aglasem.com

FOR CA FINAL EXAM PREPARATION

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

EXAM
CA Final

YEAR
2023

TYPE
Suggested Answers

SUBJECT
Paper 4 Corporate and Economic Laws (Old Scheme)

DATE
November 2023

PAPER- 4 – CORPORATE AND ECONOMIC LAWS

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

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

Question 1

(a) *The following are the abstracts from the latest audited financial statements of AB Limited, an unlisted non-government public company in respect of the financial year 2022-23.*

Paid-up share capital	*₹ 5.1 crore*
Free Reserves	*₹ 44.9 crore*
Share Premium Reserve	*₹ 4.9 crore*
Turnover for Financial year 2022-23	*₹ 50.5 crore*

The Company is already having 5 directors and is planning to appoint 1 more non-independent director on its Board in the forthcoming Extra-ordinary General Meeting scheduled to be held on 15th November, 2023. Mr. X, an eligible person being interested for directorship in AB Limited, submitted a written notice under his hand along with a deposit of ₹ 1,00,000 signifying his candidature as a director, at the registered office of the Company on 30th October, 2023. Mr. M, a member of the Company also proposed and submitted a written notice signifying the candidature of Mr. Y for the same post on 31st October, 2023 without any deposit. Both Mr. X and Mr. Y are not retiring directors of. the Company. AB Limited informed all the members about the notice received in respect of the candidature of both Mr. X and Mr. Y by email (as provided by them for communication) on 6th November, 2023. On the day of the meeting 49% votes were cast in favour of Mr. X and 51 % of votes were cast in favour of Mr. Y. Consequently, Mr. Y was considered to be elected as the director. The Company Secretary objected to the selection of Mr. Y on the ground that the deposit amount was not sufficient to validate his candidature. Mr. M, the member who proposed Mr. Y, contended that there is an exemption to Mr. Y from depositing any amount since he was proposed by one of the members.

Referring to the applicable provisions of the Companies Act, 2013 and the rules made thereunder,

(i) *Advise the Company, whether the Company Secretary is correct or the contention of Mr. M is correct?*

(ii) *What will be your answer, if 65% of paid-up share capital of the company is held by the Central Government?*

(b) *Mr. A is one of the directors of XYZ(P) Ltd. He has been convicted by a court for an offence involving moral turpitude on 31st March, 2023 and sentenced to 7 months imprisonment. Mr. A filed an appeal on 30th April, 2023 against his conviction. On 30th June, 2023, the Court dismissed the appeal of Mr. A. On 6th July, 2023, Mr. A filed a further appeal which is pending. (It is assumed that the Court /Tribunal orders were received by Mr. A on the*

@ The Institute of Chartered Accountants of India

same day of judgment). Referring to the provisions of the Companies Act, 2013 answers the following:

(i) Whether Mr. A can continue as a director of XYZ (P) Ltd?

(ii) Whether Mr. A can be appointed as a director of D Ltd. in July 2023?

(c) Mr. Surya is currently serving as the Managing Director of Mata Capital Ltd. He has been the person instrumental in developing the company. Even after attaining 70 years, his continuance was felt beneficial to the company but when his appointment was put to vote, the votes polled in favour of his appointment was 60% whereas votes against his appointment were 40%. Analyse and state the compliance requirement, that is required to be met if the company feels that Mr. Surya should continue as a Managing Director (apply the provisions of the Companies Act, 2013).

Answer

(a) (i) Whether the Company Secretary is correct or the contention of Mr. M. is correct?

Provision: Section 160 of the Companies Act, 2013 and Rule 13 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 contain provisions in respect of a person eligible to stand for directorship who is not a retiring director.

It states the following legal requirements:

(i) Requirement of Written Notice: Person who applies his candidature as a Director: A person shall be eligible for appointment as a director in a Company at any general meeting (whether in AGM or EOGM), if he has given a notice in writing under his hand signifying his candidature as a director **at least 14 days before the meeting** at the Registered Office of the Company.

Member who intends to propose other person for directorship: Whereas, in other case, a member of the Company, who intends to propose candidature of a person as a director shall give a written notice at the Registered Office of the Company signifying his intention to propose the other person as a candidate for directorship **at least 14 days before the meeting**.

(ii) Requirement of Deposit: The written notice needs to be accompanied with the **deposit of ₹ 1,00,000** or such higher amount as may be prescribed. Provided that, the requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the 'Nomination and Remuneration Committee', if any, constituted under **sub-section (1) of Section 178** of the Companies Act, 2013 or a Director recommended by the Board of Directors of the Company, in the case of a Company not required to constitute a 'Nomination and Remuneration Committee'.

@ The Institute of Chartered Accountants of India

No exemption is available to Mr. Y from depositing the amount though proposed by Mr. M, a member of the Company.

(iii) Action by the Company: The Company shall inform its members regarding the candidature of a person for the office of director in accordance with the manner prescribed in **Rule 13 of the Companies (Appointment and Qualifications of Directors) Rules, 2014**.

According to the provision, **at least 7 days** before the general meeting, the Company shall inform its members of such Candidature:

- by serving individual notice through electronic mode to such members who have provided their email addresses for communication purposes and
- by placing notice of such candidature on its website, if any.

In view of the above provisions, Mr. M has to deposit ₹ 1,00,000 along with the written notice signifying the candidature of Mr. Y for the post of director.

Conclusion: By taking into account the above provisions the Objection of the Company Secretary of AB Limited as to the selection of Mr. Y is **correct and the contention of Mr. M is not correct.**

(ii) If 65% of paid-up share capital of the Company is held by the Central Government.

In terms of **Notification No.463 (E), dated 5th June, 2015, as amended by Notifications No.582 (E), dated 13th June, 2017,** Section 160 of the Act, shall not apply to a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments. In the present case, the Central Government holds only 65 % of the paid-up share capital of the Company, the **said exemption will not be applicable** and therefore, compliance of Section 160 is necessitated. In view of the above, the answer will remain the same.

(b) (i) Whether Mr. A can continue as a director of XYZ (P) Ltd?

