

PAPER- 4 – CORPORATE AND ALLIED LAWS

Question No. 1 is compulsory.

Answer any **four** from the remaining **five** questions

Question 1

(A) The dividends declared by Alpha Limited, during the immediately preceding 5 years was 6%, 9%, 8%, 14%, 15% respectively. The company has incurred losses upto the quarter ending 30-09-2020 during the current financial year. To maintain the confidence of the shareholders in the company, the Board of Directors of Alpha Limited, declared an interim dividend @ 12% in its Board meeting held on 19-10-2020 to be paid to the shareholders of the company.

(i) Advise, whether the declaration of an interim dividend is permissible, considering that the company is making losses in the current financial year, as per provisions of Section 123(3) of the Companies Act, 2013.

(ii) Would your advice be different if the above company was a Section 8 company?

(4 Marks)

(B) Turbo Limited had appointed Mr. P a Chartered Accountant, as their auditor for a period of 5 years. One tenth of the members of the company, made an application to the Tribunal, that the auditor was acting in a fraudulent manner, in collusion with the Chief Manager. The Tribunal on being satisfied about his fraudulent behaviour, directed the company to change the auditor.

The auditor challenged that the order of the Tribunal was not tenable since the application was made by only one tenth of the members of the company.

Within a month of such removal, he accepted an order for appointment as auditor of Mettle Limited.

Decide whether the actions of the auditor are valid, in the light of the provisions of Section 140(5) of the Companies Act, 2013.

(4 Marks)

(C) Crown Industrial Conveyors Limited had advanced a loan of ₹ 1 crore to M & Co. Private Limited whose office was functioning in a rented house property belonged to Mr. M, the Managing Director. The lending company intends to attach the property of Mr. M as liquidation asset and seeks your advice with regard to its position in a Liquidation proceeding initiated under the Insolvency and Bankruptcy Code 2016.

(4 Marks)

(D) Whether it is possible to go for a liquidation process before the submission of resolution plan.

(2 Marks)

Answer

- (A) (i) As per Section 123(3) of the Companies Act, 2013, the Board of Directors of a Company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

Provided that in case the Company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years [sub-section 3, (proviso)].

According to the given facts in the question, Alpha Ltd. has incurred losses upto the quarter ended 30.09.2020 during the financial year 2020-21. In the immediate preceding three financial years, the company declared dividend at the rate of 15%, 14% and 8% respectively. Accordingly, the rate of dividend declared shall not exceed 12.33%, the average of the rates $(15+14+8 \div 3 = 12.33)$ at which dividend was declared by it during the immediately preceding three financial years.

Therefore, the act of the Board of Directors of Alpha Limited as to declaration of interim dividend at the rate of 12% during the F.Y 2020-2021 is valid and permissible.

(ii) **Legal Position if the Company was a Section 8 Company**

According to Section 8(1) of the Companies Act, 2013, the Companies licenced under Section 8 of the Act (Formation of Companies with Charitable Objects, etc.) are prohibited from paying any dividend to their members. Their profits are intended to be applied only in promoting the objects for which they are formed.

Hence, in the instant case, the proposed act of Alpha Limited, a Company licenced under Section 8 of the Companies Act, 2013, to declare dividend, is not valid.

(B) **Auditor acts in a fraudulent manner or abetted or colluded in any fraud [Section 140(5)]**

On satisfaction of Tribunal that the Auditor of a Company has acted in a fraudulent manner etc.:

Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal either—

- suo motu; or
- on an application made to it by the Central Government; or
- by any person concerned,

if it is satisfied that the Auditor of a Company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the Company or its Directors or Officers, it may, by order, direct the Company to change its Auditors.

Ineligibility of Auditor to be appointed:

An Auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this Section shall not be eligible to be appointed as an Auditor of any Company for a period of 5 years from the date of passing of the order and the Auditor shall also be liable for action under Section 447 of the Companies Act, 2013.

Hence, in the instant case, the contention of Mr. P (Auditor) that the order of the Tribunal was not tenable since the application was made by only 1/10th of the members of the company is not right as an application can be filed by any person concerned (i.e. even by a single member).

