintainable.**

(c) In the given instance, PSM Ltd. raised ECB to the eligible lenders in compliance with proper vetting of the application by AD Category-I Bank. However, PSM Ltd. failed to respond for email numbering 8 send by AD Category-I Bank during the last 2 quarters. As per AD Category-I Bank, PSM Ltd. is not found to be operative during the visit by the officials of AD Category-I Bank, but the company is regular in submitting its Statutory Auditor's Certificate.

Following are the answers:

(i) Definition of Untraceable Entity

Transactions on account of External Commercial Borrowings (ECB) are governed by Section 6(3) (d) of the FEMA, 1999. Any borrower who has raised ECB will be treated as 'untraceable entity' if the entity / auditor(s)/ director(s)/ promoter(s) of entity are not reachable / responsive / reply in negative over email / letters / phone for a period of not less than two quarters with documented communication / reminders numbering 6 or more and it fulfills both the following conditions:

(a) Entity not found to be operative at the registered office as per records available with the AD Bank or not found to be operative during the visit by the officials of AD Bank or any other agencies authorized by the AD bank for the purpose.

(b) Entities have not submitted Statutory Auditor's Certificate for last two years or more.

Whereas, in the given problem, the entity is regular in submitting its Statutory Auditor's certificate.

As the requirement of satisfying both the conditions as stated above is required to call an entity as 'untraceable entity', it can be concluded that PSM Limited cannot be considered as an untraceable entity.

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(ii) **Directorate of Enforcement** should be informed whenever any entity is designated 'untraceable'. In the given case, since **PSM Ltd. is not considered as an 'untraceable entity'**, **it is not required** to inform the Directorate of Enforcement.

(d) As per Regulations related to Import of goods and services under FEMA:

(1) Any person resident in India who had gone out of India on a temporary visit, may bring into India at the time of his return from any place outside India (**other than from Nepal and Bhutan**), currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding **₹ 25,000** (Rupees Twenty Five Thousand only).

(2) A person may bring into India from Nepal or Bhutan, currency notes of Government of India and Reserve Bank of India for any amount in denominations up to **₹ 100/- without any ceiling.**

Accordingly, following are the answers:

(i) Import of Indian currency of ₹ 1,00,000 from Bhutan in the denomination of ₹ 50 is not prohibited and without any ceiling. Also, import of currency notes of Government of India and RBI notes of ₹ 20,000 from London, is permissible.

(ii) In case where, ₹ 1,00,000 is brought from Bhutan in the denomination of ₹ 100 by AX, **it is not prohibited and without any ceiling.**

Question 3

(a) The Tribunal has passed an order for winding-up of Jagga Footwear Limited, a company limited by shares, on 1st April, 2023. Examine the liability of the following past members of the company, where present members are unable to satisfy the contributions required to be made by them in pursuance of the Companies Act, 2013. It is to be noted that they ceased to be the members of the company by way of transferring their partly unpaid shares to the transferees.

(i) Liability of Jayanti towards a debt incurred by a company during the Financial Year 2021-22 where she has ceased to be the member on 31st March, 2022.

(ii) Liability of Nayana towards a debt incurred on 31st December, 2022 where she has ceased to be the member on 30th November, 2022.

(iii) Liability of Chitra towards a debt incurred on 31st December, 2022 where she has ceased to be a member on 1st January, 2023.

(b) KRD Research Development Ltd. was registered in India under the provisions of the Companies Act, 2013. Its future project is to innovate unique business idea emerging from research and development in a new area. Due to the recession in the industry, the Company has no significant accounting transaction and business activities during the last two financial years. However, the Company has been regular in filing its financial statements and annual returns with the Registrar of Companies [RoC] by making payment

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of applicable fees. The Company decided to file the application for obtaining the status of dormant company. The Company instead of passing a special resolution to this effect in the general meeting of the Company, issued notice to all the shareholders of the Company for this purpose and obtained consent of 80% of shareholders in value.

Referring the provisions of the Companies Act, 2013 and Rules made there under answer the following:

(i) Whether the payment of filing fees to RoC could be considered as significant accounting transaction under the said Act?