Provision: According to **Section 167(1)(f)** of the Companies Act, 2013, the office of a director shall become vacant in case he is convicted by a Court of any offence, whether involving moral turpitude or otherwise and sentenced to imprisonment for **6 months or more**.

Exception: The office shall not be vacated by the director in case of orders referred above:

(i) for thirty days from the date of conviction or order of disqualification;

(ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or

@ The Institute of Chartered Accountants of India

(iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of;

In the instant case, Mr. A has filed the first appeal on 30th April, 2023 i.e. within 30 days from the date of his conviction on 31.03.2023 and upon dismissal of his appeal, he filed further appeal on 6th July, 2023 i.e. within 7 days.

Conclusion: In view of the above, **he shall continue as a director of XYZ (P) Ltd and shall not vacate his office** in the said Company until the outcome of his further appeal.

(ii) Whether Mr. A can be appointed as a director of D Ltd. in July, 2023?

Provision: Section 164(1)(d) of the Companies Act, 2013 states that a person shall not be appointed as a director if he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence.

However, in terms of the proviso to Section 164(3), the disqualifications referred to above shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.

Conclusion: In this case, even though his appeal is pending, Mr. A is disqualified from being appointed as a director in D Ltd. under Section 164(1)(d).

(c) Compliance requirement to be met to continue to appoint Mr. Surya as the Managing Director who has attained 70 years of age.

Provision: Section 201 of the Companies Act, 2013 contains provisions that need to be followed for seeking approval from the Central Government, if an application is made under second proviso to Section 196(3)(a) effective from 12.09.2018 as inserted by the Companies (Amendment) Act, 2017 for the appointment of a person as Managing Director who has attained the age of seventy years but in whose case the appointment could not be regularized by passing a special resolution despite the fact that even though the votes cast in favour of the motion exceeded the votes cast against the motion but approved by a simple majority. Non-passing of the special resolution also contravenes Schedule V.

Compliance Requirements: For regularizing the appointment, the only way is to apply to the Central Government for approval based on the fact that the majority of the shareholders are in favour of such an appointment as they find it most beneficial to the company.

The process is given u/s 201 and Rule 7 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 as under:

Making an Application for approval to the Central Government under Section 196 shall be in form No.MR-2 as prescribed by Rule 7 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 and shall be accompanied by the specified fee within 90 days from the date of such appointment.

@ The Institute of Chartered Accountants of India

Before any application is made by the Company u/s 196, a general notice to the members of the Company shall be issued by or on behalf of the Company, indicating the nature of the application proposed to be made.

Publication of Notice & Attaching of Notice with the Application

Such notice shall be published at least in one newspaper in the principal language of the district in which the registered office of the company is situated and circulating in the district and at least in one English newspaper circulating in that district.

The copies of the notices, together with the certificate by the company as to the due publication thereof, shall be attached to the application.

After complying with the above procedure and receiving approval from the Central Government, Mr. Surya can regularize his continuation as Managing Director.

Question 2

(a) *Mr. NUR and Mr. JOG, two major shareholders of KNG Limited (the Company) received complaints from some stakeholders of the Company alleging that some directors of the Company are involved in some serious fraudulent activities. Hence, they inspected the books of account and some other relevant documents of the Company and found the allegation to be genuine. They rushed to you and seek your advice for initiation of investigation through the Serious Fraud Investigation Office (SFIO), so that proper justice can be obtained for the Company and the other stakeholders. Referring to the relevant provisions of the Companies Act, 2013, advise them the scenarios in which such an investigation can be initiated. Also, advise them whether majority shareholders of the Company have any powers in this regard.*

(b) *Due to some recent sales and purchase of shares, the present shareholding pattern of Bright (P) Ltd is as follows:*

Total issued and paid up equity shares	*10,000*
The shares held by Mr. Wright	*8,000*
Shares held by Mr. Steve	*1,000*
Shares held by Ms. Sara	*200*
Shares held by Mr. Shan (deceased)	*70*
Shares held by Mr. & Mrs. Smith	*730*

Mr. Steve enters into an understanding with Mr. Wright to help him acquire the remaining shares. Mr. Wright made an offer for buying the remaining shares from all other members at a price determined based on a valuation done by a registered valuer following the prescribed rules. Ms. Sara rejected the proposed offer, Mr. Shan's legal heirs had not made any application for the transmission of shares to their names. Mr. & Mrs. Smith negotiated for a higher price for transferring their holdings. The time specified by the company for the delivery by the company to deposit the shares held by the minority shareholders had expired.

@ The Institute of Chartered Accountants of India

Under these circumstances and referring to the relevant provisions of the Companies Act, 2013 answer the following:

(i) What will be the role of Bright (P) Ltd. in this transaction?

(ii) What will be the position of Ms. Sara who has rejected the offer after the expiry of the time specified by the company?

(iii) What will be the situation of shares held in the name of a deceased shareholder?

(c) Mr. Rajesh a person Resident in India has already invested in some equity shares in LONDON Bells Limited, a company registered in the United Kingdom. He had purchased 1,000 equity shares in the Company. The same amount was invested in terms of the Rules and Regulations applicable during the time of investment. In July, 2023, the Company announced right issue of shares, i.e, 1 share for every 10 shares held as on 1st January, 2023 at the rate of £ 100 per share. Referring to the applicable provisions of the Foreign Exchange Management Act, 1999 and the Foreign Exchange Management (Overseas Investment) Rules, 2022 as regards to investment in the equity capital as right issue and bonus issue of a foreign entity, advise Mr. Rajesh whether he can renounce the equity shares issued by LONDON Bells Limited as a right issue in favour of a person resident outside India?

(d) Hydra Reality and Software (P) Ltd. is making its first export of software and it is in the process of manufacturing a unique ceramic tile product for which there are no competitors and which will require 15 months before it makes physical exports. For the ceramic product, buyers are immediately willing to enter into an export contract with a provision for export after 15 months and also make an advance payment of USD 50,000 with interest cost at LIBOR plus 150 basis points.

However, the management of the company desires to know whether it can receive the advance payment from the buyers. Advise, explaining the procedure to be followed involving advance payment as per the Foreign Exchange Management Act, 1999.