Also, his appointment in Mettle Limited as Auditor is not valid as he is ineligible to be appointed as an Auditor of any Company for a period of 5 years from the date of passing of the order.

- (C) According to Section 36 of the Insolvency and Bankruptcy Code, 2016 (the Code) for the purposes of liquidation, the liquidator shall form an estate of the assets, which will be called the liquidation estate in relation to the corporate debtor. The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.

Exceptions

In terms of Section 36(4) of the Code, the assets owned by a third party which are in possession of the corporate debtor, shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation. These assets include other contractual arrangements which do not stipulate transfer of title but only use of the assets.

In the given instance, Crown Industrial Conveyors Limited has advanced a loan of ₹ 1 crore to M & Co. Private Limited. Its (M & Co. Private Limited) office was functioning in a rented house property belonging to Mr. M, the Managing Director.

On liquidation of M & Co. Private Limited (the Corporate debtor), Crown Industrial Conveyors Limited, the Financial Creditor, intends to attach the property of Mr. M as a liquidation asset.

In line with above stated exclusion, the property in which M & Co. Private Limited was operating its office on rent belonged to Mr. M i.e. third party.

CONCLUSION

Therefore, Crown Industrial Conveyors Limited, the lending Company, cannot attach the property of Mr. M as it cannot be included in the liquidation estate assets and shall not be used for recovery in the liquidation.

- (D) Yes, as per Section 33 of the Insolvency and Bankruptcy Code, 2016, liquidation process may be initiated before submission of resolution plan for approval of Adjudication Authority where the Adjudicating Authority has not received a resolution plan before the expiry of the insolvency resolution process period or the maximum period permitted for completion

of the corporate insolvency resolution process or the fast track corporate insolvency resolution process as the case may be.

Further, where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of the resolution plan, intimates the Adjudicating Authority of the decision of the Committee of Creditors approved by not less than 66% of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order.

Question 2

- (A) *Time Zone Limited was engaged in the manufacturing of watches. Two of the directors along with the chief Financial Officer, were engaged in a lot of malpractice, and falsifying accounts. Some of the employees who were also members of the company became suspicious that serious fraud was perpetrated by the directors in collusion with the Chief Financial Officer. They decided to file an application with the Central Government under Section 212 of the Companies Act, 2013 for carrying out an investigation into the affairs of the company by Serious Fraud Investigation Office. 1600 of the 2000 members passed a resolution for investigation by the Central Government into the affairs of the company. The Central Government accepted their application and assigned its investigation to SFIO.*

The two of the directors believed that the application was not tenable since it was not filed by 90% of the members of the company.

State the circumstances under which the Central Government can carry out an investigation into the affairs of a company under Section 212 of the Companies Act, 2013. In the light of the said provisions, state whether the application filed by the members is tenable.

(4 Marks)

- (B) *Sigor Limited was in the process of liquidation. It had some correspondence with its auditor, which was in the company's letter head. The auditor observed that the letter head was not in compliance with Section 344, as it did not mention the fact that the company was being wound up. He immediately called up one of the directors and advised him about the provisions of Section 344 and the consequences of non-compliance.*

State, the provisions and consequences regarding which the auditor would have advised.

(4 Marks)

- (C) *Graphics Bank Limited, has been posting exceptionally good results continuously for the past few years. In compliance of Section 17 of the Banking Regulation Act, 1949 the bank was transferring from its net profits the specified percentage to its Reserve Fund every year. In the financial year 2019-20, also the bank had made a huge profit, maintaining the previous trend. The Chairman was of the opinion that the bank had accumulated enough funds in the Reserve Fund, to comply with Section 17, and recommended to the Board, that there was no requirement to transfer any amount to Reserve Fund. The Board also approved the resolution for non-transfer to Reserve Fund for that financial year. During*

the annual general meeting, a shareholder who was also a depositor objected to this non-transfer, stating that it was against the interest of the depositors.