(ii) Whether the application made by KRD Research Development Ltd. is in order, in the absence of passing a special resolution?

(c) Ranjeet of Lucknow was posted as Tehsildar in a Tehsil Headquarter near Lucknow. After a year of his joining he purchased a ready built house in Lucknow in the name of his wife. He ostensibly showed the business income of his wife and availed loan of 90% of the value of house from a bank and also gave a guarantee of house loan. The Bank in this case, did not ensure the business activity of his wife, (address of business place, Income tax Return filed, how long she did business etc.) and solely relying that Ranjeet is giving the guarantee, it sanctioned the loan. After availing the loan, he continued to deposit some amount in the house loan account of his wife, regularly (apart from the EMI) and within a year, liquidated the loan account. One of the employees in his office made compliant to ED of taking of bribe/commission by him on regular basis and so liquidating the loan account in just a year.

Examine whether Ranjeet was involved in the money laundering activity in the light of the given facts as per the provisions of the Prevention of Money Laundering Act, 2002?

(d) OSK Bank Limited, a reporting authority, is under enquiry by the Director appointed under the provisions of the Prevention of Money Laundering Act (PMLA), 2002. The Director having regard to the nature and complexity of the case directed OSK Bank Limited to get its records audited. The Chief Audit Officer, Head of Internal Audit Department of the Bank audited the records and furnished the report to the Director.

Referring to the provisions of the PMLA, 2002 answer the following:

(i) Whether the reporting authority has complied with the provisions of the Act?

(ii) Who shall bear the expenses of audit?

Answer

(a) Section 285 of the Companies Act, 2013 deals with the 'Settlement of List of Contributories and Application of Assets'.

While settling the list of contributories, the Tribunal shall include every person, who is or has been a member, who shall be liable to contribute to the assets of the company an amount sufficient for payment of the debts and liabilities and the costs, charges and

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expenses of winding up, and for the adjustment of the rights of the contributories among themselves, subject to the following conditions, namely:—

(a) a person who has been a member shall not be liable to contribute if he has ceased to be a member for the preceding one year or more before the commencement of the winding up; **[Section 285(3)(a)]**

(b) a person who has been a member shall not be liable to contribute in respect of any debt or liability of the company if such debt or **liability is contracted after he ceased to be a member; [Section 285(3)(c)]**

Accordingly, following shall be the answers:

(i) Jayanthi has ceased to be a member one year (i.e on 31.03.2022) before the commencement of the winding up (i.e on 1st April 2023) and **hence she shall not be liable** towards the debt incurred during the period (FY 2021-22) she has been a member even if, the shares were not fully paid-up at the time of transfer.

(ii) Nayana has ceased to be a member (i.e on 30.11.2022) prior to incurring the debt by the Company (i.e on 31.12.2022) and hence, she will not be liable for the debt.

(iii) Liability of Chitra towards a debt incurred on 31st December, 2022 **shall subsist** as she ceased to be a member on 1st January, 2023, just three months before the commencement of the winding up order (on 1st April, 2023). **Chitra shall be liable to the extent of the amount remained unpaid on the shares.**

(b) (i) As per **Section 455** of the Companies Act, 2013, where a Company is formed and registered under this Act, for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar for obtaining the status of a dormant company.

According to Explanation to Section 455, "significant accounting transaction" means any transaction other than:

- payment of fees by a Company to the Registrar;
- payments made by it to fulfill the requirements of this Act, and
- payments for maintenance of its office and records.

Thus, payment of filing fees to the RoC cannot be considered as a significant accounting transaction.

Conclusion: Accordingly, in the given case, KRD Research Development Ltd. **is eligible to apply** to the Registrar of Companies to obtain the status of Dormant company even if it has continued payment of fees to Registrar of Companies.

(ii) According to **Rule 3 of the Companies (Miscellaneous) Rules, 2014,** a Company may make an application in prescribed form NSC -1 to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455

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after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of atleast 3/4th shareholders (in value).