Answer

(a) Scenarios in which investigation can be initiated

Provision: Assigning of investigation to SFIO by the Central Government:

According to Section 212(1) of the Companies Act, 2013, where the Central Government-

(a) on receipt of a report of the Registrar or Inspector;

(b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;

(c) in the public interest; or

(d) on request from any Department of the Central Government or a State Government,

@ The Institute of Chartered Accountants of India

- is of the opinion that it is necessary to investigate into the affairs of a company by the SFIO, the Central Government may, by order, assign the investigation into the affairs of the said company to the SFIO. On receipt of such order, the Director, SFIO may designate such number of inspectors as he may consider necessary for the purpose of such investigation.

Whether majority of shareholders of the Company have any powers?

Yes, majority shareholders of the company have powers to pass a special resolution that its affairs are required to be investigated and thereafter the Company shall intimate the same to the Central Government to initiate investigation through the Serious Fraud Investigation Office (SFIO).

(b) Provision: Notify to company for purchase of minority shareholding [Section 236(1)]:

In the event of any person or group of persons- becoming ninety per cent majority or holding ninety per cent of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, shall notify the company of their intention to buy the remaining equity shares.

In the instant case, Mr. Wright and Mr. Steve holds majority of 90% of the issued equity share capital of Bright (P) Ltd., (9,000 shares out of 10,000).

(i) Role of Bright (P) Ltd. whose shares are being transferred;

Bright (P) Ltd. shall act as a transfer agent in the event of purchase [Section 236(5)]: In the event of a purchase under this section, the company whose shares are being transferred shall act as a transfer agent for receiving and paying the price to the minority shareholders and for taking delivery of the shares and delivering such shares to the majority, as the case may be.

(ii) Position of Ms. Sara who has rejected the offer:

Section 236 (6) of the Companies Act, 2013 states that in case the minority shareholders do not deliver their shares within the time specified by the company whose shares are being transferred, the share certificates shall be deemed to be cancelled, and the company whose shares are being transferred shall be authorized to issue shares in lieu of the cancelled shares and complete the transfer in accordance with law and make payment of the price out of deposit made under sub-section (4) by the majority in advance to the minority by dispatch of such payment.

Considering the said provision, it can be concluded that in case such minority shareholders do not turn up or take action within the specified time, they are bound to accept the offer. Thus, the shares held by Ms. Sara will be deemed to have been transferred to the acquirers and they will become the owners of the said shares.

@ The Institute of Chartered Accountants of India

(iii) If shares held in the name of the deceased shareholder:

Right of shareholders to make an offer for sale of minority equity shareholding [Section 236(7)]: In the event of a majority shareholder or shareholders requiring a full purchase and making payment of price by deposit with the company for-

- any shareholder or shareholders who have died or ceased to exist, or
- whose heirs, successors, administrators or assignees have not been brought on record by transmission,

the right of such shareholders to make an offer for sale of minority equity sha**reholding shall continue and be available for a period of** three years from the date of majority acquisition or majority shareholding.

The above provisions will apply to legal heirs of Mr. Shan who had not made any application for the transmission of shares to their names.

(c) Provision: As per **Regulation 7 of the Foreign Exchange Management (Overseas Investment) Rules, 2022,** any person resident in India who has acquired and continues to hold equity capital of any foreign entity in accordance with the provisions of the Act or the rules or regulations made thereunder–

(a) may invest in the equity capital issued by such entity as a rights issue; or

(b) may be granted bonus shares subject to the terms and conditions under these rules.

The person resident in India acquiring the rights above, may renounce such rights in favour of a person resident in India or a person resident outside India.

Hence, taking into account the above provisions, Mr. Rajesh can renounce the equity shares issued by LONDON Bells Limited as a right issue in favour of a person resident outside India.

(d) Regulation 15 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015] talks about advance payment against exports. Accordingly,

(1) Where an exporter receives advance payment (with or without interest), from a buyer/ third party named in the export declaration made by the exporter, outside India, the exporter shall be under an obligation to ensure that –

(i) the shipment of goods is made within one year from the date of receipt of advance payment;

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

(iii) the documents covering the shipment are routed through the authorized dealer through whom the advance payment is received;

@ The Institute of Chartered Accountants of India

Provided that in the event of the exporter's inability to make the shipment, partly or fully, within one year from the date of receipt of advance payment, no remittance towards refund of unutilized portion of advance payment or towards payment of interest, shall be made after the expiry of the period of one year, without the prior approval of the Reserve Bank.

(2) Exemption: Notwithstanding anything contained in clause (i) of sub-regulation (1), an exporter may receive advance payment where the export agreement itself duly provides for shipment of goods extending beyond the period of one year from the date of receipt of advance payment.

Conclusion: In the instant case, the buyers can enter into an export contract with a provision for export after 15 months as per exemption stated above, however, cannot make an advance payment of USD 50,000 with interest cost at LIBOR plus 150 basis points.

Question 3

(a) (i) On an application made by SWG Limited, the Tribunal after thorough analysis passed an order for winding up of the Company on 10th August, 2023. While passing the winding up order, the Tribunal directed for formation of an advisory committee to advise the Company Liquidator and to report to the Tribunal on such matters as the Tribunal requires. The advisory committee was formed consisting of 10 members including the Company Liquidator and a creditor Mr. MAN, who holds about 90% share in value of the total creditors of the Company. Mr. MAN was nominated as the Chairman of the Committee. Mr. PRADHAN, a member of the Committee objected to the decision of nomination of Mr. MAN as the Chairman of the Committee. Referring to the applicable provisions of the Companies Act, 2013, advise whether the above objection raised by Mr. PRADHAN is valid and if so, what corrective actions should have been taken in this respect.

(ii) Fault Limited is being wound up and Mr. Kris claimed a loss of future commission of ₹50,000 that he might have earned, if Fault Ltd. did not go into liquidation. Ascertain, whether the claim of Mr. Kris can be admitted by the liquidator, referring to the provision of the Companies Act, 2013?