State whether the Board's decision is right in the light of the provisions of Section 17 of the Banking Regulation Act, 1949. **(6 Marks)**

Answer

(A) Circumstances when Central Government can carry an investigation:

Section 212 of the Companies Act, 2013 provides for investigation into affairs of Company by the Serious Fraud Investigation Office (SFIO).

According to Section 212(1) of the Companies Act, 2013, without prejudice to the provisions of Section 210, where the Central Government -

- (a) on receipt of a report of the Registrar or Inspector under Section 208;
- (b) on intimation of a special resolution passed by a Company that its affairs are required to be investigated;
- (c) in the public interest; or
- (d) on request from any Department of the Central Government or a State Government, is of the opinion that it is necessary to investigate into the affairs of a Company by the SFIO, the Central Government may, by order, assign the investigation into the affairs of the said company to the SFIO.

Filing of an application by members:

In the instant case, 1600 of the 2000 members passed a resolution for investigation by the Central Government into the affairs of the company. Hence, the application filed by the members is tenable as it was passed by 80% majority and the section specifies that on intimation of a special resolution i.e. 75% majority by company, Central Government may assign the investigation into the affairs of the company to the SFIO.

(B) Statement that Company is in Liquidation [Section 344 of the Companies Act, 2013]

(1) Statement of winding up: Where a Company is being wound up, whether by

- the Tribunal or
- voluntarily,
every invoice, order for goods or business letter issued-
- by or on behalf of the Company or
- by a Company Liquidator of the Company, or
- by a receiver or
- by the manager of the property of the Company,

being a document on or in which the name of the Company appears, shall contain a statement that the Company is being wound up.

- (2) If a company contravenes the above provisions, the company and every officer of the Company, the Company Liquidator and any receiver or manager, who willfully authorises or permits the non-compliance, shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees.

In the instant case, the Auditor would have advised accordingly.

(C) Reserve Fund (Section 17 of the Banking Regulation Act, 1949)

Every Banking Company incorporated in India must create a Reserve Fund and transfer a sum equal to not less than 20% of its net profits. However, the Central Government is empowered to exempt from this requirement on the recommendation of the RBI. Such exemption will be allowed only:-

- When the amounts in the reserve fund and the share premium account are not less than the paid-up capital of the banking Company.
- When the Central Government feels that its paid-up capital and reserves are adequate to safe guard the interest of the depositors.
- In the instant case, the Board's decision for non-transfer to Reserve Fund is not right as exemption from non-transfer to Reserve Fund shall be provided only by Central Government on the recommendation of the RBI on the basis of above two conditions, if satisfied.

Question 3

- (A) *Hybrid Limited is having issued share capital of ₹ 8,00,000 consisting of 80,000 shares of ₹ 10 each. The company has 38 members. Some members who felt oppressed by certain decisions of the Board, submitted a petition before the Tribunal for relief against the same.*

Details of the members who submitted the petition are given below:

Member A holding 1000 shares

Member B holding 2500 shares

Members C and D – jointly holding 3500 shares

Examining the above under the provisions of Section 244 of the Companies Act, 2013, state whether the petition is maintainable. **(4 Marks)**

- (B) *Draft a Board resolution for approval of investment in equity shares by Speed Cycles Limited in Brakes and Gears Limited.* **(4 Marks)**

- (C) *Molly had resided in India for 182 days in the financial year 2017-18.*

She went to UK on 1st April, 2018 and returned to India on 1st July, 2019 on an employment contract in India for a year. She completed her contract and immediately left India.

Under Section 2(v) of FEMA 1999, determine the residential status of Molly for the financial years:

(i) 2018-19

(ii) 2019-20

(6 Marks)

Answer

(A) Right to apply for Oppression and Mismanagement:

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

Explanation—For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

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

₹ 8,00,000 equity share capital held by 38 members

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

(i) Number of members making the petition – 3 (Member C and D jointly holding the shares, they shall be counted only as one member)

(ii) Amount of share capital held by members making the petition – ₹ 70,000

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

100 members; or

3.8 members (being 1/10th of 38) or 4 members (rounding it off); (or)

Members holding ₹ 80,000 share capital (being 1/10th of ₹ 8,00,000)

As it is evident, that no condition meets the eligibility criteria specified under Section 244 of the Companies Act, 2013, therefore, the petition is non maintainable.