Conclusion: Thus, application made by KRD Research Development Ltd. **is in order**, as a notice is issued to all the shareholders of the Company for this purpose and obtained consent of 80% of shareholders in value which fulfills the requirement of at least 3/4th shareholders (in value).

(c) As per **Section 3** of the Prevention of Money Laundering Act, 2002 -

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property **shall be guilty of offence of money-laundering**.

Section 2(1)(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;

Section 2(1)(y) of the PML Act provides that – **"scheduled offence"** besides with other offences, includes the offences specified under Part A of the Schedule;

Under Schedule -Part A - Paragraph 8: Offences under the Prevention of Corruption Act, 1988 specifies Section 7- Offence relating to public servant being bribed.

Conclusion: In the light of the above mentioned related legal provisions and **if it has been proved that Ranjeet has taken bribery,** then the act of Ranjeet shall be a case of money laundering i.e. converting of black income earned through bribe and efforts in converting it into white money and raising the house loan in the name of his wife. Hence, **Ranjeet would be deemed to be involved in money laundering activity and liable under the PMLA, 2002.**

(d) As per **Section 13** of the PMLA, 2002, if at any stage of inquiry or any other proceedings before him, the Director having regard to the nature and complexity of the case, is of the opinion that it is necessary to do so, he may direct the concerned reporting entity to get its records, audited by an accountant from amongst a panel of accountants, maintained by the Central Government for this purpose.

The expenses of, and incidental to, any such audit shall be borne by the Central Government.

Accordingly, following are the answers to the questions:

(i) **No,** the reporting authority **has not complied** with the direction of OSK Bank Limited to get its records audited by competent authority as per the above provision. Records need to be audited by an accountant from amongst a panel of accountants,

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maintained by the Central Government and cannot be audited by the chief audit officer of the Bank.

(ii) The expenses of audit shall be **borne by the Central Government**.

Question 4

(a) Vijyan, a market intermediary was found to have violated the provisions of the Securities and Exchange Board of India (SEBI) Act, 1992 while dealing in securities of KGK Ltd. The SEBI, pending investigation for the reasons recorded in writing, proposed to attach the Bank Accounts maintained by Vijyan. Two current Accounts are maintained by him. One current account with Star Bank of India (SBI) where the proceeds involved in the dealing of Securities of KGK Ltd. alone have been routed through and another current account with Indian Domestic Bank (IDB) where his textile business transactions have been routed through. The debit balance of current account with SBI is rupees one lakh and that of IDB ₹ 15 lakh. Referring to the provisions of the SEBI Act, 1992:

(i) Advise the SEBI regarding the attachment of Bank current Account maintained with SBI or IDB or both.

(ii) Whether SEBI has the power to investigate the affairs of Vijyan in relation to the securities market?

(b) JKR Ltd., a listed company submitted the following Reports/ statement to the Stock Exchange:

(i) Quarterly Compliance Report on Corporate Governance for the Quarter ended 31st December, 2022 on 18th January, 2023.

(ii) Annual Compliance Report on Corporate Governance for the financial year ended 31.3.2022 on 4th October, 2022 after filing the Quarterly Compliance Report on Corporate Governance relating to the second quarter of the financial year 2022-23.

(iii) Statement of Grievance Redressal Mechanism showing only the number of investor complaints remaining unresolved at the Quarter ended 31st December, 2022 on 20th January, 2023.

Referring to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, whether the Company has complied timelines requirements in the above cases and also the content requirement in respect of the statement of Grievance Redressal Mechanism.

(c) KK Medicare Trust in Hyderabad (India) was setup for poor class of society in the year 2015. Since then, the trust has been receiving huge foreign contribution regularly, out of which the medical hospital and residential flats for medical officers and staff have been constructed. Trusties of KK Medicare Trust in its meeting held on 30th April, 2023 decided to dissolve the trust and dispose off the property and assets of the trust, including the property created out of foreign contribution. Explain the trustees of KK Medicare Trust, the provisions applicable for disposal of property of the Trust created out of funds of foreign

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contribution in light of the provisions of the Foreign Contribution (Regulation) Act, 2010.