(b) Alex Limited is a closely held, Public Limited Company. The Board of Directors (BOD) of the Company decided to undertake a valuation exercise of their shares, debentures, assets and the liabilities, net worth and goodwill of the Company as at 31.03.2023. In this connection, the Chairman of the Audit Committee (AC), Mr. Amrish, proposed to appoint an experienced Registered Valuer (RV) who meets all the eligibility conditions for registered valuers. Mr. Aravind, a member of the Audit Committee is of the opinion that only the BOD has the power to appoint a RV and not the AC. He also raised certain other doubts regarding the appointment of RV. In this regard, it was unanimously decided by the members of the AC and the BOD to approach you, being an expert, to resolve the following clarifications under the provisions of the Companies Act, 2013. Advise them suitably.

@ The Institute of Chartered Accountants of India

(i) Who shall appoint the Registered Valuer of the Company?

(ii) What factors shall a Registered Valuer consider while conducting valuation of assets or liabilities of the Company?

(iii) What will be the consequences, if the Registered Valuer contravenes the provision of the Act with an intention to defraud the Company or its members?

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

During the trial of the said case by Special Court, Mr. Hitesh came to know of such attachment of the property bought by him from Mr. Rajan and he made immediately claim for such property with the Special Court. In his claim, he mentioned that he was not aware that the property which he bought was covered under "illicit earning" as per the provisions of the Prevention of Money Laundering Act, 2002, and he also stated that was totally unrelated to Mr. Rajan and had bought the said property at fair market value by making payment through account payee cheques. Further, he mentioned in his claim, that due to such provisional attachment of the property, he has suffered a business loss of rupees 15 lakhs.

In the given context of facts, answer the following questions under the provisions of the Prevention of Money Laundering Act, 2002:

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

(ii) Whether Mr. Hitesh could have made such claim at an earlier stage of the proceedings in respect of such property?

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

Answer

(a) (i) Advisory Committee [Section 287 of the Companies Act, 2023]

Appointment of Advisory Committee: The Tribunal may, while passing an order of winding up of a company, direct that there shall be, an advisory committee to advise the Company Liquidator and to report to the Tribunal on such matters as the Tribunal may direct.

Composition: The advisory committee appointed by the Tribunal shall consist of not more than twelve members.

Company Liquidator shall be Chairperson: The meeting of advisory committee shall be chaired by the Company Liquidator.

@ The Institute of Chartered Accountants of India

In the instant case, objection raised by Mr. PRADHAN is valid that Mr. MAN, a creditor, cannot be nominated as Chairman of the Advisory Committee. Hence, Company Liquidator should be appointed Chairman of the Committee and not Mr. MAN.

The Company Liquidator shall convene a meeting of creditors and contributories for the company within 30 days from the date of winding up order for enabling the Tribunal to determine the persons who may be members of the Advisory Committee.

(ii) Debts of all Descriptions to be Admitted to Proof [Section 324 of the Companies Act, 2013]

In every winding up -

- all debts payable on a contingency, and
- all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages,

shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency, or may sound only in damages, or for some other reason may not bear a certain value.

Thus, the prospective value of a mere possibility, such as a loss of future commission that might have been earned but for the winding up, is not a provable debt. Hence, Kris's claim cannot be admitted.

(b) (i) Who shall appoint a Registered Valuer: As per Section 247(1) of the Companies Act, 2013, a Registered Valuer and being a member of an organization recognized in such manner as may be prescribed **shall be appointed by the Audit Committee (AC) or in its absence, by the Board of Directors (BOD) of that Company.**

(ii) Factors to be considered by a Registered Valuer: As per Section 247(2) of the Companies Act, 2013, the valuer shall,—

(a) make an impartial, true and fair valuation of any assets which may be required to be valued;

(b) exercise due diligence while performing the functions as valuer;

(c) make the valuation in accordance with such rules as may be prescribed; and

(d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him.

(iii) Consequences of Contravention: As per Section 247(3) of the Act, if the valuer has contravened such provisions with the intention to defraud the company or its

@ The Institute of Chartered Accountants of India

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**.

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

Provision: As per **Section 8(2)** of the Prevention of Money Laundering Act, 2002, if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

Further, **Section 8(5)** of the Prevention of Money Laundering Act, 2002, states that where a property stands confiscated to the Central Government, the Special Court, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering.

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

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

In the given case, it appears that Mr. Hitesh in good faith had bought the property from Mr. Ranjan without knowing that the said property was "illicit earning" as per the provisions of the Prevention of Money Laundering Act, 2002 and he also does not appear to be involved in the offence of money laundering because as per his claim he was totally unrelated to Mr. Ranjan and had bought the said property at fair market value by making payment through account payee cheques. Also, as per his claim, he has suffered a business loss of rupees 15 lakhs due to such provisional attachment of the said property.

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

(ii) Whether Mr. Hitesh could have made such claim at an earlier stage?

In line with Section 8(2) of the Prevention of Money Laundering Act, 2002, Mr. Hitesh could have made such claim only, after receiving opportunity of being heard, that the property is not involved in money laundering.

(iii) Option available to Mr. Hitesh: Section 47 of the Prevention of Money Laundering Act, 2002, empowers the High Court to exercise all the powers related to appeal and revision, as if a Special Court, were a Court of Session. In the said question, Mr. Hitesh can appeal to High Court if the Special Court rejects his claim.

@ The Institute of Chartered Accountants of India

Question 4

(a) On 15.01.2023, the Securities and Exchange Board of India (the Board) proposed to convene an urgent meeting of its members (meeting of the Board) for regulating the working of the depositories, participants, custodians of securities, foreign institutional investors and such other intermediaries. Due to certain unavoidable circumstances beyond control, Mr. Gopalakrishnan, the Chairman of the Board could not attend and preside over the meeting. Referring to the provisions of the Securities and Exchange Board of India Act, 1992 answer the following:

(i) Whether the scheduled meeting will be conducted or postponed for want of the Chairman?

(ii) How the questions that come before the meeting would be decided?

(iii) Under what circumstances a member of the Board cannot participate in the meeting?

(iv) In case of any defect in the constitution of the Board, will it invalidate any act or proceeding of the Board?

(b) The composition of the Audit Committee of Shree Balaji Limited, an unlisted Company, as on 31-03-2023 comprises of 9 directors including 5 Independent Directors. The majority of the members of the Audit Committee have the ability to read and understand the financial statements but none of them has Accounting or related Financial Management expertise. The Company listed its securities in a recognized Stock Exchange in the month of July, 2023. Referring to the regulations of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 decide, whether the existing Audit Committee can continue after listing of its Securities?

