

PAPER- 4 – CORPORATE AND ALLIED LAWS

Question No. 1 is compulsory.

Answer any **four** from the rest

Question 1

(a) DMD Limited is an unlisted Public Limited company having paid up share capital of ₹ 60 crores during the preceding financial year 2019-20. The turnover of the company was ₹ 240 crores for the same period. Referring to the provisions of the Companies Act, 2013, answer the following:

(i) Is it mandatory for DMD Limited to appoint an Internal Auditor for the financial year 2020-21?

(ii) What are the qualifications of the Internal Auditor? One of the directors of the company suggested that Arun, being an employee of the company, can be appointed as Internal Auditor to comply with the statutory requirements. State whether the director's suggestion is valid or not? **(4 Marks)**

(b) In the Annual General Meeting of shareholders of Quality Steel Industries Limited, held on 30.06.2020, a dividend at the rate of 20% payable on the paid up equity share capital of the company as on 31.03.2020 was approved by the shareholders. The dividend warrants were posted to all the equity shareholders before the due date. The company had received a notice from one shareholder Jayant, holding 1,000 equity shares of ₹ 100 each, that he had not received the dividend warrant till 30.09.2020 and to pay the dividend immediately along with interest at the rate of 24% p.a. for the default period. The company seeks your advice to reply to the shareholder as per the provisions of the Companies Act, 2013. Decide:

(i) Whether the shareholder will succeed and

(ii) the Director's liability in this regard. **(4 Marks)**

(c) A and B were appointed as first directors on 04.04.2019 in Sun Glass Ltd. Thereafter, C, D and E were appointed as directors on 06.07.2019 and F, G and H were also appointed as directors on 07.08.2019 in the company. In the Annual General Meeting (AGM) of the company held after the above appointments, A and B were proposed to be retired by rotation and re-appointed as directors.

At the AGM, resolution for A's retirement and re-appointment was passed. However, before the resolution for 'B' could be taken up for consideration, the meeting was adjourned. In the adjourned meeting also, the said resolution could not be taken up and the meeting was ended without passing the resolution for B's retirement and re-appointment.

In the light of above and with reference to the relevant provisions of the Companies Act, 2013, answer the following:

- (i) *Whether proposals for retirement by rotation and re-appointment of A and B only were sufficient?*
- (ii) *What will be the status of B as a director in the company?* **(6 Marks)**

Answer

- (a) According to Section 138 read with Rule 13 of the Companies (Accounts) Rules, 2014 and every unlisted public company shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, having
- (A) paid up share capital of 50 crore rupees or more during the preceding financial year; or
 - (B) turnover of 200 crore rupees or more during the preceding financial year; or
 - (C) outstanding loans, or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year; or
 - (D) outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year.

In the instant case, since DMD Limited is fulfilling the above conditions regarding paid up share capital and turnover, it is mandatory for the company to appoint Internal Auditor.

An Internal Auditor shall either be a Chartered Accountant or a Cost Accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

For the purpose of Rule 13 of the Companies (Accounts) Rules, 2014

- (i) The term "Chartered Accountant" or "Cost Accountant" shall mean a "Chartered Accountant" or a "Cost Accountant", as the case may be, whether engaged in practice or not'.
- (ii) The internal auditor may or may not be an employee of the company.

Hence, the suggestion of the Director is valid and Mr. Arun, employee of DMD Limited can be appointed as an Internal Auditor of the company provided, he fulfils any one of the professional qualifications as decided by the Board to carry out the audit work.

- (b) Section 127 of the Companies Act, 2013 lays down the penalty for non-payment of dividend within the prescribed time period of 30 days. According to this section, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration of dividend to any shareholder entitled to the payment of dividend, the company shall be liable to pay simple interest at the rate of 18% per annum during the period for which such default continues.

Posting of dividend warrants within 30 days absolves the company from any punishment irrespective of whether it is received by the shareholder concerned within this time or not. The offence is committed only when the company fails to post dividend warrants to the registered address of the members within 30 days of declaration. Non-receipt of dividend warrants by the shareholders within the prescribed time does not attract any punishment.