(d) SAL and AFL enters into an Annual Maintenance Service contract on 10.1.2020 for a period of 4 years. The contract contained a clause that in the event of a dispute between the parties, such matter would be submitted to arbitration. A new Annual Maintenance Service contract was entered between the parties on 30th December, 2022. The New Annual maintenance service contract does not contain an arbitration clause as was in the contract dated 10.1.2020.

Referring to the Provisions of the Arbitration and Conciliation Act, 1996, answer the following:

(i) Whether the parties can refer any future dispute to Arbitration based on the contract dated 10.1.2020?

(ii) Whether an arbitration agreement is discharged by the death of any party?

Answer

(a) As per **Section 11** of the SEBI Act, 1992, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the measures provided therein the provision, either pending investigation or inquiry or on completion of such investigation or inquiry.

According to the Section, Board may order for attachment, **for a period not exceeding ninety days,** bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder.

Provided that the Board shall, within, ninety days of the said attachment, obtain confirmation of the said attachment from the **Special Court,** established under **Section 26 A,** having jurisdiction and on such confirmations, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of Section 28 A shall apply.

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached.

(i) In view of the above provisions, **SEBI has the power to attach the current account maintained with Star Bank of India (SBI)** involved in the securities of KGK Ltd have been routed through it. **SEBI cannot attach the current account maintained with Indian Domestic Bank (IDB).**

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(ii) If any intermediary or any person associated with the securities market has violated any of the provisions of SEBI Act, 1992 or the rules or the regulations made thereunder issued by the Board, it may at any time by order in writing, direct any person (referred to as the Investigating Authority) to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the Board.

Therefore, an order for an investigation into the affairs of the Vijyan in relation to the securities market, may be initiated.

(b) Following shall be the answers as per the SEBI (LODR) Regulations, 2015

(i) Quarterly Compliance Report on Corporate Governance

As per **Regulation 27(2),** a listed entity shall submit **quarterly compliance report on corporate governance** in the format as specified by the Board from time to time to the recognized stock exchange(s) within 21days from close of the quarter.

JKR Ltd. filed the report on 18th January, 2023. **There is no violation of time line.** It has been submitted before the stipulated time period i.e. by 21st of January, 2023.

(ii) Annual Compliance Report on Corporate Governance (ACRCG).

The Annual Compliance Report on Corporate Governance **shall be submitted within 6 months from the end of the financial year** and **may be submitted along with the second quarter report.** The second quarter report was filed earlier to the Annual Compliance Report on Corporate Governance and hence, the ACRCG **was not filed within the time frame** as the time limit for filing is 30.09.2022 in this instance or along with the second quarter report.

(iii) Regulation 13(3): Grievance Redressal Mechanism

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

In this case, time lines compliance is made by filing the statement of Grievance Redressal Mechanism on 20th January 2023 , however, content requirement in the statement (w.r.t number of pending complaints, received complaints, disposed complaints and unresolved complaints during different stages of the quarter were not furnished **which is not in compliance as per the requirement of the provision.**

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(c) In the given case, KK Medicare Trust in Hyderabad was setup in 2015. Trust was receiving huge foreign contribution regularly. Trustees decided in its meeting held on 30th April, 2023 to dissolve the trust and dispose off the property and assets of trust, including the property created out of foreign contribution.

Disposal of Assets created out of Foreign Contribution [Section 22]

Where any person who was permitted to accepted foreign contribution under this Act:

(a) **Ceases to exist or has become defunct** - in this case, all the assets of such person shall be disposed of in accordance with the provision contained in any law for the time being in force under which the person was registered or incorporated; and

(b) **In the absence of any such law** - the Central Government may, having regard to the nature of assets created out of foreign contribution received under this Act, by notification, specify that all such assets shall be disposed of by such authority, in such manner and such procedure as may be prescribed.

