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

EXAM
CA Final

YEAR
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TYPE
Suggested Answers

SUBJECT
Paper 4 Corporate and Economic Laws (Old Scheme)

DATE
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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) *Pharma Limited is a company listed with Bombay Stock Exchange. The company is having 500 small shareholders. 50 shareholders have proposed to appoint Amar as a Director as their representative on the Board of Directors of the company. Amar is holding 1000 equity shares of ₹ 10 each in the said company. State, in the light of the provisions of the Companies Act, 2013, whether the proposal to appoint Amar as a Small Shareholders' Director can be adopted by the company. Also state, can the company appoint Small Shareholders' Director, if there is no such proposal moved by the small shareholders.*

(4 Marks)

(b) *PCR Limited has appointed Mr. Vivek, a person resident in India, as a Managing Director who has taken a charge of the post on 1st June, 2021. The remuneration package sanctioned to him is as below:*

Sr. No.	*Particulars*	*₹*
1	*Salary*	*60,00,000*
2	*Rent free accommodation*	*6,00,000*
3	*Children education allowance*	*3,00,000*
4	*Leave Travel Concession Package*	*3,00,000*
5	*Premium in respect of insurance taken for indemnification*	*5,00,000*

It has, further, been informed that-

(a) *Mr. Vivek has availed the Leave Travel Concession Package which will not be pro-rated for 2021-22.*

(b) *Mr. Vivek is not proved guilty during the financial year 2021-22 with respect to the above insurance policy.*

(c) *The company has not passed a special resolution for payment of remuneration in excess of the limit prescribed by schedule V to the Companies Act, 2013.*

(d) *The company has incurred losses during the financial year 2020-21 and 2021-22.*

(e) *The effective capital of the company as at 31st March, 2021 is in negative.*

Based on the above details and referring to the provisions of the Companies Act, 2013, you are requested to analysis and answer the following:

(i) *Compute the amount that would constitute the yearly remuneration for Mr. Vivek.*

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(ii) Compute the excess remuneration paid to Mr. Vivek, if any, and discuss the prospects of recovery thereof. ***(6 Marks)***

(c) Green Developers Limited proposes to acquire a land owned by its Director, Mr. Manoj at a fair market value of ₹10.00 Crores to execute a project of developing a commercial and residential complex on that land. In consideration, the company will allot certain flats of equivalent value to Mr. Manoj on completion of the project. Referring to the provisions of the Companies Act, 2013, advise the Board of Directors of the company whether Green Developers Limited can enter into the proposed arrangement and what will happen, if compliance requirement is contravened? ***(4 Marks)***

Answer

(a) Appointment of Small Shareholders' Director:

According to Section 151 of the Companies Act, 2013 read with Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014,

A listed company may, upon notice of not less than:

(a) one thousand small shareholders; or

(b) 1/10th of the total number of such shareholders,

whichever is lower, have a small shareholders' director elected by the small shareholders.

However, a listed Company may opt to have a director on suo moto representing small shareholders.

The term "small shareholders" means a shareholder holding shares of nominal value of not more than ₹ 20,000 or such other sum as may be prescribed.

(i) Proposal to appoint Mr. Amar as a Small Shareholders' Director:

In the instant case, since 50 small shareholders' have proposed to appoint Amar as their representative, the said proposal is valid and can be adopted as 1/10th of 500 small shareholders' comes to 50. Also, the nominal value of shares held by Amar is ₹ 10,000 (i.e.1000 equity shares of ₹10/- each) which is below the maximum limit of ₹ 20,000.

(ii) If there is no such proposal moved by the small shareholders:

For the second part of the question, yes, the Company can suo moto appoint small Shareholders' director, even if there is no such proposal moved by the small shareholders.

(b) (i) Computation of the amount that would constitute the yearly remuneration for Mr. Vivek

As per **Section 2(78)** of the Companies Act, 2013, (the Act) the term **"Remuneration** "means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income Tax Act, 1961.

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Further, as per **Section 197(13)** of the Act, where any indemnification insurance is taken by a Company on behalf of Managing Director or other managerial personnel, the premium therefor paid by the Company shall not form part of the remuneration payable to any such personnel, if that person is proved not to be guilty during the year of insurance coverage.

In the light of the provided information in the problem and as per Section 197 read with Schedule V to the Companies Act, 2013, the computation of the amount that would constitute the yearly remuneration of Mr. Vivek in PCR Limited for the FY 2021-2022 will be as under:

Sl. No.	Particulars	In ₹ (proportionate to 10 months as the MD has taken charge of the post w.e.f. 01.06.2021)
1.	Salary	50,00,000
2.	Rent Free Accommodation	5,00,000
3.	Children Education Allowance	2,50,000
4	Leave Travel Concession Package (not pro-rated for 2021-22 as per the question)	3,00,000
	Total yearly remuneration of Mr. Vivek	**60,50,000**

NOTE:

Premium in respect of insurance taken for indemnification is not considered, as Mr. Vivek is not proved guilty during FY 2021-2022.

(ii) Computation of excess Remuneration paid to Mr. Vivek

It is provided that the Company has suffered losses during the FY 2020-2021 and 2021-2022 and the effective capital of the Company as at 31st March, 2021 is in negative. So, as per the Act read with Schedule V, the maximum yearly managerial remuneration payable to Mr. Vivek shall be ₹ 60 Lakhs including perquisites.

From the above table of computation, the total yearly remuneration of Mr. Vivek is arrived ₹ 60,50,000 (pro-rated) and whereas, for the year 2021-2022, Mr. Vivek will be entitled for maximum remuneration payable not exceeding ₹ 50 lakhs per annum (pro-rated for 10 months).