- (i) Therefore, in the given case, Mr. Jayant will not succeed as the dividend warrant were posted to all (which must have included Mr. Jayant) the equity shareholders before the due date.
 - (ii) Every director of the company, shall if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for everyday during which such default continues. However, the directors shall not be liable in this case as the warrants were posted before the due date.
- (c) The provisions of Section 152 (6) of the Companies Act, 2013, are stated as under:

Appointment of Rotational director & number of directors liable to retire by rotation: Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of public company shall—

- (A) be persons whose period of office is liable to determination by retirement of directors by rotation; and
- (B) save as otherwise expressly provided in this Act, be appointed by the company in general meeting.

Retirement from office of rotational director: At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

Retiring director – When to be deemed director?

In accordance with the provision of the Companies Act, 2013, as contained in section 152(7)(a) which provides that if at the annual general meeting at which a director retires and the vacancy is not so filled up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned to same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

Section 152(7)(b) further provides that if at the adjourned meeting also, the place of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the

adjourned meeting, unless at the adjourned meeting or at the previous meeting a resolution for the re-appointment of such director was put and lost or he has given a notice in writing addressed to the company or the Board of Directors expressing his desire not to be re-elected or he is disqualified.

In the instant case,

- (i) A company is having 8 directors.

Directors liable to retire by rotation: $8 \times \frac{2}{3}$ i.e. 5.33 or 6 (not less than two-third)

No. of directors to retire at AGM: $6 \times \frac{1}{3}$ i.e. 2.

Therefore, in the given case, 2 directors will be liable to retire by rotation at the next AGM of the company, which in this case will be A and B as they are who have been longest in office since their last appointment. Hence, proposal for retirement by rotation and re-appointment of A and B only were sufficient.

- (ii) At the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director, B, shall be deemed to have been re-appointed at the adjourned meeting as he does not fall in the category of any of the exceptions mentioned in section 152(7)(b).

Question 2

- (a) *During the course of investigation under Section 217 of the Companies Act, 2013, it is revealed that the M/s K Fishers Ltd. has taken loans worth ₹ 100 crores from the consortium of Banks in India and failed to repay them as per the terms of the loan agreement. Further, Manish, the Managing Director of the Company, who is a UK National has moved to London and is not responding to the inquiries by the Investigating Officer.*

You are required to advise one of the Banks who lent more than 62 crores, on the steps to be taken to collect evidence as well as to recover the money lent by the Bank to the Company as per the relevant provisions of the Companies Act, 2013. **(4 Marks)**

- (b) *RX Limited, a listed entity was into real-estate business. Over a period in an attempt to diversify its operations, it borrowed heavily from banks and financial institutions. The Company appointed a Merchant Banking firm, to provide strategic inputs for its business operations. On the recommendation of the firm, the Company created complex group structures and business models. Due to financial mismanagement and lack of strategic operations, the Company started making losses and over a period was not able to repay the loans it had taken. The Company also failed to repay the deposits it had raised from public. Gradually, the market capitalization of the Company eroded and now it has been reduced to a penny stock. The shareholders are evaluating the option of filing a case against the Company, the Merchant Banking firm and also Rating Agency which were involved with the Company during such period.*

Evaluate whether the shareholders and depositors will be successful in filing a suit in these circumstances referring to the provisions of the Companies Act, 2013. (4 Marks)

- (c) *Ganesh (Member of SEBI) was adjudged as an insolvent by the Adjudicating authority. In view of above, a group of complainants have alleged that Ganesh while rendering of his services in office may be biased in the performance of his duties. Working in such a state of position, may be detrimental to the public interest and so should be removed from his office. Advise in the given situation, the tenability of maintenance of complaint against Ganesh. (6 Marks)*

Answer

- (a) As per Section 217(2) of the Companies Act, 2013, the inspector may require any body corporate, other than a body corporate under investigation, to furnish such information to, or produce such books and papers before him or any person authorised by him in this behalf as he may consider necessary, if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.