(c) Bharat Sevak Samaj, a NGO set up for the purpose of providing health facilities to the poor people of slum areas in rural India had applied to the Central Government for obtaining registration to avail foreign contribution from some organisations located in New Zealand. The application was rejected on some grounds. The Secretary of the NGO was called for hearing on the date of cancellation of the application and he was informed about the fact of rejection on the same day. A copy of the rejection letter was handed over by the Authorities and was signed by him as a mark of acknowledgement on that day, i.e. on 9th December, 2022. A copy of the said letter was also sent by registered post on the address of the NGO on 16th December, 2022, which was received by the NGO on 23rd December, 2022. After due analysis of the rejection letter, the NGO decided to apply to the Central Government for revision of the rejection order. In this regard, the Secretary of the NGO requested you to advice on some matters. He wanted to apply for revision on a plain paper referring to the earlier application (for registration) and send it by speed post to the concerned authorities without any attachment. Referring to the relevant provisions of the Foreign Contribution (Regulation) Act, 2010 and the applicable Rules made thereunder, advise him regarding the time period within which the application of revision is to be made and whether the application on plain paper and sending it by speed post is a valid mode?

@ The Institute of Chartered Accountants of India

(d) A dispute arose between the management of Akar Automobile Ltd. and its Supplier. The dispute was relating to non-supply of quality goods within the stipulated time whereas the Supplier was not happy with the delayed payments. The management of the company sent an invitation to the Supplier to conciliate on the issues raised mutually which was accepted in writing by him. Examine the given situation and answer the following under the provisions of the Arbitration and Conciliation Act, 1996:

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

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

Answer

(a) (i) Whether the scheduled meeting will be conducted or postponed?

As per **Section 7** of the Securities and Exchange Board of India Act, 1992, if for any reason, Chairman is unable to attend a meeting, any member chosen by the members present from amongst themselves shall preside over the meeting. Thus, the scheduled meeting shall be conducted on 15.01.2023 and said meeting will not be postponed for want of the Chairman.

(ii) How the questions would be decided?

All questions which come up before the meeting shall be decided by majority vote of the members present and the Chairman or the presiding member will have a second or casting vote, in the event of equality of votes.

(iii) Circumstances a member of the Board cannot participate in the meeting?

As per **Section 7A** of the Securities and Exchange Board of India Act, 1992, any member-

- who is a director of a company and has any indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board, shall, on disclosure of his interest at such meeting, shall not take any part in any deliberation or decision of the Board with respect to that matter.

(iv) Whether any defect in the constitution of the Board will invalidate any act or proceedings of the Board?

As per Section 8 of the Securities and Exchange Board of India Act, 1992, no act or proceeding of the Board shall be invalid merely by reason of any vacancy in, or any defect in the constitution of the Board. Therefore, the proceeding of the Board is not void.

(b) According to **Regulation 18** of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, every listed entity shall constitute a qualified and independent audit committee in accordance with the term of reference which shall be as following:

(a) The audit committee shall have minimum three directors as members.

@ The Institute of Chartered Accountants of India

(b) Two-thirds of the members of audit committee shall be independent directors.

(c) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

In the given case, the audit committee of Shree Balaji Limited already has 9 directors as members, which is in compliance. The audit committee has 5 directors as independent directors. However, once the company gets listed, at least 6 [9*(2/3)] directors shall be independent directors. Thus, they need to change the composition of audit committee once the company gets listed on stock exchange.

All members of audit committee shall be financially literate and at least one member shall have accounting or related financial Management expertise, whereas in the existing committee only majority of members have the ability to read and understand the financial statements but none of them has Accounting or related Financial Management expertise.

Hence, the composition of the Audit Committee should meet this requirement. In view of the above, the existing audit committee cannot continue after listing.

(c) Rejection of Application: As per Section 12 read with Rule 9 of the Foreign Contribution Regulation Act, 2010-

(1) An application by a person, referred to in section 11 for grant of certificate or giving prior permission, shall be made to the Central Government in such form and manner and along with such fee, as may be prescribed.

(2) **Rejection of Application**: On receipt of an application the Central Government shall, by an order, if the application is not in the prescribed form or does not contain any of the particulars specified in that form, reject the application.

(3) Grant of Certificate of Registration /Prior Permission: If on receipt of an application for grant of certificate of registration or giving prior permission and after making such inquiry as the Central Government deems fit, it is of the opinion that the conditions specified in sub-section (4) are satisfied, it may, ordinarily within ninety days from the date of receipt of application, register such person and grant him a certificate or give him prior permission, as the case may be, subject to such terms and conditions as may be prescribed.

If the Central Government does not grant, within the said period of ninety days, a certificate or gives prior permission, it shall communicate the reasons therefor to the applicant.

No person shall prefer a second application for registration or prior permission within a period of six months after submitting an application either for the grant of prior permission for the same project or for registration.

Conclusion: Accordingly, time period within which the application is to be made, shall be after six months of submitting of an application for the grant of registration.

@ The Institute of Chartered Accountants of India

Application to be made to the Central Government (CG) in form FC-3A or FC-3B, as the case may be. All requisite documents are to be uploaded with the application online only and no physical copies shall be accepted by MHA under any circumstances.

Hence, the application on plain paper and sent by speed post will not be a valid mode.

(d) (i) When the conciliation proceedings shall be said to have commenced?

According to section 62 of the Arbitration and Conciliation Act, 1996,

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

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

Hence, the conciliation proceeding shall be said to be commenced when the invitation to the Supplier to conciliate has been accepted by him in writing.

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

The following is the manner to arrive at the settlement agreement.

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

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

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

Question 5

(a) ODYSSY Overseas Limited is incorporated in Singapore and has recently opened three branches in India, namely Chennai, New Delhi and Mumbai. The liability of the members of the Company is limited.