Thus the excess remuneration paid to Mr. Vivek is ₹10,50,000/- [i.e.₹60,50,000 (-) ₹ 50,00,000].

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Prospects of Recovery thereof:

As per Sections 197(9) and 197(10) of the Companies Act, 2013, where the remuneration received by any director is in excess of the limit it shall be refunded to the Company by such director and till that time he holds it in trust for the Company.

The Company shall not waive the recovery of any sum which is refundable to it unless the waiver is approved by a Special Resolution passed by the Company within two years from the date the sum becomes refundable.

In the given case, as the remuneration package sanctioned to him of ₹ 10,50,000/- is in excess of the prescribed limit and as provided in the question, that no special resolution is passed for payment of remuneration in excess of the limit prescribed by Schedule V to the Act.

Therefore, the Company can recover the excess amount.

(c) Restriction on acquiring assets for consideration other than cash:

According to **Section 192 (1)** of the Companies Act, 2013, no company shall enter into an arrangement by which-

(a) a director of the Company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the Company; or

(b) the Company acquires or is to acquire assets for consideration other than cash, from such director or person so connected.

Relaxation of Restriction:

The above restriction shall be relaxed *i.e.* the company may enter into an arrangement involving non- cash transactions as stated above, if prior approval for such arrangement is accorded by a resolution of the Company in general meeting.

Advise to the Board:

Hence, in view of the above provisions of law, the Board of Directors of Green Developers Limited shall be advised that the proposed arrangement cannot be entered into by the Company. However, the proposed arrangement may be executed, if prior approval of the Company by way of an ordinary resolution is accorded thereto failing which the contract shall be voidable at the option of the Company.

Further, where the director or the connected person is a director of its holding company, approval shall also be required to be obtained by passing a resolution in general meeting of the holding company.

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What happens if Section 192 is contravened?

Any arrangement entered into by a Company or its holding company in contravention of the provisions of Section 192 shall be voidable at the instance of the Company.

The arrangement shall not be voidable;

(a) if the restitution of any money or other consideration which is the subject-matter of the arrangement is no longer possible and the Company has been indemnified by any other person for any loss or damage caused to it; or

(b) if any rights are acquired *bona fide* for value and without notice of the contravention of the provisions of this section *(i.e.* Section 192) by any other person.

Hence, the Board of Directors of Green Developers Limited can enter into the proposed arrangement by taking into account the above provisions.

Question 2

(a) STC Limited is a wholly owned subsidiary of HTC Limited. The 100% equity shares, fully paid-up, of STC Limited is held by HTC Limited including the shares held by 6 nominees of HTC Limited. In order to effectively utilise the resources, a proposal is under discussion in the board meeting of HTC Limited for merger of both the companies. The majority of the directors of HTC Limited opined in the board meeting that the merger has to be done through fast track mode as per the provisions of Section 233 of the Companies Act, 2013. However, the Company Secretary was of the view that the merger of both the companies cannot be done through fast track mode as they are public companies. Referring to the provisions of the Companies Act, 2013-

(i) Analyze the validity of merger of HTC Limited and STC Limited through fast track mode.

(ii) Examine, whether STC Limited can be merged with HTC Limited, if HTC Limited is a foreign company. ***(4 Marks)***

(b) SOPS Limited is in the field of manufacturing of toys. The company has Authorised Share Capital of ₹ 50 Lakhs consisting of 40,000 equity shares of ₹ 100 each and 10,000 preference shares of ₹ 100 each. The company has issued 32,000 equity shares and 8,000 preference shares of which 24,000 equity shares and 6,000 preference shares are subscribed and fully paid-up. The company has 650 members holding equity shares and 200 members holding preference shares. A petition was submitted before the Tribunal signed by 90 members holding 3,100 equity shares of the company alleging various acts of oppression and mismanagement on the part of the company. During pendency of the petition, 10 petitioner-members holding 1,000 equity shares disassociated from the petition. Referring to the provisions of the Companies Act, 2013, answer the following:

(i) Whether the petition will be admitted?

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(ii) Whether the petition will be maintainable after disassociation of the stated members?

(4 Marks)

(c) On 1st day of April, 2020, Alm Food Processors Limited, a company engaged in food processor manufacturing unit, entered into a joint venture agreement with Ron and Col Limited, the largest manufacturer of Food processors. Both the companies are registered under the Companies Act, 2013. The joint venture agreement does not contain the term for referring the dispute relating to the quality of the goods supplied to the arbitration. In light of the Arbitration and Conciliation Act, 1996, examine, what will happen, if the parties later on agreed to refer the dispute to the arbitration concerning quality of goods supplied in 2021? ***(3 Marks)***

(d) LMR Limited, a banking company has a "Record Preservation Policy" which inter alia states to maintain the documents evidencing identity of its clients and beneficial owners for a period of 5 years after the account has been closed. Evaluate, whether the "Record Preservation Policy" of the Company has fulfilled its obligation under the provisions of the Prevention of Money Laundering Act, 2002? ***(3 Marks)***

Answer

(a) (i) Companies who may enter into scheme of Merger or Amalgamation [Section 233 (1)]:

A scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or class or classes of companies as may be prescribed (i.e. between two or more start-up companies or one or more start- up company with one or more small company) if 100% of its share capital is held by the holding company, except the shares held by the nominee or nominees to ensure that the number of members of subsidiary company is not reduced below the statutory limit as provided in section 187 of the Companies Act, 2013.