Further as per section 217(4), an inspector may examine on oath-

- (a) any of the persons i.e., officers and other employees and agents including the former officers, employees and agents of a company which is under investigation, and
- (b) with the prior approval of the Central Government, any other person, in relation to the affairs of the company, or other body corporate or person, as the case may be, and for that purpose may require any of those persons to appear before him personally:

According to Section 217(5), the inspector, being an officer of the Central Government, making an investigation, shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:-

- (a) the discovery and production of books of account and other documents, at such place and time as may be specified by such person;
- (b) summoning and enforcing the attendance of persons and examining them on oath; and
- (c) inspection of any books, registers and other documents of the company at any place.

The notes of any examination under sub-section (4) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

According to Section 217(11) of the Companies Act, 2013 an application can be made by the inspector to the competent court in India, which may issue a letter of request to a court or authority in UK to deal with such request.

The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf. Every statement recorded or document or thing received under this sub-section shall also be deemed to be the evidence collected during the course of investigation.

In view of the above provisions of the Act, the Bank directly cannot take steps to collect evidence as well as recover the money lent. It is the inspector who is conducting the investigation under section 217 to take the necessary steps.

In order to protect the interest of lenders of money to the company assets, sufficient provisions are provided under the Companies Act, 2013 which include freezing of assets of company on inquiry and investigation and imposition of restrictions upon securities.

- (b) As per the provision of Section 245(1) of the Companies Act, 2013, the member or members, depositor or depositors or any class of them, as the case may be, as are indicated in sub-section 245(3) may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interest of the company or its members or depositors, file an application before the tribunal on behalf of the members or depositors to claim damages or compensation or demand any other suitable action from or against:
- (i) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;
 - (ii) the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or
 - (iii) any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;

In the given case, it has been mentioned that there was financial mismanagement and lack of strategic operation, hence based on the aforementioned provisions, it can be concluded that shareholders or RX Limited will be successful in filing Class Action Suit against the company, its directors and consultants including merchant banking firm/rating agencies.

- (c) According to Section 6 of the Securities and Exchange Board of India Act, 1992, the Central Government shall have the power to remove a member appointed to the Board, if he:
- (i) is, or at any time has been adjudicated as insolvent;
 - (ii) is of unsound mind and stands so declared by a competent court;

- (iii) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude.
- (iv) has, in the opinion of the Central Government, so abused his position as to render his continuance in office detrimental to the public interest.

Before removing a member, he will be given a reasonable opportunity of being heard in the matter.

In the present case, since Ganesh has been adjudged as an insolvent by the Adjudicating Authority, his state of position may effect on rendering of his services in a biased manner. This may be unfavourable to the public interest and so he should be removed from his office. Hence, the Central Government has the power to remove him (Ganesh) on this ground.

Question 3

- (a) *Naman was the Managing Director of ME India Private Limited. During his tenure, he sold few properties of the Company and cleared all the registered mortgages. He also diverted Company's funds of ₹ 50 Lakhs to his bank account and diverted another ₹ 10 Lakhs to pay off and discharge the housing loan on his daughter's property. Later, winding up proceedings were initiated against the Company.*

Can the Liquidator of the Company commence proceedings against Naman and his daughter in these circumstances? **(4 Marks)**

- (b) *Bharat Defence Equipments Limited is a Government company in which the Central Government (Government of India), Ministry of Defence, holds 60% of the paid-up share capital. Apart from the Central Government, another two State Governments are holding the remaining 40% of the paid-up share capital (each State Government is holding 20% of the paid-up share capital). As per the provisions of Section 394 of the Companies Act, 2013, the Central Government decides to place the Annual Report. Discuss the procedure for laying the annual reports by the Central Government and the State Governments.*

IDE Limited is a subsidiary of Bharat Defence Equipments Limited. Examine with reference to the Companies Act, 2013, whether IDE Limited can be considered as Government Company? **(4 Marks)**

- (c) *MZ Limited, a listed public company having a turnover ₹ 1,000 Crores earned a foreign exchange ₹ 225 crores during last financial year. MZ Limited wishes to create a chair in a reputed university in U.S. This chair is for the department of computer science. The company wishes to obtain your advice as regard to the following with reference to the FEMA, 1999:*

- (i) *Is such "chair" creation permissible?*
- (ii) *What is the maximum amount that can be donated for such chair?*

(iii) Any formalities to be complied with?