The Company has, so far, no plan to raise funds in India and therefore, no plan to issue prospectus in near future. The Company has conspicuously exhibited its name and the name of the country in which it is incorporated, i.e. 'Singapore' in bold and legible letters on the outside of all the above offices in the English characters. The same words have also been stated in all business letters, bill-heads, letter papers, notices and other official publications of the Company. The fact that the liability of the members of the Company is

@ The Institute of Chartered Accountants of India

limited has also been stated in all the business letters, bill-heads, letter papers, notices and other official publications of the Company. The Company has recently appointed you as the legal advisor of the Company and you have visited all the three branches and have noticed the above relating to exhibition of its name etc. both outside its branches and in the documents maintained inside the branches. Referring to the applicable provisions of the Companies Act, 2013, advise the Company, whether it has to comply with any other formalities with regard to display of its name and other matters at the branches and in its letterheads etc.?

(b) *Due to continuing contravention of some provisions of the Companies Act, 2013, for which no specific penalty has been provided in the Act, the Registrar exercising its powers, levied a penalty of ₹2,00,000 on SAD Limited. The Company moved to the Tribunal (the NCLT) against the order of the Registrar. During the pendency of the above case with the NCLT, the Registrar applied to the Tribunal to refer the matter pertaining to the proceedings to the Mediation and Conciliation Panel, (the Panel). The Tribunal thereupon appointed two experts from the Panel and referred the case to the Panel on 10th July, 2023. The Panel after hearing both the parties disposed of the matter on 18th October, 2023 and forwarded its recommendations to the Tribunal. The Company being aggrieved of the recommendations of the Panel, contended that the recommendation was not given within the prescribed time limit and therefore, the same cannot be accepted.*

Referring to the applicable provisions of the Companies Act, 2013, decide, whether the contention of the Company is tenable?

Also advise the Company, whether and before which Authority, the recommendation of the Panel can be challenged in case the same was disposed on 9th August, 2023?

(c) (i) *Mr. Samuel D'Souza submitted his candidature for being a resolution applicant of Arch Chambers Ltd. in pursuance of an invitation made to prospective resolution applicants under section 25(2)(h) of the Insolvency and Bankruptcy Code, 2016 (IBC-2016), by Mr. Ashok Tailor, the resolution professional.*

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

In the light of the given facts, examine, whether Mr. Samuel D'Souza is eligible to be a resolution applicant referring to the provisions of the Insolvency and Bankruptcy Code, 2016?

@ The Institute of Chartered Accountants of India

(ii) Members of the Committee of Creditors representing forty-nine percent of voting rights placed a proposal before the Resolution Professional for inclusion of a particular proposal relating to realization of some assets of the Company (Corporate Debtor).

The Resolution professional is of the opinion that the proposal given by the above members will result in delay in the corporate insolvency process, and therefore, does not want to include the proposal for discussion in the forthcoming meeting of the Committee of Creditors. Referring to and analyzing the applicable provisions of the Insolvency and Bankruptcy Code, 2016 and the relevant Rules made thereunder, advise the Resolution Professional, whether it is mandatory for him to place the proposal so received before the Committee of Creditors in its forthcoming meeting?

Answer

(a) Display of name, etc., of foreign company [Section 382 of the Companies Act, 2013]

As per the provisions of Section 382 of the Companies Act, 2013, every foreign company shall conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;

(a) cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, bill-heads and letter paper, and in all notices, and other official publications of the company; and

(b) if the liability of the members of the company is limited, cause notice of that fact- to be stated in every such prospectus issued and in all business letters, bill- heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and

(c) to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situate.

Formalities with regard to display of the name and other matters at the branches and in its letter heads etc.

In terms of the above provisions, the following additional formalities are to be fulfilled by ODYSSY Overseas Limited with regard to display of the name and other matters at the branches and in its letter heads etc.:

The Company is also required to exhibit the name of the company and the country in which it is incorporated on the outside all the three branches over and above the language in English as already done, in the characters of the language or one of the languages in

@ The Institute of Chartered Accountants of India

general use in the locality in which the office or place is situate.

Since the liability of the members of the Company are limited, the fact should also be conspicuously exhibited on the outside of all the three branches over and above in English language as already done, in legible characters of the language or one of the languages in general use in the locality in which the office or place is situate.

(b) **Provision:** As per **sub-section (5) of Section 442** of the Companies Act, 2013, the Mediation and Conciliation Panel shall follow such procedure as may be prescribed in **Rule 11 and 19** of the Companies (Mediation and Conciliation) Rules, 2016, and dispose of the matter referred to it within a period of three months from the date of such reference and forward its recommendations to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

Whether the recommendations of the Tribunal can be challenged?

In terms of the stated above provisions, the Mediation and Conciliation Panel has not disposed of the matter referred to it within the prescribed time period of three months from the date of such reference (i.e 9th October 2023) and therefore it **can be challenged** by SAD Limited.

Before which Authority can it be challenged?

As per sub-section (6) of Section 442 of the Companies Act, 2013 any party aggrieved by the recommendation of the Mediation and Conciliation Panel may file objections to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

(c) **(i)** **Provision:** According to **Section 29A** of the Insolvency and Bankruptcy Code, 2016, a person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person has been convicted for any offence punishable with imprisonment for two years or more under any Act specified under the Twelfth Schedule.

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment.

Provided further that this clause shall not apply in relation to a connected person referred to in clause (iii) of the Explanation.

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

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

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

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

@ The Institute of Chartered Accountants of India

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

Here, in the given case, Mr. Samuel D'Souza being sister's spouse will be considered as a related party to Mr. Vincent as per **Section 5(44) and 5(24A)** of the Code and consequently will be considered as a 'connected person' to Mr. Vincent who is going to be involved in the management of Arch Chambers Ltd. as a director at the time of implementation of the resolution plan.

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

Conclusion: Thus, Mr. Samuel D'Souza **will be eligible** to be a resolution applicant of Arch Chambers Ltd. in view of the facts given in the present case.

(ii) According to Regulation 18 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a resolution professional may place a proposal received from members of the committee in a meeting, if he considers it necessary and shall place the proposal if the same is made by members of the committee representing at least 33% of the voting rights.

Hence, **it is mandatory for the Resolution Professional** to place the proposal received, before the Committee of Creditors in the forthcoming meeting, as the proposal has been made by members of the Committee of Creditors representing 49% (i.e. more than 33%) of voting rights.