Validity of Merger of HTC Limited and STC Limited through Fast Track Mode.

In the instant case, the 100% equity shares of STC Limited is held by HTC Limited including the shares held by 6 nominees of HTC Limited.

Yes, proposal for the merger of HTC Limited and STC Limited opined by the Board of Directors through fast track mode will be valid subject to the following:-

(a) A notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within thirty days is issued by the transferor company or companies and the transferee company

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(b) The objections and suggestions received are to be considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent of the total number of shares;

(c) Each of the companies involved in the merger files a declaration of solvency, in the prescribed form, with the Registrar of the place where the registered office of the company is situated; and

(d) The scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing.

Contention of Company Secretary that the merger of both the companies cannot be done through fast track mode as they are public companies, is incorrect.

(ii) Merger of STC Limited with HTC Limited, a Foreign Company:

Section 234 of the Companies Act, 2013 makes provisions in respect of cross border mergers and amalgamations i.e. between Indian Company and a foreign body corporate. Procedure has been prescribed in Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. According to this Section, STC Ltd. can be merged with HTC Ltd. (if it's a foreign company) with RBI approval and after complying with provisions of Sections 230 to 232 of the Act and relevant Rules.

(b) Right to apply for Oppression and Mis-management:

As per the provisions of Section 244 of the Companies Act, 2013, in the case of a company having share capital, members eligible to apply for oppression and mismanagement shall be lowest of the following:

- 100 members; or
- 1/10th of the total number of members; or
- Members holding not less than 1/10th of the issued share capital of the company.

Provided that the applicant or applicants has or have paid all calls and other sums due on his or their shares.

The share holding pattern of SOPS Limited is given as follows:

₹ 40,00,000 issued share capital (equity and preference) held by 850 members

The petition alleging oppression and mismanagement has been made by some members as follows:

(i) No. of members making the petition - 90 members holding 3100 equity shares of ₹100/- each.

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(ii) Amount of share capital held by members making the petition - ₹ 3,10,000

The petition shall be valid if it has been made by the lowest of the following:

- 100 members; or
- 85 members (being 1/10th of 850); or
- Members holding ₹ 4,00,000 share capital (being 1/10th of ₹40,00,000)

(i) Whether the Petition is maintainable?

As it is evident, the petition made by 90 members meets the eligibility criteria specified under Section 244 of the Companies Act, 2013 as it exceeds the minimum requirement of 85 members in this case. Therefore, the petition is maintainable.

(ii) Whether the petition is maintainable even after disassociation of the stated members? The consent to be given by a shareholder is reckoned at the beginning of the proceedings. The withdrawal of consent by any shareholder during the course of proceedings shall not affect the maintainability of the petition ***[Rajamundhry Electric Corporation Vs. V. Nageswar Rao*** **A.I.R.].**

Hence, the petition will be maintainable even after disassociation of the stated members i.e. by 10 petitioner members holding 1,000 equity shares.

(c) In the given question, the Joint Venture Agreement (JVA) between Alm Food Processors Limited and Ron and Col Limited, does not contain the term for referring the dispute relating to the quality of the goods supplied to the arbitration. To resolve this dispute, the parties later entered into an agreement to refer the dispute to the arbitration concerning quality of goods supplied in 2021.As per the Arbitration and Conciliation Act, 1996, the purpose of an arbitration agreement is to submit disputes to arbitration on the basis of whether existing or future disputes would be submitted to arbitration. Where an agreement is entered into after the disputes have arisen, then, it would be called as a 'submission agreement".

Conclusion: Thus, a submission agreement may be entered by the parties that shall be submitted arbitration, whereby they agree to abide by the decision of the arbitrator.

(d) Section 12 of the Prevention of Money Laundering Act, 2002 provides for the obligation of Banking Companies, Financial Institutions and Intermediaries i.e. the reporting entity to maintain records of all transactions.

According to sub-section (1)(e), every reporting entity shall maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

Maintenance of Records: The records referred to in clause (e) of sub-section (1) of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

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The records shall contain information about nature of transaction, amount of transaction, currency, date of transaction and parties to transaction as per the respective Rules of the Prevention of Money- laundering (Maintenance of Records) Rules, 2005.

Conclusion

In view of the above, LMR Limited has not fulfilled its obligation to maintain the above stated documents for a period of 5 years after the business relationship between a client and the Company has ended or the account has been closed, whichever is later. The Preservation Policy of the Company does not provide such conditions stated above.

Question 3

(a) Green Rose Limited is regularly filing its annual financial statements with the Registrar of Companies (RoC). The Company is suffering losses continuously for the past 5 years. The annual financial statements disclosed that the liabilities are ten times of its assets as per the latest audited financial statements. Based on the financial position revealed by the financial statements filed with his office, the RoC came to the conclusion that the Company should be wound up in the public interest being unable to pay its debts. The RoC filed a petition before the Tribunal [NCLT] under Section 272 of the Companies Act, 2013 for winding up of the Company without obtaining previous approval therefor. Referring to the provisions of the Companies Act, 2013.

(i) Enumerate the circumstances in which a company may be wound up by the Tribunal.

(ii) Examine the validity of the petition filed by the RoC. ***(4 Marks)***

(b) RFC Limited has been incorporated in Singapore and has a business place in Mumbai. The company has issued 5,00,000 shares of USD 100 each, consisting of 4,00,000 equity shares and 1,00,000 preference shares. The issued share capital is fully paid up except 5,000 preference shares where USD 50 per share is unpaid.