(6 Marks)

Answer

- (a) Section 336 of the Companies Act, 2013 covers the offences which were committed by the officers of the company when the company was not under winding up. In case where the company is subsequently ordered to be wound up, the offences committed by the officers of the company while the company was a going concern, will still be dealt under Section 336, though such offence could be dealt with under other relevant sections had it remain a going concern. Action covered under Section 336(1)(d) are those which were committed within the twelve months immediately before the commencement of the winding up or at any time thereafter.

Further, Section 329 of the Companies Act, 2013 provides that any transfer of property of any kind by a company other than the transfer made in the ordinary course of business or the transfer is made in good faith and for a value consideration made within a period of one year prior to the presentation of the petition for winding up shall be void against the liquidator.

Hence it can be concluded that Mr. Naman and his daughter would be jointly and severally liable for diversion of Company's funds and the Liquidator of the company can commence proceeding against Naman and his daughter after following due procedures provided in the Act.

- (b) **Annual reports on Government companies [Section 394 of the Companies Act, 2013]**

As per Section 2(45) of the Companies Act, 2013, "Government Company" means any company in which not less than 51% of the paid-up share capital (equity & preference) is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

Section 394 of the Companies Act, 2013 provides for Annual reports on Government companies, where the Central Government and the State Government is a member of the Government Company. According to this section:

- (1) **Where the Central Government is a member of a Government company**, the Central Government shall cause an annual report on the working and affairs of that company to be—
- (a) prepared within three months of its annual general meeting before which the comments given by the Comptroller and Auditor-General of India and the audit report are placed under the proviso to sub-section (6) of section 143; and
 - (b) as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and comments upon or

supplement to the audit report, made by the Comptroller and Auditor-General of India.

- (2) **Where in addition to the Central Government, any State Government is also a member of a Government company**, that State Government shall cause a copy of the annual report prepared under sub-section (1) to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments upon or supplement to the audit report referred above.

IDE Limited is a subsidiary of Bharat Defence Equipment Limited (Government company). Hence, it will also be considered as Government company.

- (c) As per Schedule III of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, read with section 5 of the Foreign Exchange Management Act, 1999 donations exceeding one per cent of their foreign exchange earnings during the previous three financial years or US 5,000,000, whichever is less, can be remitted by persons other than individuals for creation of Chairs in reputed educational institutes with the prior approval of the Reserve Bank of India.

Considering the above provision-

- (i) In the first case, "chair" creation for the department of computer science in reputed university in U.S. is permissible.
- (ii) Maximum amount that can be donated for such chair will be one per cent of their foreign exchange earnings during the previous three financial years or US 5,000,000, whichever is less without prior approval of the Reserve Bank of India.
- (iii) In case where donations exceeds one per cent of their foreign exchange earnings during the previous three financial years or US 5,000,000, it shall require prior approval of Reserve Bank of India.

Question 4

- (a) *The Corporate Insolvency Resolution Process (CIRP) against A Ltd. was initiated on application by its financial Creditors but the process was not completed within the time limit prescribed in terms of Section 12(1) of the Insolvency and Bankruptcy Code, 2016. Before completion of CIRP timeline, Committee of Creditors in its meeting voted at 70 per cent voting share in favour of a proposal to seek extension for a period of 60 days. Can the Resolution Professional file application seeking extension of CIRP on the basis of voting results so obtained?* **(4 Marks)**
- (b) *Model Bank Ltd. acquired 10 per cent convertible debentures in PQR Ltd. In terms of the issue in the year 2012, these debentures were converted into the equity shares in PQR Ltd. Consequent to conversion, Model Bank Ltd. became the owner of 5 per cent equity holding in PQR Ltd. Further Model Bank Ltd. provided a loan of ₹ 10 Crore to PQR Ltd. that became due in the year 2019. PQR Ltd. became defaulter in repayment of loans not*

only of Model Bank Ltd. but also to some other Banks. On the application by ICID Bank, the Adjudicating Authority initiated Corporate Insolvency Resolution Process (CIRP) and appointed an Interim Resolution Professional (IRP). The Committee of Creditors constituted by IRP include Model Bank Ltd. ICID Bank objected on the ground that Model Bank Ltd. is a related party that should not have any right of representation, participation or voting. Examine the validity of ICID Bank's objection in the light the Insolvency and Bankruptcy Code, 2016. **(4 Marks)**