Question 6

(a) There are 16 employees working with BML Limited, which is a listed company. Over and above the employees, there are three directors and one-Managing Director. During the financial year 2022-23, the Directors and the Managing Director have received the following amount towards remuneration in terms of the provisions of the Companies Act, 2013.

Mr. A (Director)	*₹ 32,00,000*
Mr. B (Director)	*₹ 36,00,000*
Mr. C (Managing Director)	*₹ 45,00,000*

The total amount of remuneration paid to sixteen employees during the financial year 2022-23 was as follows:

Employee No.	*Annual Remuneration (₹)*
1.	*12,00,000*
2.	*15,00,000*
3.	*18,00,000*

@ The Institute of Chartered Accountants of India

4.	*10,00,000*
5.	*18,00,000*
6.	*13,50,000*
7.	*15,60,000*
8.	*13,00,000*
9.	*24,00,000*
10.	*16,50,000*
11.	*17,30,000*
12.	*18,50,000*
13.	*42,50,000*
14.	*38,60,000*
15.	*27,54,000*
16.	*31,54,000*

Being a listed company, BML Limited seeks your advice regarding the point of disclosure to be made in the Board's Report which is connected to the managerial remuneration and the median employee's remuneration.

Referring to the applicable provisions of the Companies Act, 2013 and the rules made thereunder, calculate, from the information given above, the median employee's remuneration paid by the Company along with the required ratios to be disclosed in the Board's Report

OR

XYZ Limited conducted a board meeting via video conferencing on 12th December, 2022, which was the last day of the 120 days interval allowed between two board meetings. The notice specified the venue of the board meeting as the registered office of the company in Chennai. While the Company Secretary and one director participated from the registered office in Chennai, the Chairman and a majority of its directors participated from a hotel resort in Shimla and completed the quorum. All the recordings of the proceedings of the board meeting were made at its registered office in Chennai. The first agenda of the said meeting was the immediate appointment of Mr. Jain as Director of XYZ Ltd. One of the directors, Mr. Yash attended the meeting through audio conferencing.

Analyzing and referring to the relevant provisions of the Companies Act, 2013, relevant notifications/circulars and secretarial standards answer the following:

(i) What is the venue of the board meeting and its validity?

(ii) Whether Mr. Yash, Director participating through audio conferencing is allowed to participate in the meeting and counted for quorum?

@ The Institute of Chartered Accountants of India

(b) *BIG Limited, a listed entity, has come under the purview of formation of Nomination and Remuneration Committee since it has listed its securities for the first time recently. It was not obliged to form such a committee since it was not fulfilling the required criteria earlier. The Company has the following Directors on its Board who are being considered to be included as members of the above committee, which shall consist of 4 members amongst them including the chairperson:*

Mr. A - The Managing Director

Mr. B - Non-Executive non-independent director

Mr. C - Executive non-independent director (Also the Chairman of the Company)

Ms. D - Non-Executive non-independent director

Ms. E - Executive non-independent director

Ms. F - Non-Executive independent director

Mr. G - Non-Executive independent director

The Company seeks your advice regarding constitution of its Nomination and Remuneration Committee. The Company has given the following list of the proposed members, one of whom will chair the above committee.

Preference 1 - Mr. A

Preference 2 - Mr. C

Preference 3 - Ms. F

The Company leaves up to you to choose the other three members of the committee, which may include the excluded members from the above preferential members.

Referring to the applicable provisions of the Companies Act, 2013 and keeping in mind the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, advise the Company.

(c) *Mr. X, an individual has started a small-time business dealing in scrap.*

For this purpose, he opened a current account with ICBD Bank. On a particular day, a huge cash deposit was made and he then approached the branch for making foreign remittance to Mr. Y, located abroad, for the purchase of an imported expensive car at less than its stated value. As a compliance officer of the bank (reporting entity), explain, what would be the enhanced due diligence before making the foreign remittance under section 12AA of the Prevention of Money Laundering Act, 2002?

(d) *Lock Ltd. is the Corporate Debtor under Corporate Insolvency Resolution Process. Two resolution plans have been proposed one by Key Ltd. and second by JL Ltd. Lock Ltd has a financial debt of ₹ 100 crore and it owes the following amounts to the members of the Committee of Creditors (CoC) as under:*

@ The Institute of Chartered Accountants of India

1. *PX Ltd.* *₹ 30 crore*
2. *GHU Ltd.* *₹ 25 crore*
3. *Key Ltd.* *₹ 20 crore*
4. *QW Ltd.* *₹ 25 crore*

The resolution professional presented both resolution plans to the CoC for its approval by a vote.

The voting results are as follows:

1. *FX Ltd., GHU Ltd. and Key Ltd. voted in favour of resolution plan proposed by Key Ltd.*
2. *FX Ltd., GHU Ltd. and QW Ltd. voted in favour of resolution plan proposed by JL Ltd.*

Referring to the provisions of the Insolvency and Bankruptcy Code, 2016 state,

(i) Whether the resolution applicant can attend and vote on the resolution plan? and;

(ii) Decide the resolution plan that can be considered as approved in this case.

Answer

(a) (FIRST ALTERNATIVE)

Disclosure in Board's Report by a Listed Company [Section 197(12) of the Companies Act, 2013 and Rule 5 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014]

(a) Every listed company shall disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and other details as prescribed under Rule 5 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

(b) **According to Rule 5 (1) every listed company shall disclose in the Board's report:**

(i) the ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year; this disclosure is also prescribed by Section 197 (12).

(ii) the percentage increase in remuneration of each director, Chief Financial Officer, Chief Executive Officer, Company Secretary or manager, if any, in the financial year;

(iii) the percentage increase in the median remuneration of employees in the financial year;

(iv) the number of permanent employees on the rolls of company;

(v) average percentile increase already made in the salaries of employees other

@ The Institute of Chartered Accountants of India

than the managerial personnel in the last financial year and its comparison with the percentile increase in the managerial remuneration and justification thereof and point out if there are any exceptional circumstances for increase in the managerial remuneration; and

(vi) affirmation that the remuneration is as per the remuneration policy of the company.