RJW, an Indian citizen is holding 26,000 preference shares which include 1100 partly paid-up shares and Ronte Limited incorporated in New-Delhi (India) is holding 2,23,500 equity shares in RFC Limited.

The Registrar of Companies issued notice under Section 379 of the Companies Act, 2013 addressed to the person whose name and address has been delivered to the Registrar by RFC Limited for compliance under the Companies Act, 2013 for foreign companies.

The above notice was Delivered at the address which was given by RFC Limited to the Registrar of Companies.

Answer the following, referring to the provisions of the Companies Act, 2013:

(i) Whether RFC Limited is a foreign company?

(ii) Whether service of notice by the Registrar of companies is valid? ***(4 Marks)***

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(c) TZ is a promoter director of Ind Exports Limited engaged in the export of software products to various countries in the world. ZZ, a customer in U.S. to whom the company exported certain products, failed to pay the amount due for these exports. Later, the company settled the amount for 50% with ZZ and the amount was transferred through hawala to India. The money so received was partly used by the company to part finance its office building in Mumbai and the balance of the money to part finance the residential flat in Delhi purchased by TC, a son of TZ. During the search in the premises of hawala businessman, some documentary evidences were captured by the search officer and based on which, the Adjudicating Authority appointed under the Prevention of Money Laundering Act, 2002 issued an order attaching the office of Ind Exports Limited and the flat of TC alleged to be involved in scheduled offence of money laundering.

Based on the above scenario, answer the following as per the provisions of the Prevention of Money Laundering Act, 2002 (the Act):

(i) What is the scheduled offence?

(ii) Where an order for confiscation has been made, all the rights and title in such property shall vest in President of India. Examine the statement.

(iii) Advise Ind Export Limited about the remedy available under the Act. ***(6 Marks)***

Answer

(a) (i) Circumstances in which company may be wound up by Tribunal:

According to Section 271 of the Companies Act, 2013, a company may be wound up by the Tribunal in the following circumstances, where-

(a) the company has, by special resolution, resolved that the company be wound up by the Tribunal;

(b) the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;

(c) on an application made by the Registrar or any other person authorised by the Central Government. The Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner/ formed for fraudulent and unlawful purpose / the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;

(d) the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or

(e) the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

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(ii) Validity of the petition filed by the RoC

According to Section 272 of the Companies Act, 2013, the Registrar of Company is entitled to present a petition for winding up under section 271 except on the grounds specified in clause (a) of that Section.

Provided that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition. The Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.

Here in the given instance, RoC filed a petition before the Tribunal for winding up without obtaining previous approval of the Central Government.

Therefore, the petition filed by the RoC is invalid.

(b) (i) Whether RFC Limited is a Foreign Company ?

Definition of a Foreign Company

As per **Section 2(42)** of the Companies Act, 2013, "Foreign Company" means any company or body corporate incorporated outside India which has a place of business in India whether by itself or through an agent, physically or through electronic mode; and conducts any business activity in India.

Provision of Section 379(2): Requirement of holding of paid up share capital of Foreign Company:

Further, in the light of the inputs given in the problem, where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company incorporated outside India is held by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such foreign company shall also comply with the provisions of Chapter XXII and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India. [Section 379(2)]

In the given case, RFC Limited, incorporated in Singapore has a business place in Mumbai. The Company has issued 5,00,000 shares of USD 100 each i.e. of USD 5,00,00,000 comprising of USD 4,00,00,000 equity share capital (i.e. 4 lac* USD 100) and USD 1,00,00,000 preference share capital (i.e,1 lac * USD 100).

As the issued capital was fully paid up except 5,000 preferences shares (i..e, 5000* 50= USD 2,50,000), so, total paid up share capital of the RFC limited is:

Equity Share Capital	USD 4,00,00,000
Preference Share Capital (Full Paid)	USD 95,00,000
Preference Share Capital (Partly Paid)	USD 2,50,000
Total Paid up Share Capital	USD 4,97,50,000

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As per facts, shareholding by RJW, an Indian citizen is USD 25,45,000 preference share capital (i.e. 26,000 shares *USD 100- 1100 shares * USD 50) and Ronte Limited incorporated in New-Delhi (India) is holding USD 2,23,50,000 equity share capital (i.e., 2,23,500 *USD 100) in RFC Limited. Aggregate shareholding is USD 2,48,95,000.

As per requirement of Section 379(2), RJW, an Indian citizen and Ronte Limited incorporated (an Indian Company) were holding more than 50% of the shareholding (i.e. 50%∗ USD 4,97,50,000 = 2,48,75,000) in RFC Limited.

Therefore, RFC Ltd. is not only a foreign company as per Section 2(42) but shall also be complying with the provisions of Chapter XXII and other provisions of this Act with regard to the business carried on by it in India, as if it were a company incorporated in India as per Section 397(2) .

(ii) Whether service of notice by the RoC is valid?

Yes, the service of notice by the Registrar of Companies is valid in the light of Section 383 of the Companies Act, 2013. According to the provision 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 and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

(c) (i) Scheduled Offence

The term "Scheduled Offence" has been defined in clause (y) of sub-section (1) of Section 2 of the Prevention of Money Laundering Act, 2002. It means -

(a) the offences specified under Part A of the Schedule; or

(b) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or

(c) The offences specified under Part C of the Schedule.

(ii) Whether all the rights and title in property vest in President of India

According to Section 9 of the Prevention of Money Laundering Act, 2002, where an order of confiscation has been passed in respect of any property of a person, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances. Therefore, the statement that right and title in property shall vest in President of India on the passing of an order of confiscation, is incorrect.