Conclusion: Hence, the Trustees be advised to refer to the applicable clause in the trust deed and its by-laws governing the disposal of assets in the event of dissolution of the trust or if it is silent, the Government notification, if any, issued in this regard. **The assets created out of foreign contribution cannot be disposed of contrary to the procedure laid down by the law.**

(d) As per **Section 7** of the Arbitration and Conciliation Act, 1996, **"arbitration agreement"** means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. An arbitration agreement shall be in writing.

The reference in a contract to a "document containing an arbitration clause" constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

In said case,

(i) **No**, as per above provision, SAL and AFL **cannot refer future dispute** to Arbitration based on the contract dated 10.1.2020, as the new Annual Maintenance Service Contract which was entered on 30th December 2022 does not contain arbitration clause neither reference in a contract to a "document containing an arbitration clause".

(ii) An arbitration agreement is not discharged by the death of any party. **It shall be enforceable by or against the legal representatives of the deceased.**

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Question 5

(a) (i) *Global Commercial LLC is a foreign company having its place of business in Mumbai, India. On default of repayment in loan instalments, the lender bank in India wants to serve a notice on the LLC. Advise, whom and how the notice will be served on it as per the provisions of the Companies Act, 2013?*

(ii) *MNO LLC (LLC), a foreign company, has failed to file its annual return and financial statements with the Registrar of Companies, Delhi relating to the financial year 2021-22 and the default continues. LLC has contracted for purchase of machinery which has been delivered on 1st January, 2023. The vendor wants to sue LLC for defaulting the payment terms of the contract. On the contrary, LLC is planning to sue the vendor for supplying defective spare parts along with the machinery. Referring to the provisions of the Companies Act, 2013 examine the entitlement of both the parties to sue each other.*

(b) *The Registrar of Companies in the capacity of the Adjudicating officer, issued notice dated 10th March, 2023 to Straight Ltd. to show cause to reply within 10 days as to why the penalty should not be imposed on the company for contravening of a provision of the Companies Act, 2013. The Company submitted its reply within the time frame in electronic mode. The Registrar was of the opinion that physical appearance was not required. The Registrar considering the merit of the reply passed an order on 25th April, 2023 imposing penalty on the Company. The Company contended that the Registrar has not passed the order within the time frame specified under section 454 of the Companies Act, 2013. Hence, the order is not valid.*

Referring to the provisions of the Companies Act, 2013, answer the following:

(i) *Whether the contention of the Company about the validity of the order is correct?*

(ii) *Identify the time frame for passing order in case physical appearance was found required and authorized representative appeared before the Registrar.*

(iii) *Who is the authority to appoint Adjudicating Officer for adjudging penalty?*

(c) (A) *Oman Inc. (HUF) filed a Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) for initiation of Corporate Insolvency Resolution Process (CIRP) against D Ltd., [Corporate Debtor]. The Adjudicating Authority admitted the Petition vide order dated 26.9.2022 and initiated CIRP and appointed PS as an Interim Resolution Professional (IRP). Subsequently PS (IRP) has been replaced by SKA Resolution Professional, on 10.1.2023. The Insurance of the assets of the CD was lapsing on 16.12.2022. The IRP recognizing the urgent need to get the insurance renewed in order to safeguard the assets of the CD, decided to take new insurance policy at a higher premium rate comparing the previous Insurance policy without the prior consent of the Committee of Creditors. The IRP entered into the contract with the Insurance Company for taking the new Insurance Policy.*

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(B) MN has granted an interest free loan to AB Private Ltd. with a condition to repay the loan within 3 years. AB Private Ltd. defaulted to repay the loan. MN filed a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) to initiate the CIRP against AB Private Ltd. after complying the required formalities. The Adjudicating Authority dismissed the Petition on the ground that it is an interest free loan and the applicant is not a financial creditor.

Referring to the provisions of IBC, 2016 decide:

(i) Identify the date of commencement of CIRP in relation to CIRP initiated against D Ltd.

(ii) Whether PS (IRP) has the authority in entering the new Insurance Policy?

(iii) Whether the rejection of the Petition made by MN on the ground mentioned above is valid?

Answer

(a) (i) Global Commercial LLC has a place of business in Mumbai, India, hence it is a foreign company and will be required to follow provisions as specified under the Companies Act, 2013.