(B) Specimen Board Resolution: Investment in Equity Shares

Resolution passed at the meeting of the board of directors of Speed Cycles Limited held at its registered office situated at _____ on _____ (day) at _____ A.M.

“Resolved unanimously that pursuant to provisions of Section 186(2) of the Companies Act, 2013, the company be and is hereby authorized to invest in _____ equity shares of

₹ ____ each of Brakes and Gears Limited, the investment in addition to other investments made to date in the aggregate being within the limits prescribed under the said section.”

“Resolved further that Mr., the Managing Director of the Company be and is hereby authorised on behalf of the Board to sign /execute the necessary documents in this connection.”

Sd/-

Board of Directors

Speed Cycles Limited

(C) As per Section 2(v) of the Foreign Exchange Management Act, 1999, “Person Resident in India” means:

a person residing in India for more than 182 days during the course of the preceding financial year but does not include—

(A) a person who has gone out of India or who stays outside India, in either case—

- (a) for or on taking up employment outside India, or
- (b) for carrying on outside India a business or vocation outside India, or
- (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) a person who has come to or stays in India, in either case, otherwise than:

- (a) for or on taking up employment in India, or
- (b) for carrying on in India a business or vocation in India, or
- (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

In line with the above definition, Residential status of Molly for the financial years will be as follows:

- (i) **For FY 2018-2019:** As in the preceding year 2017-2018, Molly resided for 182 days which is not in compliance with the requirement of number of days of her stay (for more than 182 days). Here, residential status of Molly is Person resident outside India.
- (ii) **For FY 2019-2020:** In the preceding year 2018-2019, Molly has not resided in India as she went to UK on 1st April 2018 and returned on 1st July 2019. In this case also, the residential status of Molly is a person resident outside India.

Question 4

- (A) *A company incorporated in France, with limited liability, established an office in Baroda, and started conducting business activity from its place of business. In compliance of*

Section 382 of the Companies Act, 2013, it conspicuously exhibited a name board outside its office, with the name of the company in English in big block letters.

In three days, the company received a notice from the Registrar stating that it had not properly complied with the requirements of Section 382 of the Companies Act, 2013.

Mention the areas of lapses of the foreign company, which would be mentioned in the notice. **(4 Marks)**

OR

Dissatisfied with the decision of the NCLT, Rana had filed an appeal before the Appellate Tribunal, which was also turned down. Advise him on further course of action to be taken.

- (B) *Jackpot Limited, a public limited company, with 7 Directors in the Board, had not filed annual returns and financial statements for 2 consecutive financial years. The Register after required formalities, entered the name of the company in the register maintained for dormant companies.*

One of the directors suggested that since, the company was now registered as a dormant company, the company need not have 7 directors and having one or maximum two directors would suffice. Following his advice, 5 directors resigned, and the company was left with only 2 directors. The existing two directors did not file any statement with the Registrar, regarding change of directors.

Advise stating the provisions of Section 455, of the Companies Act, 2013, whether the reduction in the number of directors and not filing a statement with Registrar regarding change of Directors, is appropriate. **(4 Marks)**

- (C) *The Board of SEBI is managed by its members. The Chairman Mr. A aged 65, has just completed his three year term of office and his office has become vacant. The Union Government is of the opinion that Mr. A is a person with specialized knowledge in the areas of law, finance, economics and appoints him as Chairman for another period of 3 years.*
- (i) *Discuss the validity of the above appointment under Section 5 of SEBI Act, 1992.*
- (ii) *The Board of SEBI at its meeting, passed a resolution altering the bye laws of one of the member stock exchange. The stock exchange refused to accept the alteration on the ground that the appointment of one of the directors in the Board, was defective. Explain whether the contention of the stock exchange is right.* **(6 Marks)**

Answer

- (A) According to Section 382 of the Companies Act, 2013,**

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

- if the liability of the members of the company is limited, cause notice of that fact—
 - (i) to be stated in every such prospectus issued and in all business letters, bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and
 - (ii) to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situated.