(iii) Remedies Available

According to Section 5 of the Prevention of Money Laundering Act, 2002, Ind Exports Limited shall have right to enjoy or use its Office. The flat purchased by TC, son of TZ can enjoy the rights during the period of provisional attachment being an interested person here.

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Also, under Section 26 and 42 of the Act, Ind Exports Limited, if being aggrieved by an order made by the Adjudicating Authority on the attachment order, may prefer an appeal to the Appellate Tribunal. The appeal shall be filed within 45 days from the date on which a copy of the order made by the Adjudicating Authority is received and appeal further in the High Court against any decision or order of the Appellate Tribunal.

Question 4

(a) ABC Limited mobilized the funds from the public towards development of plots under "Cash-down Payment Scheme". The said scheme, inter alia, stipulates the following terms & conditions.

(i) The plot will be allotted to the customer after completion of 9 months from the date of agreement.

(ii) No specific plot is mentioned at the time of entering into the agreement.

(iii) The company has authority for developing and maintaining the plots.

(iv) The amount mobilized under the scheme will be utilized for the purpose of the scheme.

(v) The customers do not have day-to-day control over the development of plots.

Other information:

(i) The scheme is registered with the Securities and Exchange Board of India [SEBI]

(ii) The Company had raised ₹100 Crores under the Scheme.

Referring to and analysing the provisions of the Securities and Exchange Board of India Act, 1992, decide:

(i) Whether the "Cash-down Payment Scheme" operated by ABC Limited is a Collective Investment Scheme.

(ii) What will be your answer in case the scheme is not registered with SEBI?

(4 Marks)

(b) 'SEBI has powers to pass cease and desist order'. Examine the statement with reference to the provisions of the Securities and Exchange Board of India Act, 1992. ***(4 Marks)***

(c) Mr. MGJ, a person resident outside India, is contemplating to invest his foreign currency funds through equity contribution in an Indian company engaged in a huge township development project consisting commercial and residential complex in Bangalore (India). Examine, referring to the provisions of the Foreign Exchange Management Act, 1999, the feasibility of his proposal of investing funds in the said company. ***(3 Marks)***

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(d) Upalayam Old Student Association was formed with the object of providing Coaching & Hostel facilities to the students studying in the government school. Mr. Murugan, an Indian Origin, acquired American citizenship and settled in USA. However, he is an overseas citizen of India cardholders. Mr. Murugan donated ₹10 Lakh to the said Association from his personal savings through the normal banking channel. Referring to the provisions of the Foreign Contribution (Regulation) Act, 2010, answer the following:

(i) Whether the donation made by Mr. Murugan is a foreign contribution?

(ii) What will be your answer in case Mr. Murugan still holds Indian Citizenship?

(3 Marks)

Answer

(a) **"Collective Investment Scheme"** means any scheme or arrangement which satisfies the conditions specified in Section 11AA of the Securities and Exchange Board of India, Act, 1992 [Section 2(1)(ba)]

Collective investment Scheme [Section 11AA]: Any scheme or arrangement which satisfies following conditions, shall be a collective investment scheme as specified in sub-section (2) or sub- section (2A).

Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board, involving a corpus amount of one hundred crore rupees or more, shall be deemed to be a collective investment scheme.

Requisite conditions [Section 11AA(2)]: Any scheme or arrangement made or offered by any person under which -

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement;

(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, from such scheme or arrangement;

(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;

(iv) the investors do not have day-to-day control over the management and operation of the scheme or arrangement. [Sub-section 2]

Section 11AA(2A)· Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.

Accordingly, following shall be the answers:

(i) Yes, "Cash -down Payment Scheme" operated by ABC Limited is a Collective Investment Scheme in compliance with the requisite conditions and is registered with the SEBI.

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(ii) In the given case, if the Scheme is not registered with SEBI, then any pooling of funds under any scheme, involving a corpus amount of one hundred crore rupees or more, shall be deemed to be a Collective Investment Scheme.

Therefore, the answer will remain the same.

(b) According to Section 11D of the SEBI Act, 1992, if the Board finds, after causing an inquiry to be made, that any person-

(i) has violated, or

(ii) is likely to violate,

any provisions of this Act, or any rules or regulations made thereunder.

It may pass an order requiring such person to cease and desist from committing or causing such violation.

Provided that the Board shall not pass such order in respect of any listed public company or a public company (other than the intermediaries specified under section 12) which intends to get its securities listed on any recognised stock exchange unless the Board has reasonable grounds to believe that such Company has indulged in insider trading or market manipulation.

In view of the above, the statement that SEBI has powers to pass cease and desist order, is correct subject to the conditions provided in Section 11(D) of the SEBI Act. 1992.

(c) As per the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, a person resident outside India is prohibited from making investments in India in any form, in any Company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engage in real estate business, or construction of farm houses.

Here the term "real estate business" shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.

Conclusion: Accordingly, the proposal of investing funds in an Indian Company by Mr. MGJ, is feasible as the investment is for development of township as per the above stated laws.

(d) Foreign Contribution:

Foreign Contribution is defined under Section 2(1)(h) of the Foreign Contribution (Regulation) Act, 2010 (FCRA, 2010), to mean the donation, delivery or transfer made by any foreign source. Section 2(1)(j) only speaks about citizen of a foreign country while inclusively defining foreign source. A donation, delivery or transfer of any article, currency or foreign security by any person who has received it from any foreign source, either directly or through one or more persons is a foreign contribution.

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(i) Whether the donation made by Mr. Murugan is a Foreign Source? Yes. Donation from Mr. Murugan, a Person of Indian origin who has acquired American citizenship and also is an Overseas Citizen of India cardholder, will be treated as foreign contribution.