According to **Section 383** of the Companies Act, 2013, any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar under section 380 and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

Conclusion: The lender bank can serve the notice to any person whose name and address have been delivered to the Registrar under Section 380 and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

(ii) According to **Section 393** of the Companies Act, 2013, any failure by a company to comply with the provisions of Chapter XXII of the Companies Act, 2013, shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof. However, the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until the company has complied with the provisions of the Companies Act, 2013, applicable to it.

In the given question, MNO LLC (LLC), a foreign company has failed to file its annual return and financial statements with the Registrar for F.Y. 2021-2022, hence, **it has contravened the provisions of Chapter XXII.** The vendor can sue MNO LLC for defaulting the payment terms of contract. However, MNO LLC shall not be entitled to

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bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until it has complied with the provisions of the Companies Act, 2013, applicable to it.

(b) Period for passing the order: The Adjudicating Officer shall pass an order:

(a) within 30 days of the expiry of the period or of such extended period, where physical appearance was not required;

(b) within 90 days of the date of issue of notice, where any person appeared before the Adjudicating Officer:

However, in case an order is passed after the aforementioned duration, the reasons of the delay shall be recorded by the Adjudicating Officer and no such order shall be invalid merely because of its passing after the expiry of such 30 days or 90 days as the case may be.

(i) Whether the contention of the Company about the validity of the order is correct?

The said order was passed after 30 days of the date of issue of notice**.** However, the order passed is valid. Therefore, the contention of the company about the validity of the order that it has not passed the order within the time frame, is incorrect.

(ii) Time Frame

Within 90 days of the date of issue of notice where any person appeared before the Adjudicating Officer.

(iii) Authority to appoint Adjudicating Authority

The Central Government may appoint any of its officers, not below the rank of Registrar, as Adjudicating Officers for adjudging penalty under the provisions of the Act.

(c) (i) Date of commencement of CIRP initiated against D Ltd.

Application for initiating Corporate Insolvency Resolution Process (CIRP) by the Adjudicating Authority under **Sections 7, 9 or 10** of the Insolvency and Bankruptcy Code, 2016, as the case may be **[Section 5(12)]**.

Accordingly, the date of commencement of CIRP against D Ltd. shall be 26.09.2022.

(ii) Whether PS(IRP) has the authority in entering the new Insurance Policy?

Financial service includes inter-alia with other services, effecting/ implementing contracts of insurance.

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According to **Section 16** of the Code, the interim resolution professional shall have the authority to appoint accountants, legal or other professionals as may be necessary and to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of Corporate Insolvency Resolution Process. Here, since CIRP is commenced, so CoC's approval is required to take new insurance policy at higher premium rate.

PS (IRP) has entered into the new insurance policy without the approval of CoC and after the commencement of CIRP.

Hence, PS (IRP) has no authority.

(iii) Whether the rejection of petition made by MN is valid?

As per S**ection 3(11)** of the IBC, 2016, the term **'debt'** means a liability in respect of a claim which is due from any person and includes a financial debt and operational debt. A **'financial debt'** means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes money borrowed against the payment of interest. The interest, if any, will be included in the financial debt. Interest is not compulsory as per the meaning of Financial Debt. Therefore, interest free loan given by MN is a financial debt and MN is a Financial Creditor.

The rejection of the application on this ground, is not valid.

Question 6

(a) (A) PK Ltd. is engaged in manufacturing of paper and paper boards. Brilliant was appointed as a director representing small shareholders for a period of 3 years. After one month from this appointment, Brilliant was appointed by White Ltd. as small shareholder director for a period of 2 years. White Ltd. is engaged in manufacture of Passenger Cars.

(B) Umesh was a small shareholder director of Slow Ltd. upto 15th September, 2020. Considering the professional expertise of Umesh, Slow Ltd. appointed him as Manager (Human Resource) with effect from 10th February, 2023.

Referring to the provisions of the Companies Act, 2013 examine and decide:

(i) Validity of appointment of Brilliant as small shareholder director in White Ltd. for a period of 2 years.