- (c) *Joy, one of the Directors of AG Insurance Company Limited had taken some life insurance policies from the company. He, now, wants to avail a temporary loan from the company. The company refused to grant such loan on the ground that there is a prohibition in this regard. Joy approached you now, about the matter. Advise him with reference to the Insurance Laws Amendment Act, 2015 as well as Section 185 of the Companies Act, 2013, whether such loan can be obtained by him.* **(3 Marks)**
- (d) *ABC Bank of India, a nationalized bank, acquired on 31.01.2014 a building, fully occupied by various tenants, from Shyam, the owner of the building in discharge of a term loan advanced to Shyam, who had mortgaged the said building as security with the said Bank and failed to repay the loan. The bank wants to keep the building permanently with it and earn the rent from tenants.*

Explain with reference to the provisions of the Banking Regulation Act, 1949 whether the said bank can do so? **(3 Marks)**

Answer

- (a) Time-limit for completion of insolvency resolution process [Section 12 of Insolvency and Bankruptcy Code, 2016]**

Period for completion of insolvency process: The corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

Filing of application for extension of period: The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of sixty- six per cent of the voting shares.

Period of extension: On receipt of an application, if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days. Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

Taking into the above provisions, the Resolution Professional can file application seeking extension (for a period of 60 days) of CIRP on the basis of voting results i.e. 70% so obtained.

- (b) As per Section 21(2) of the Insolvency and Bankruptcy Code, 2016, the committee of creditors shall comprise of all financial creditors of the corporate debtor.

As per the proviso to Section 21(2) of the Code, the Financial creditor or the authorised representative of the financial creditor referred to in Section 24(6), 24(6A), or 24(5), if it is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the committee of creditors.

Provided further that this proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, or completion of such transactions as may be prescribed prior to the insolvency commencement date.

Accordingly in the case here,

1. Model Bank Ltd. became an owner of 5% equity holding in PQR Ltd. (in 2012) due to conversion of convertible debenture into equity shares in PQR Ltd.
2. Model Bank Ltd. has given a loan of ₹ 10 Crore to PQR Ltd. (in 2019), shall be the treated as Financial creditor.

On the initiation of CIRP and on appointment of IRP, the Committee of creditors was constituted including Model Bank Ltd.

Accordingly, Model Bank Ltd. falling under the exception, even though a related party, shall be entitled to right of representation, participation or voting. Hence, the objection raised by ICID Bank on the right of representation, participation or voting of the Model Bank Ltd. is invalid.

- (c) Section 29 of the Insurance Act, 1938 as amended by the Insurance Laws (Amendment) Act, 2015 provides for the Prohibition of loans. According to this section, no insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life insurance policies issued by him within their surrender value, to any director, manager, actuary, auditor or officer of the insurer, if a company or to any other company or firm in which any such director, manager, actuary or officer holds the position of a director, manager, actuary, officer or partner.

In the instant case, Mr. Joy can avail a temporary loan upto the surrender value of all the policies taken by him.

Also, the provisions of Section 185 of the Companies Act, 2013 shall not apply to a loan granted to a director of an insurer being a company, if the loan is one granted on the security of a policy on which the insurer bears the risk and the policy was issued to the director on his own life, and the loan is within the surrender value of the policy. If the

temporary loan availed by Mr. Joy is within the surrender value of the policy, then Section 185 of the Companies Act, 2013 is not applicable.