(ii) In case if Mr. Murugan still holds Indian Citizenship

Contributions made by a citizen of India living in another country i.e. 'Non-resident Indians' from his personal savings through normal banking channels is not to be treated as foreign contribution. In case if Mr. Murugan holds Indian citizenship, he is not a foreigner and therefore, donation given by Mr. Murugan, will not be treated as foreign contribution.

Question 5

(a) The following balances are extracted from the last audited financial statement of Blow (Nidhi) Limited.

Particulars	*Amount in ₹*
Paid up Equity Share capital	*15,00 000*
Paid up Preference Share Capital	*5,00,000*
Free Reserves	*1,00,000*
Tangible Assets	*10,00,000*
Intangible Assets	*2,00,000*

Referring to the Nidhi Rules, 2014, as amended from time to time, formulated under the Companies Act, 2013 answer the following:

(i) Compute the Net Owned Funds of Blow (Nidhi) Limited.

(ii) Compute the Maximum amount of deposits that Blow (Nidhi) Limited can accept.

(4 Marks)

(b) Anoor Sheep Private Limited, a small company, donated, One Lakh to a Political Party in the month of May 2021. The Company has been in existence for less than three financial years and it has, thus, contravened the provisions of Section 182 of the Companies Act 2013. Eventually, a fine of ₹5 Lakh, ignoring the legal status of the company, was imposed by the Adjudicating Officer (Registrar of Companies) on the Company. Anoor Sheep Private Limited approached the Registrar of Companies with a request to levy lesser penalties. Referring to the provisions of the Companies Act, 2013, answer the following:

(i) Is it possible to levy lesser penalty?

(ii) If so, compute the quantum of the penalty that will be payable by the Company.

(4 Marks)

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(c) Argunt Infrastructure Project Private Limited [Corporate Debtor] is classified as a Small Enterprise under Sub-section (1) of Section 7 of the Micro, Small and Medium Enterprises Development (27 of 2006) Act, 2006. It owes ₹ 60 Lakh to its creditors. In view of Covid-19 Pandemic situation, the Corporate Debtor was not in a position to recover money from Sundry Debtors as per the payment schedule and it commits default in settling dues to the Sundry Creditors. The Corporate Debtor decided to go for Pre-packed Insolvency Resolution Process [PPIRP] under the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC) and accordingly took the following steps to initiate PPIRP.

1. The Financial Creditors of the Corporate Debtor, not being its related parties, representing 66% in value of the financial debt due to them proposed Mr. Pure, the Insolvency Professional, to be appointed as Resolution Professional to conduct PPIRP.

2. The Majority of the Board of Directors of the Corporate Debtor have made a declaration that the PPIRP is not being initiated to defraud any person and nothing more is contained in the declaration.

3. The Members of the Corporate Debtor passed an Ordinary Resolution approving the filing of an application for initiating PPIRP.

There were no further approvals obtained from the Financial Creditors / Board of Directors on any matters.

Referring to the provisions of the Insolvency and Bankruptcy Code 2016, advise on the following matters for filing of an application before NCLT to initiate PPIRP.

(i) Whether the act of Financial Creditors proposing the name of the Mr. Pure as Resolution Professional is valid?

(ii) Whether the declaration made by the Board is in accordance with the Provisions of the IBC?

(iii) Whether the resolution passed by the members of the company is in line with the requirements of the IBC?

(iv) Are there any requirements to get the approval of the Financial Creditors/ Board of Directors on any other matters? If so, state the relevant provisions of the IBC.

(6 Marks)

Answer

(a) (i) Computation of Net Owned Funds of Blow (Nidhi) Limited Provision

According to Rule 3 of the Nidhi Rules, 2014, "Net Owned Funds**"** means the aggregate of paid up equity share capital and free reserves as reduced by accumulated losses and intangible assets appearing in the last audited balance sheet.

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Provided that the amount representing the proceeds of issue of preference shares shall not be included for calculating Net Owned Funds.

Calculation

Particulars	Amount in ₹
Paid up Equity Share Capital	15,00,000
Free Reserves	1,00,000
Less: Intangible Assets	(2,00,000)
Net Owned Funds	**14,00,000**

(ii) Computation of maximum amount of deposits that Blow (Nidhi) Limited can accept According to Rule 11 of the Nidhi Rules, 2014, a Nidhi shall not accept deposits exceeding twenty times of its Net Owned Funds (NOF) as per its last audited financial statements.

Hence, Blow (Nidhl) Limited can accept maximum ₹ 2,80,00,000 (20 times of ₹ 14,00,000) as deposits.

(b) According to Section 446B of the Companies Act, 2013, if penalty is payable for non-compliance of any of the provisions of this Act by a One Person Company, Small Company, Start- up Company or Producer Company, or by any of its officer in default, or any other person in respect of such company, then such Company, its officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than one-half of the penalty specified in such provisions subject to a maximum of two lakh rupees in case of a company and one lakh rupees in case of an officer who is in default or any other person, as the case may be.

Section 182 of the Companies Act, 2013, provides:

(1) a company which has been in existence for less than three financial years is not allowed to contribute to any political party

(2) if a company makes any contribution in contravention of the provisions of Section 182, he company shall be punishable with fine up to five times the amount of contribution so made.

In the light of the above provisions and facts of the question, the following are the answers

(i) Is it possible to levy Lesser Penalty?

Yes, it is possible to levy lesser penalty as Anoor Sheep Private Limited is a small company and section 446B provides for lesser penalty for small companies.