(ii) Validity of appointment of Umesh as Manager (Human Resources) in Slow Ltd.

(iii) Whether a small shareholder director is eligible for re-appointment?

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OR

(a) *Net Profit of Sonata Goldmines Limited is ₹ 200 Lakh as per its Audited Financial Statement for the year ending 31st March, 2022. The Profit and Loss Account contains the following items:*

Sr. No.	*Particulars*	*Treatment given in Profit and Loss Account*	*INR (In lakh)*
1	*Subsidies received from a State Government which has not otherwise been directed by the Central Government*	*Credit given*	*5*
2	*Profits on sale of forfeited shares by the Company*	*Credit given*	*2*
3	*Directors' remuneration paid*	*Deducted*	*10*
4	*Income-tax payable*	*Deducted*	*30*

Referring to the provisions of the Companies Act, 2013 you are requested to compute the net profits for the purpose of managerial remuneration payable under section 197 of the Act.

(b) *King Global Limited (KGL) is a multinational company. KGL appointed JiK (an expatriate managerial person) as its Executive Director and paid Children's Education Allowance of ₹ 5,40,000 during the financial year 2022-23 at the rate of ₹ 15,000 per month per child for three children studying outside India, as per the terms & conditions of appointment. JiK has spent ₹ 2,00,000 per child for study of his Children. Compute the amount of Children's Education Allowance being perquisites which shall not be included in computation of the ceiling on remuneration specified in Schedule V Managerial Remuneration of the Companies Act, 2013 in the above scenario.*

What would be your answer in case JiK is a person resident in India?

(c) *"The legal representative of the accused person will have no locus standi to continue the proceedings relating to attachment of property by order of the Special Court in the event of death or insolvency of such person." Examine the validity of the statement referring to the provisions of the Prevention of Money Laundering Act, 2002.*

(d) *After approval of an application made by the financial creditor for initiating Corporate Insolvency Resolution Process against the corporate debtor, the Committee of Creditors (CoC) has been constituted. Thereafter, the financial creditor wants to withdraw the application but is not willing to put forth the justification thereof. Will he succeed under the provisions of the Insolvency and Bankruptcy Code, 2016? Explain.*

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Answer

(a) First Alternative

According to **Section 151** of the Companies Act, a listed company may have one director elected by the small shareholders.

(i) According to **Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014**, no person shall hold the position of small shareholders' director in more than two companies at the same time.

However, the second company in which he has been so appointed shall not be in a business which is competing or is in conflict with the business of the first company.

In the instant case, Brilliant who was small shareholder director of PK Ltd. was appointed by White Ltd. as Small Shareholder Director for a period of 2 years. As White Ltd. is engaged in manufacture of passenger cars, hence, his appointment in White Ltd. **is valid** as the business of White Ltd. **is not competing** with PK Ltd.

(ii) According to the said Rules, a Small Shareholders' Director shall not be appointed in or be associated with such company in any other capacity, either directly or indirectly for a period of three years from the date on which he ceases to hold office as a small shareholders' director in a company.

In the instant case, Umesh ceases to hold office as a Small Shareholders' Director of Slow Ltd. on 15th September, 2020. He was appointed by the Company as Manager (Human Resource) w.e.f. 10th February, 2023 i.e. within 3 years of cooling period, **hence his appointment is not valid.**

(iii) The small shareholders director's tenure shall not exceed a period of three consecutive years, and on the expiry of the tenure, **such director shall not be eligible for re-appointment.**

Important Note: Since the provisions of Section 151 of the Companies Act, 2013 along with related Rules are applicable for Listed Company only, it is assumed in this question that all the companies mentioned in it are Listed companies.

(OR)

Second Alternative

According to Section 198 of the Companies Act, 2013, net profits for any financial year for the purpose of managerial remuneration payable under section 197 shall be calculated as follows:

(i) Credit shall be given for Subsidies received from any Government unless and except in so far as the Central Government otherwise directs.