Calculation of Median employee's remuneration and Ratio of the remuneration: In the instant case, median employee's remuneration paid by BML Limited is [(17,30,000 + 18,00,000)/2)]

Ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year 2022-2023 is:

Mr. A (Director): 3200000/1765000 i.e. 1.81:1

Mr. B (Director): 3600000/1765000 i.e. 2.04:1

Mr. C (Managing Director): 4500000/1765000 i.e. 2.53:1

OR

(a) (Second Alternative)

(i) What shall be venue of Board Meeting and its validity?

As per Section 173 read with Rule 3(6) of the Companies meetings of Boards and its Powers), Rules 2014, and clause 1.2.2 of Secretarial Standards (SS)-1, the venue of video conferencing Board meeting shall be the place which is set out in the notice of the Board meeting as such and all the recordings of the proceedings at the meeting should be made at that place only.

In the instant case, since the notice specified the venue of the board meeting as the registered office of the company in Chennai and all the recordings of the proceedings of the board meeting were made there only, hence, registered office of the company in Chennai is the scheduled venue.

Since the venue as per the notice is at the registered office in Chennai and all the recordings of the proceedings of the meeting are made at Chennai, the same complies with the provisions of the Act, Rule, and Secretarial Standard as stated and thus the meeting is held to be valid.

(ii) Whether Mr. Yash participating through audio conferencing is allowed to participate in the meeting and counted for quorum?

As per **Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014,** the Chairperson of the meeting and the Company Secretary, if any, shall take due and reasonable care to ensure that participants attending the meeting through **audio visual means** are able to hear and see the other participants clearly during the course of the meeting.

@ The Institute of Chartered Accountants of India

As per explanation to Rule 3(12) of the Companies (Meetings of Board and its Powers) Rules, 2014, "**Video conferencing or other audio visual means** " audio-visual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting.

Therefore, video facility is a must, and meetings cannot be done through audio conferencing. Thus, in the instant case, Mr. Yash cannot participate in the board meeting and shall not be counted for the quorum.

(b) Nomination and Remuneration Committee [Section 178(2) of the Companies Act, 2013]

Section 178 (1) of the Companies Act, 2013 read with **Rule 6** of the Companies (Meeting of Board and its Powers) Rules, 2014, states that the Board of Directors of every listed public company and a company covered under Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, shall constitute a Nomination and Remuneration Committee. According to which the NRC shall consist of 3 or more non-executive directors out of which not less than one-half shall be independent directors.

Whereas Regulation 19 of the SEBI (LODR) Regulations, 2015 states that:

The Board of directors shall constitute the Nomination and Remuneration Committee with the following requirements:

- The committee shall comprise of at least 3 directors;
- All directors of the committee shall be Non-Executive Directors; and
- At least two-thirds of the directors shall be independent directors;
- The Chairperson of this committee shall be an independent director

In the said question, BIG Limited is a listed entity and so SEBI (LODR), Regulations, 2015 provisions will be applicable here. It was to form a Nomination and Remuneration Committee consisting of 4 members. These 4 members would be including a chairperson and atleast 3 independent directors (2/3 of 4 comes to 2.67 rounding off to 3).

The composition will be as follows:

1. Chairperson: Ms. F (Non-Executive Independent Director)

   Since, the Chairperson of this committee shall be an independent director, therefore, Ms. F can be appointed as the chairperson of this committee (Mr. A and Mr. C are not an independent director)

2. Member: Mr. G (Non-Executive Independent Director)

3. Members: Mr. B and Ms. D (both are Non-executive non-independent director)

@ The Institute of Chartered Accountants of India

Conclusion: Accordingly, as per the given data & information, BIG Ltd., cannot form N&RC as per the legal requirements of the SEBI (LODR), 2015, due to non-fulfilment of minimum requirement of 3 Independent directors, though eligible as per the Companies Act, 2013.

(c) Enhanced due diligence [Section 12AA of the Prevention of Money Laundering Act, 2002]

(1) Every reporting entity shall, prior to the commencement of each specified transaction,-

(a) verify the identity of the clients undertaking such specified transaction by authentication, as may be prescribed:

(b) take additional steps to examine the ownership and financial position, including sources of funds of the client, in such manner as may be prescribed;

(c) take additional steps as may be prescribed to record the purpose behind conducting the specified transaction and the intended nature of the relationship between the transaction parties.

(2) Where the client fails to fulfill the conditions as stated above, the reporting entity shall not allow the specified transaction to be carried out.

(3) Where any specified transaction or series of specified transactions undertaken by a client is considered suspicious or likely to involve proceeds of crime, the reporting entity shall increase the future monitoring of the business relationship with the client.

(4) The information obtained while applying the enhanced due diligence measures, shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.

"Specified transaction" means-

(a) any withdrawal or deposit in cash, exceeding such amount;

(b) any transaction in foreign exchange, exceeding such amount;

(c) any transaction in any high value imports or remittances;

(d) such other transaction or class of transactions, in the interest of revenue or where there is a high risk or money-laundering or terrorist financing,

(d) As per **Section 30** of the Insolvency and Bankruptcy Code, 2016, which deals with the submission of resolution plan, following shall be the answers:

(i) Whether the resolution applicant can attend and vote on the resolution plan?

Attending and voting on resolution plan: The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered. Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a

@ The Institute of Chartered Accountants of India

financial creditor. Here, both resolution applicants may attend the CoC meeting but vote of only Key Ltd. shall be counted as he is a financial creditor.

Hence, resolution applicant can attend and vote on proposed resolution plan only in the capacity of financial creditor.

(ii) **Resolution plan that can be considered as approved:** The resolution professional shall submit the resolution plan to the committee of creditors for its approval which may approve the plan by a vote of not less than 66% of voting share of the financial creditors.

Where two or more resolution plans are put to vote simultaneously, the resolution plan, which receives the highest votes, but not less than requisite votes, shall be considered as approved.

The voting percentage of the resolution plan proposed by Key Ltd. is 75% whereas the resolution plan proposed by JL Ltd received 80% votes.

Hence, Resolution Plan, which is proposed by JL Ltd. is considered as approved.

@ The Institute of Chartered Accountants of India