(ii) Computation of the Quantum of Penalty

Anoor Sheep Private Limited has contravened the provisions of section 182 and is liable to penalty (maximum 5 times of ₹ 1,00,000), however, it being a small company

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cannot be penalised for an amount exceeding ₹ 2,00,000 [(1/2 of ₹ 5,00,000) subject to a maximum of two lakh rupees].

(c) Pre-Packaged Insolvency Resolution Process (PPIRP) [Sections 54A - 54P of the Insolvency and Bankruptcy Code, 2016].

Corporate Debtors eligible for Pre-Packaged Insolvency Resolution Process

In terms of Section 54A(1) of the IBC,2016 an application for initiating PPIRP may be made in respect of a corporate debtor classified as a micro, small or medium enterprise under Section 7(1) of the Micro, Small and Medium Enterprises Development Act, 2006.

(i) Whether the Act of the Financial Creditors proposing the name of Mr. Pure as Resolution Professional is valid?

In terms of Section **54A(2)** of the IBC, 2016 an application for initiating PPIRP may be made in respect of a corporate debtor who commits default referred to in Section 4 subject to a condition specified in Section **54A2(e)** whereby, the financial creditors of the corporate debtor not being its related parties, representing such number and such manner as may be specified, have proposed the name of the insolvency professional to be appointed as resolution professional for conducting the PPIRP of the corporate debtor and the financial creditors of the corporate debtor not being its related parties representing not less than 66% in value of the financial debt due to such creditors have approved in such form as may be specified.

Therefore, In view of the above, the act of Financial Creditors proposing the name of Mr. Pure as Resolution Professional, is valid.

(ii) Whether the declarations made by the Board is in accordance with the provisions of IBC, 2016?

In terms of Section 54A(2)(f) of the IBC, 2016, the majority of the director or partners of the corporate debtor, as the case may be, have made a declaration, in such form as may be specified stating that:

(i) That the corporate debtor shall file an application for initiating PPIRP within a definite time period of 90 days,

(ii) That the PPIRP is not being initiated to defraud any person.

(iii) The name of the insolvency professional proposed and approved to be appointed as resolution professional under clause (e).

In view of the above, the only declaration by the majority of Board of Directors of the Corporate Debtor that the PPIRP is not being initiated to defraud any person, is not sufficient. The declaration shall also contain the matters contained in Clause 2(f)(i) and (iii) above.

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(iii) Whether the resolution passed by members is in line with the requirements of IBC, 2016?

No. The Act requires that the members of the corporate debtor to pass a special resolution, or at least three-fourth of the total number of partners, as the case may be, of the corporate debtor have passed a resolution approving the filing of an application for initiating pre-packaged insolvency resolution process.

(iv) Requirements to get the approval of Financial Creditors / Board of Directors

Yes. The corporate debtor shall obtain an approval from its financial creditors, representing at least sixty-six per cent. in value of the financial debt due to such creditors, for the filing of an application for initiating pre-packaged insolvency resolution process.

By majority of the directors of the corporate debtor, a declaration is required on stating that the corporate debtor shall file an application for initiating pre-packaged insolvency resolution process within a definite time period not exceeding ninety days; and the name of the insolvency professional proposed and approved to be appointed as resolution professional.

Question 6

(a) A, B and C are independent directors of X Limited. A was appointed independent director for a period of 3 years, B was appointed for a period of 5 years and C was appointed for a second term of 5 years.

The period /term of all the independent directors will be over on 30th September, 2022. X Limited is planning to consider reappointment of the above independent directors. You are requested to advice whether A, B and C can be reappointed as independent directors as per the provisions of the Companies Act, 2013? ***(4 Marks)***

OR

Mr. Jack, a young and energetic 24 years old American Citizen came to India in the month of January, 2021 for taking up employment. He has been hunting for the job and stayed in India. M/s NS Software Solutions Limited is a listed company engaged in developing customized software package for automobile manufacture. This company appointed Mr. Jack as its Managing Director at the Annual General Meeting held on 11th November, 2021, upon certain terms & conditions. Based on the above information, you are requested to validate the following referring to the provisions of the Companies Act, 2013 read with Schedule V of the Act:

(i) Eligibility of Mr. Jack for being appointed as a managing director.

(ii) Will your answer differ in case the company is located in Special Economic Zone. (SEZ)?

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(b) *ABC Limited put forth the following matters for your examination. The meeting of the Board of Directors of the company was convened on 15th July, 2021. While one Director attended the Board Meeting physically all other five Directors of the Company attended the meeting through Video conferencing /other Audio-visual means and approved the Annual Financial Statements ending 31st March, 2021. Referring to the provisions of the Companies Act, 2013 you are requested to validate the followings:*

(i) Compliance requirement of quorum for the said meeting.

(ii) Approval of the Financial Statements for the year ending 31st March, 2021.

(4 Marks)

(c) *XYZ Private Limited is a Start-up company recognized by the Central Government. The company is intending to raise External Commercial Borrowing under automatic route of USD 3 million for 3 years in the form of partially convertible preference shares for working capital from one of the shareholders.*

You are requested to advice the company on the Maturity, Forms and Amount of External Commercial Borrowing permitted as per the provisions of the Foreign Exchange Management Act, 1999. ***(3 Marks)***

(d) *Ram, the financial creditor, was an investor and a debenture holder of 'Optionally Convertible Debenture Bond (OCDB)' payable on maturity with redemption premium, issued by Asset Limited (Corporate Debtor). The zero interest OCDB bonds amounted to ₹ 3 Crore was matured in 2016. The Corporate Debtor failed to discharge this liability in due date. Ram filed an application to initiate the Corporate Insolvency Resolution Process (CIRP) before the NCLT. Advise, in the light of the given facts, the following situations referring to the provisions of the Insolvency and Bankruptcy Code, 2016:*

(i) Whether Ram is eligible for filing an application for initiation of CIRP?