- (d) ABC Bank of India, being a nationalized bank is a banking company within the meaning of the Banking Regulation Act, 1949. As per the provisions of Section 9, notwithstanding anything contained in Section 6, no banking company shall hold any Immovable property, howsoever acquired, for a period exceeding seven years except
- (I) If such property is required for banking company's own use.
 - (II) If the Reserve Bank of India extends the said period of seven years by up to another five years on the ground that such extension would be in the interest of the depositors of the banking company.

Accordingly, ABC Bank of India in this case, would normally be required to dispose off the building acquired from Shyam before seven years. However, if the Reserve Bank of India on above stated ground grants the extension, then also the said Bank will have to dispose off the same before five years from the end of seventh year. But in no case, ABC Bank of India can hold it permanently because the building is not for bank's own use.

Question 5

- (a) *Flora and Fauna Herbal Awareness Development Company Limited is a Public Limited company incorporated in July, 2018 and one of the main objects of the company is to promote a new line of life saving products to improve the health conditions of the village people at a lower cost. However, it is a new project and requires the environmental clearance from the National Green Tribunal and the local administration. The company had not filed any financial statements and annual returns during the last two financial years. The company is not having any significant accounting transactions and business activities at present. Explain the term ' -"Significant Accounting Transaction". The Board of Directors decides to obtain the status of a Dormant Company from the Registrar of Companies. Advise the company regarding the procedure to be followed in this regard.*

(4 Marks)

- (b) *Vijay, an Indian citizen holds 25% of the paid up capital of Seven Star Limited, a company which was incorporated in Singapore with a paid up share capital of 10 million Singapore Dollars. WPS Limited a company registered in India holds 30% of the paid up share capital of Seven Star Limited. Seven Star Limited has recently established a share transfer office at New Delhi. Examine whether the said company is an Indian Company or foreign company and also the Company seeks your advice as to what formalities it should observe under the Companies Act, 2013?*

(4 Marks)

- (c) *Raghu was found to be guilty of offence of money-laundering by being involved in an activity connected with proceeds of crime. Adjudicating Authority as per findings confirmed the attachment of the property and ordered for the investigation. The investigation was initiated by the Adjudicating authority on 01.02.2020. The attachment of the property of Raghu was continued till 31.01.2021. Decide the validity of the*

attachment period with reference to the provisions of the Prevention of Money Laundering Act, 2002. (6 Marks)

Answer

- (a) Section 455(1) of the Companies Act, 2013 states that where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

What is “Significant accounting transaction” has been explained in (ii) of the Explanation attached to Section 455(1) which means any transaction other than—

- (1) payment of fees by a company to the Registrar;
- (2) payments made by it to fulfill the requirements of this Act or any other law;
- (3) allotment of shares to fulfill the requirements of this Act; and
- (4) payments for maintenance of its office and records.

Status of a Dormant company: Where a company is formed and registered under the Companies Act, 2013, for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such company or an inactive company may make an application to the Registrar in such manner as may be prescribed for the status of a dormant company.

Flora and Fauna Herbal Awareness Development Company Limited was registered in 2018 and it did not file the financial statements and the annual returns for the last two financial years to make it eligible to apply for the status Dormant company with the registrar of companies.

Explanation - for the purposes of this

Inactive company means a company which has not been carrying on any business or operation or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years

Procedure to obtain the status of a Dormant company from the Registrar of companies: According to the Rule 3 of the Companies (Miscellaneous) Rules, 2014, a company may make an application in Form MSC-1 along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of Section 455 after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value).

- (b) In terms of the definition of a foreign company under Section 2(42) of the Companies Act, 2013, a "foreign company" means any company or body corporate incorporated outside India which:

- (1) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (2) Conducts any business activity in India in any other manner.

According to Section 386 of the Companies Act, 2013, "Place of business" includes a share transfer or registration office.

Further, Section 379 states that 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 is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or 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 company shall comply with the provisions of this Chapter 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.

In the case given in the question, the following facts are given:

- a. Seven Star Limited. was incorporated in Singapore and has a place of business (share transfer office) in New Delhi, hence, it is a foreign company.
- b. Its shareholding comprises of 25% held by Vijay who is a citizen of India and 30% by WPS limited which is a company registered in India. Together the two Indian shareholders hold 55% of the share capital of seven star limited.