After taking into account the provisions of Section 382 of the Companies Act, 2013, the following are the lapses by the company:

- (i) The company has exhibited the name of the company in English but it has not displayed the name of the Country where it was incorporated. Further, it has not displayed both the facts in the local language or one of the languages in general use in the locality in which the office or place is situated i.e. Baroda.
- (ii) Further the company is one where the liability of members is limited. The fact that the members liability is limited has not been conspicuously exhibited on the outside of every office or place i.e. in Baroda, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality i.e. Baroda

The above lapses would have given rise to the notice from the Registrar.

OR

(A) Appeal to Supreme Court [Section 423 of the Companies Act, 2013]

Any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order.

The Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

Explanation: It is to be understood that it is solely at the discretion of the Supreme Court whether to provide an extension or not by such number of days which shall however not exceed 60 days.

Hence, Rana can follow the above procedure when his appeal has turned down by Appellate Tribunal.

- (B)** A dormant Company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status

in the Register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed.

According to Rule 6 of the *Companies (Miscellaneous) Rules, 2014*, a dormant company shall have a minimum number of 3 directors in case of a public company, 2 directors in case of a private company and 1 director in case of a One Person Company.

According to the Rule 7 of the *Companies (Miscellaneous) Rules, 2014*, a dormant company shall also continue to file the return / returns and change in directors in the manner and within the time specified in the Act, or whenever the company allots any security to any person or whenever there is any change in the directors of the company.

Under the provisions, a dormant public company should have minimum 3 directors. The reduction of number of directors to 2 is not appropriate.

Hence, by taking into account the above provisions, reduction in the number of directors to 2 and not filing a statement with Registrar regarding change of Directors by Jackpot Limited is not appropriate.

- (C) (i) **Term of Office:** As per Section 5 of the SEBI Act, 1992 and the Rules framed thereunder, the Chairman may hold office for a period of 5 years subject to the maximum age limit of 65 years and can be re-appointed by the Central Government.

In the instant case, the appointment of Mr. A as the Chairman to the Board of SEBI by Union Government is not valid as Mr. A is of 65 years.

- (ii) **Vacancies, etc., not to invalidate proceedings of the Board [Section 8 of the SEBI Act, 1992]**

The following reasons shall not invalidate any act or proceeding of the Board:

- any defect in the constitution of the Board
- in the appointment of any person or member of the Board
- any irregularity in the procedure of the Board not affecting the merits of the case

As per the above provision, the passing of the resolution altering the byelaws of the Stock Exchange by SEBI is valid, even though, the appointment of one of the directors of the Board is invalid.

Accordingly, in the instant case, the contention of stock exchange regarding refusal to accept the alteration on the ground that the appointment of one of the directors in Board was defective is not right.

Question 5

- (A) *Halogen Limited, is facing acute shortage of funds and owes huge sums of money to its financial and operational creditors.*

- (i) When will the provisions of insolvency and liquidation of corporate persons be applicable on a corporate person?
- (ii) State with reasons whether the following persons can initiate insolvency resolution process against Halogen Limited:
- Mr. Y, a person to whom an operational creditor of Halogen Limited has assigned his debt of ₹ 120 lakhs.
 - Mr. P is a financial creditor, to whom the company owes ₹ 80 lakhs. **(4 Marks)**
- (B) The term of office of the Managing Director of Tractors Limited will be expiring on 31st December, 2023. One of the directors at the Board meeting held on 18th October, 2022 proposed that he should be reappointed for another term of 5 years.
- Alternately, the Managing Director, proposed that his son aged 19 years could be appointed as Managing Director, at the time of the expiry of his tenure.
- Explain whether both the above proposals are as per the provisions of Section 196 of the Companies Act, 2013. **(4 Marks)**
- (C) (i) Rajan had filed an appeal before the Appellate Tribunal regarding unlawful attachment of one of his properties. The Bench, which was handling the appeal, consisted of 2 members, and both the members were divided in their opinion, on the decision. The matter was referred to a third member of the Appellate Tribunal who gave his opinion. Between the three, the majority decision was that the attachment of Rajan's property was lawful and enforceable. Rajan contended that when the Bench was divided in its opinion, the matter should be decided by the Chairman, with his casting vote and not by any other member of the Appellate Tribunal, and so the decision was not tenable.
- State with the reasons whether Rajan's contention is right, under the provisions of Section 38 of the Prevention of Money Laundering Act, 2002. **(3 Marks)**
- (ii) State the procedure for withdrawal of recognition given to a Stock Exchange under Section 5 of the Securities Contracts (Regulation) Act, 1956. **(3 Marks)**