(ii) Whether the redemption of debenture bonds, payable on the maturity date, amounts to debt? ***(3 Marks)***

Answer

(a) According to Section 149(10) & (11) of the Companies Act, 2013:

Term: an independent director shall hold office for a term up to 5 consecutive years on the Board of a company.

Eligibility for Re-appointment: He shall be eligible for re-appointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

Limit on holding of office: An independent director shall not hold office for more than 2 consecutive terms.

Cooling period for appointment: However, he shall be eligible for appointment after the expiration of 3 years of ceasing to be an independent director.

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Appointment of A

In the instant case, A was appointed Independent Director for a period of 3 years, therefore he can be re-appointed after complying the above provisions.

Appointment of B and C

B was appointed for a period of 5 years, therefore he can also be re-appointed after complying the above provisions.

C was appointed for a second term of 5 years, he cannot be reappointed as Independent Director for consecutive third term. However, he shall be eligible for appointment after the expiration of 3 years of ceasing to be an independent director.

OR

Additional eligibility conditions for appointment as per Schedule V:

Part I **of Schedule V** to the Companies Act, 2013, has prescribed additional eligibility conditions for appointment as Managing Director or whole-time director or a manager without seeking approval from the Central Government. According to condition (4), the person to be appointed shall be resident of India.

Explanation I clarifies that **resident in India** includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India, -

(a) for taking up employment in India; or

(b) for carrying on a business or vocation in India.

Explanation II clarifies that the condition above shall not apply to the companies in Special Economic Zones (SEZ).

(i) Eligibility of Mr. Jack for being appointed as the MD

In the instant case, Mr. Jack, an American Citizen came to India in the month of January, 2021 for taking up employment. He has been appointed as Managing Director in NS Software Solutions Limited on 11th November, 2021.

Since, Mr. Jack has not stayed in India for a continuous period of twelve months immediately preceding 11th November, 2021, he is not eligible for being appointed as the Managing Director.

(ii) If the Company is located in SEZ

In case the Company is located in Special Economic Zone (SEZ), the above condition shall not apply and Mr. Jack is eligible for being appointed as a Managing Director.

(b) According to Section 174(1) of the Companies Act, 2013, the quorum for a Board Meeting shall be one-third of its total strength or two directors, whichever is higher.

Also, Section 173(2) of the Act allows the directors of a Company to attend Board meetings

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in the following manner:

- in person
- through video conferencing
- other Companies audio-visual (Meetings means of as prescribed Board and under its Rule 3 Powers) of the Rules, 2014

(i) Quorum Compliance

In the instant case, since there are total 6 directors in ABC Limited, the quorum shall be 2 (1/3rd of 6 or 2, whichever is higher). Since, one director attended the meeting physically and all other five directors attended through Video conferencing/ Audio visual means, it implies that all the directors attended the meeting and quorum compliance is there.

(ii) Approval of Financial Statements:

Since the quorum of the Board meeting is complied with the presence of all the six directors, therefore, approval of Financial Statement in the Board Meeting held on 15th July, 2021 is valid.

Further, according to Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014, certain matters including the approval of Annual Financial Statements cannot be dealt with in a meeting through Video Conferencing / Other Audio visual means. However, vide **Notification GSR** Powers) Rules, 2014, through enforcement of the Companies (Meeting of Board and its Powers) Rules, 2014, Rule 4 dealing with matters to be dealt with in a meeting through video conferencing or other audio visual means was omitted. Therefore, the Company has compiled with the provisions of the Companies Act, 2013 approving the Annual Financial Statements at the Board Meeting held on 15th July, 2021.

(c) XYZ Limited, based on the guidelines contained in the Master Direction No 5/2018 - 19 issued by the Reserve Bank of India, is advised as under**:**

ECB facility for Start-ups: AD Category-I Banks are permitted to allow Start-ups to raise ECB under the automatic route as per the following framework:

Eligibility: An entity recognized as a Start-up by the Central Government as on date of raising ECB. Maturity: Minimum average maturity period will be 3 years.

Forms: The borrowing can be in form of loans or non-convertible, optionally convertible or part I convertible preference shares.

Amount of ECB: The borrowing per Start-up will be limited to USD 3 million or equivalent per financial year either in INR or any convertible foreign currency or a combination of both.

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(d) Optionally Convertible Debenture Bonds (OCDB) are debt securities which allow an issuer to raise capital and in return the issuer pays interest to the investor till the maturity.

(i) Whether Ram is eligible to file an application for initiation of CIRP?

In the given case, Ram, was a debenture holder of OCDB payable on maturity issued by Asset Limited (Corporate Debtor), which it failed to discharge on due date.

According to Section 21(6A), where a financial debt is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;

According to the proviso to Section 7 of the Code, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by required number of such creditors in the same class as specified, through such authorised representative i.e. trustee or agent.

Accordingly, Mr. Ram is entitled for filing an application for initiation of CIRP.

(ii) Whether the redemption of debenture bonds, payable on the maturity date amounts to debt?

Yes, Redemption of debenture bonds, payable on maturity amounts to debt. Debt under the Code means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. [Section 3(11)]

Financial Debt - "Financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument.

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