Therefore, although Seven Star Limited is a foreign company, due to the holding of more than 50% of its share capital by two Indian entities, it will be covered under section 379 and will be treated as a company incorporated in India or as an Indian Company. It will also be required to comply with other provisions of this Act as may be prescribed with regard to the business carried on by its place of business in India as if it were a company incorporated in India.

- (c) **Order for attachment/retention of property etc.:** According to Section 8(3) of the Prevention of Money Laundering Act, 2002, where the Adjudicating Authority decides that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property or retention of property or record seized or frozen under Section 17 or Section 18 and record a finding to that effect.

Period for attachment, retention, or freezing of the seized or frozen property or record: Whereupon such attachment, retention, or freezing of the seized or frozen property or record, AA shall continue during investigation, for a period not exceeding three hundred and sixty-five days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other

country, before the competent court of criminal jurisdiction outside India, as the case may be.

In the given case, it is mentioned as 365 days and not one year, so calculation will be done on days' basis.

[Note: Since Feb 2020 is having 29 days (being a leap year) hence, from 01.02.2020 to 31.01.2021 (both days inclusive), total will be 366 days]

In the instant case, the investigation was initiated by the Adjudicating authority on 01.02.2020. The attachment of the property of Raghu was continued till 31.01.2021. **The attachment period is invalid as the property is attached for 366 days (i.e. more than three hundred and sixty five days).**

Question 6

- (a) *Kamal is making an arrangement to acquire some stock-in-trade from BL Limited for consideration of some furniture lying with him. He is a Director of JS Limited, which is the holding company of BL Limited. Advise him on the basis of provisions of the Companies Act, 2013. What will be the position of the arrangement if there is a contravention of the applicable provisions of the Companies Act, 2013?*

OR

VS Lenders Limited, convened a Board Meeting on 25.10.2021. One of the items of the agenda is to approve the grant of loan of ₹ 20 crores to RMS Industries Limited, for expansion of its business activities. At the Board Meeting of VS Lenders Ltd., out of the total of six Directors of the lending company, five directors were present and except one director, the remaining four directors approved the grant of loan of ₹ 20 crores to RMS Industries Limited. RMS Industries Limited has also taken loans from a public financial institution and received deposits from the public. Examine the loan proposal with reference to the provisions of the Companies Act, 2013. **(4 Marks)**

- (b) *Referring to the provisions of the Companies Act, 2013, examine the following:*
- (i) *CBA Limited, a listed company has constituted an audit committee consisting of five members out of whom two are independent directors. Subsequently, the company increased the composition of audit committee to six members with three independent directors. Is the composition valid?*
 - (ii) *Pawan was appointed as a small shareholder's director of CBA Limited, which is in the business of Oil refining. Subsequently, A Limited and B Limited have also appointed him as small shareholder's director. Is the appointment valid?* **(4 Marks)**
- (c) *JV Ltd. is in the process of taking over TM Ltd. The turnover of TM Ltd. as per latest financial statements is ₹ 800 Crores and assets value is ₹ 280 Crores. There are no material changes in the value of assets and projected turnover for the current financial year. The Board of Directors seek your opinion for obtaining approvals in terms of the Competition Act, 2002.* **(3 Marks)**

- (d) *Explain very briefly the significance of conjunctive and disjunctive words "or" "and" in the matter of interpretation of statutes.* **(3 Marks)**

Answer

- (a) As per Section 2(76) of the Companies Act, 2013, 'Related party', with reference to a company, includes-

any body corporate which is a holding, subsidiary or an associate company of such company.

Related Party Transactions requiring approval by ordinary resolution: In case a company enters into a contract or arrangement with a related party and the value of transaction exceeds the prescribed value as per Rule 15 (3), it shall be entered into with the prior approval of the company by passing an ordinary resolution.

In the given question, Kamal is a director of JS Limited (holding of BL Limited). Kamal is making an arrangement to acquire some stock in trade from BL Limited for consideration of some furniture.

This arrangement is a related party transaction [in compliance with Rule 15(3) of the Companies (Board Meetings and its powers) Rules, 2014].