Answer

- (A) (i) The provisions relating to the insolvency and liquidation of corporate debtors shall be applicable only when the default is occurred. Vide Ministry of Corporate Affairs Notification dated the 24th March, 2020 S.O. 1205 (E), minimum amount of default for initiation of corporate insolvency resolution process has been increased to one crore rupees.
- (ii) According to Section 6 of the Insolvency and Bankruptcy Code, 2016, where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor.

- According to Section 5(20), Operational creditor means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.

Yes, Mr. Y, to whom an operational creditor of Halogen Limited, has assigned his debt (of Rs 1.2 crore) can initiate insolvency resolution process against Halogen Limited.

- Mr. P, financial creditor, cannot initiate insolvency resolution process against Halogen Limited as the debt owed is less than the threshold limit.

(B) According to Section 196(2) of the Companies Act, 2013:

- (a) No company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time.
- (b) It is further provided that no re-appointment shall be made earlier than one year before the expiry of his term.

As per Section 196(3), no Company shall appoint or continue the employment of any person as managing director, whole-time director or manager who is below the age of 21 years or has attained the age of 70 years.

In the given question, the term of office of Managing Director was expiring on 31st December, 2023. Since, no re-appointment shall be made earlier than one year before the expiry of his term, hence, proposal in the Board meeting held on 18th October, 2022 to reappoint Managing director (due to retire in December 2023) is invalid.

The son of Managing Director cannot be appointed as Managing Director as he has not attained the age of 21 years.

- (C) (i) According to Section 38 of the Prevention of Money Laundering Act, 2002, if the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by third Member of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it. In the given question, the decision regarding attachment of Rajan's property was taken by a majority decision (total 3 members: two original members + the third member to whom the matter was referred). The contention of Rajan that since the original bench was divided in its opinion, the matter ought to be decided by the Chairman, is invalid.
- (ii) **Serving of notice for withdrawal of recognition:** Section 5(1) states that if the Central Government/ SEBI is of the opinion that the recognition granted to a stock exchange in the interest of the trade or in the public interest, the same should be withdrawn, then the Central Government or SEBI may serve on the governing body of the stock exchange, a written notice that the Central Government is considering

the withdrawal of the recognition for the reasons stated in the notice and after giving an opportunity to the governing body to be heard in the matter, the Central Government may withdraw by notification in the Official Gazette, the recognition granted to the stock exchange.

When recognition granted stand to be withdrawn: Also, the Section 5(2) of the Act states that where the recognised stock has not been corporatized or demutualised or it fails to submit the scheme referred to in section 4B(1) within the specified time therefor or the scheme has been rejected by SEBI under section 4B(5), the recognition granted to such stock exchange under section 4, shall, stand withdrawn and the Central Government shall publish, by notification in the Official Gazette, such withdrawal of recognition.