(ii) Credit shall not be given for profits on sales by the company of forfeited shares;

(iii) Directors' remuneration shall be deducted;

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(iv) Income-tax and super-tax payable by the company under the Income-tax Act, 1961 shall not be deducted.

In the instant case, in line above stated provisions:

Computation

Items	**INR (in Lakh)**
Net Profit of Sonata Goldmines Ltd.	₹ 200
Credit is given for subsidies received from a State Government which has not otherwise been directed by the Central Government Credit shall be given. **No further adjustment is required as credit has already been given** [Section 198 (2)]	-
Credit is given for Profits on sale of forfeited shares by the Company Credit should not be given as per the Companies Act, 2013 and hence deducted [Section 198 (3)(b)]	(2)
Directors' remuneration paid is deducted. It has to be deducted as per the Companies Act, 2013. [Section 198(4)(b)].	NIL
Income tax payable is deducted The said amount is not deductible as per Act and hence, added back.	30
Revised Net Profit	**228**

Hence, the revised net profit for the purpose of managerial remuneration payable under **Section 197** is **₹ 228 Lakhs**.

(b) (i) As per Section IV of **Schedule V** to the Companies Act, 2013, an expatriate managerial person (including a non-resident Indian) shall be eligible to the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in Section II or Section III:

Children's Education Allowance: In case of children studying in or outside India, an allowance is limited to a maximum of ₹ 12,000 per month, per child, or actual expenses incurred, whichever is less. Such allowance is admissible up to a maximum of two children.

Hence, the amount of Children's Education Allowance being perquisites shall not be included in the computation of the ceiling on remuneration specified in Schedule V. According to the above provision, an amount of ₹ **2,88,000** [i.e lower of (12000 * 12 months * 2 children) or 4,00,000 (2,00,000 * 2 children)]

(ii) In case JiK is a person resident in India, there is no provision under Schedule V of the Companies Act, 2013 to exclude Children's Education Allowance in computing of the ceiling on remuneration.

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Hence, the Children's Education Allowance paid **₹ 5,40,000** to JiK will be considered as perquisites in computing of the ceiling on remuneration.

(c) Continuation of proceedings in the event of death or insolvency [Section 72 of the Prevention of Money Laundering Act, 2002 (the Act)]

Where -

(a) any property of a person has been attached under **Section 8** of the Act and no appeal against the order attaching such property has been preferred; or

(b) any appeal has been preferred to the Appellate Tribunal, and-

(i) in a case referred to in clause (a), such person dies or is adjudicated an insolvent before preferring an appeal to the Appellate Tribunal; or

(ii) in a case referred to in clause (b), such person dies or is adjudicated an insolvent during the pendency of the appeal,

then, **it shall be lawful for the legal representatives of such person** or the official assignee or the official receiver, as the case may be, to prefer an appeal to the Appellate Tribunal or as the case may be, to continue the appeal before the Appellate Tribunal, in place of such person and the provisions of Section 26 shall, so far as may be, apply, or continue to apply, to such appeal.

Conclusion: Hence, the statement "The legal representative of the accused person will have no locus standi to continue the proceedings relating to attachment of property by order of the Special Court in the event of death or insolvency of such person" **is not valid.**

(d) Withdrawal of Application:

Withdrawal of application shall be pursuant to Section 12A of the Insolvency and Bankruptcy Code, 2016 read with Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Under Section 12 A of the Code, a scenario may arise for withdrawal of application after constitution of Committee of Creditors (CoC) but before issue of Invitation for Expression of Interest (EoI). Accordingly, an application for withdrawal shall be first considered by the CoC within 7 days of its receipt. Such withdrawal application shall be approved by the CoC with 90% voting share upon which the resolution professional shall submit withdrawal application along with the approval of the Committee to the Adjudicating Authority on behalf of the applicant within three days of such approval. The final approval shall be by way of an order passed by the Adjudicating Authority.

Conclusion: Accordingly, the financial creditor will succeed in withdrawing the application without giving justification, only if an application is made before issuing an invitation for EoI and approved by the Adjudicating Authority. However, he will not succeed without giving justification, if EoI has already been invited.

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