Related party transactions voidable at the option of the Board/shareholders [Section 188 (3)]: A contract or arrangement shall be voidable at the option of the Board or, as the case may be, of the shareholders:

Contract/arrangement entered without obtaining the consent of the Board or approval by a resolution: Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a resolution in the general meeting as required under Section 188 (1), and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within 3 months from the date on which such contract or arrangement was entered into.

Further, if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

Alternatively, the answer can also be provided as per Section 192 of the Companies Act, 2013 which is as follows:

Section 192 of the Companies Act, 2013 provides for restriction on non-cash transactions involving directors. According to this section:

- (i) 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, unless prior approval for

such arrangement is accorded by a resolution of the company in general meeting and if the director or 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.

- (ii) The notice for approval of the resolution by the company or holding company in general meeting shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer. Hence, kamal (director of JS Limited, holding company of BL Limited) can follow the above procedure for making an arrangement to acquire some stock-in-trade from BL Limited for consideration of some furniture lying with him.
- (iii) Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of the company unless-

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

Any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person loan by company:

OR

The given problem is based on the Section 186 of the Companies Act, 2013. According to Section 186 (2) of the Companies Act, 2013, no company shall directly or indirectly -

- give any loan to any person or other body corporate;
- give any guarantee or provide security in connection with a loan to any other body corporate or person; and
- acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,

exceeding 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more.

Further, Section 186 (5) of the Companies Act, 2013 provides for unanimous resolution that is required for grant of loan to the borrowing company. Any investment shall be made or loan or guarantee or security given by the company only after when the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting.

Facts in the given problem states that VS Lenders Limited convened a board meeting and was to approve grant of loan of ₹ 20 Crore to RMS Industries Limited. However, at the Board meeting, out of the total of six directors of the VS Lenders

Ltd., five directors were present and except one director, the remaining four directors approved the grant of the loan of ₹ 20 Crore. Considering the above-mentioned provisions, since the approval for the grant of loan has not been sanctioned by passing of resolution at a meeting of the Board with the consent of all the directors present at the meeting, so loan proposal is not in compliance with the Companies.

- (b) (i) **Composition of an Audit committee:** According to Section 177 (2) of the Companies Act, 2013, the Audit Committee shall consist of a minimum of 3 directors with independent directors forming a majority.

In the instant case, the composition of Audit committee in CBA Limited is not valid as it is having 5 members out of whom 2 are Independent Directors. But the composition of Independent Directors shall be 3 (majority).

Subsequently also, the composition of Audit committee in CBA Limited is not valid as it is having 6 members out of whom 3 are Independent Directors. But the composition of Independent Directors shall be 4 (majority).

- (ii) **Maximum number of directorships (Section 151 of the Companies Act, 2013 and Rules made there):** No person shall hold the position of small shareholders' director in more than two companies at the same time.

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

Since, Pawan has been appointed as small shareholder in three companies, hence, the appointment is not valid.

- (c) Section 5 of Competition Act, 2002 envisages financial thresholds beyond which any combination requires approval of the Competition Commission of India. Combinations that involve assets or turnover below threshold limits need to be notified to the Competition Commission of India for seeking approval. Central Government has granted exemption to acquisition of small targets known as minims exemption. In terms of Notification No. S.O. 988 dated March 27, 2017, all forms of combinations involving assets not more than ₹ 350 Crore in India or turnover of not more than ₹ 1,000 Crore in India are exempt from Section 5 of the Act for a period of 5 years.

In the given case, both value of assets and turnover are within the notified thresholds and hence no need to seek approval from the Competition Commission of India.

- (d) **Conjunctive and Disjunctive Words 'or' 'and':** The word 'or' is normally disjunctive and 'and' is normally conjunctive. However, at times they are read as vice versa to give effect to the manifest intention of the legislature as disclosed from the context. This would be so where the literal reading of the words produces an unintelligible or absurd result. In such a case 'and' may be read for 'or' and 'or' for 'and' even though the result of so modifying the words is less favorable to the subject, provided that the intention of the legislature is otherwise quite clear.