Question 6

(A) *Mr. Yashpal and Mr. Dugal are proposed to be appointed as directors of Light Tubes Limited at the Annual General Meeting to be held on 2nd May, 2021. Following additional information about these persons are provided:*

- *Mr. Yashpal had subscribed for 20,000 fully paid Equity shares of ₹ 10 each of Light Tubes Limited. The last date for payment of the second call amount was 20th June, 2020 and he has not paid the call money, till the time of submitting his consent to be appointed as director of the Company.*
- *Mr. Dugal is also a director of Heavy Tubes Limited, a subsidiary Company of Light Tubes Limited, which has full time director in charge of Finance & Accounts to ensure compliance with provisions of the Companies Act, 2013. One aggrieved depositor of Heavy Tubes Limited has represented to the Holding Company that he has neither received refund of his deposit matured on 31st October, 2019 nor interest thereon.*

As statutory auditor of the Holding Company, providing Secretarial Service, advise the company about the eligibility of Mr. Yashpal and Mr. Dugal to be appointed as Directors under Section 164 of the Companies Act, 2013. **(4 Marks)**

(B) *State with reasons whether the following companies should constitute a Nomination and Remuneration Committee as per Section 178 of the Companies Act, 2013:*

- (1) *Zero Limited, an unlisted public company having turnover of ₹ 180 crores.*
- (2) *Eldo Limited, an unlisted public company having, outstanding loans ₹ 30 crores, and debentures ₹ 12 crores.*

All the above figures are as on the date of last audited Financial Statements. **(4 Marks)**

(C) (i) *Mr. R was under investigation in France regarding a smuggling case. His accomplice in India Mr. M was aiding him in this illegal activity. The government of France approached the Government of India, (Contracting State) with which agreement for exchange of information has already been entered into, for assistance to enquire into the activities of Mr. M and for freezing of certain properties in India.*

- (1) *Explain Contracting State.*
- (2) *State the procedure to be followed by the Central Government of India in regard to this request under Section 58 of the Prevention of Money Laundering Act, 2002.* **(4 Marks)**
- (ii) *Explain the significance of SCHEDULE as one of the internal aids to interpretation/construction of statutes.* **(2 Marks)**

Answer

- (A)** Section 164(1) of the Companies Act, 2013 provides that a person shall not be appointed as a director if he has not paid any calls in respect of any shares of the Company held by him and 6 months have elapsed from the last day fixed for the payment of the call.

Further, Section 164(2) states that no person who is or has been a director of a Company which has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that Company or appointed in other Company for a period of five years from the date on which the said company fails to do so.

In the light of the provisions stated above and facts of the question,

- (1) Mr. Yashpal cannot be appointed as director in Light Tubes Limited, since he has not paid the amount of second call amount on 20,000 fully paid shares and 6 months have elapsed from the last day fixed for the payment of the call (the call amount is due since 20th June, 2020 and he is to be appointed director in 2021).
- (2) Mr. Dugal is a director in Heavy Tubes Limited which has defaulted in the repayment of deposits accepted by it and payment of interest thereon, since October 2019 (i.e. the default has continued for more than one year- 31st October 2019 to 2nd May 2021). Hence, he will not be eligible to be appointed as director in Light Tubes Limited.
- (B)** According to Section 178 (1), the Board of Directors of every listed public Company and the below mentioned classes of Companies, shall constitute the Nomination and Remuneration Committee:
1. the Public Companies having paid up share capital of ten crore rupees or more; or
 2. the Public Companies having turnover of one hundred crore rupees or more; or
 3. the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.

In the light of the provisions stated above,

- (1) Zero Limited, an unlisted public Company shall be required to constitute the Nomination and Remuneration Committee, as the turnover is ₹ 180 crore (i.e. more than ₹ 100 crore).

- (2) Eldo Limited, an unlisted public Company is not required to constitute the Nomination and Remuneration Committee, as the aggregate of outstanding loans and debentures is ₹ 42 crore (i.e. less than ₹ 50 crore).
- (C) (i) (1) **“Contracting State”** means any Country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such Country through a treaty or otherwise.

(2) **Assistance to a contracting State in certain cases [Section 58]**

Where a letter of request is received by the Central Government from a Court or Authority in a contracting State requesting for investigation into an offence or proceedings under this Act and forwarding to such court or Authority any evidence connected therewith, the Central Government may forward such letter of request to the Special Court or to any Authority under the Act as it thinks fit for execution of such request in accordance with the provisions of this Act or, as the case may be, any other law for the time being in force.

(ii) **Significance of Schedules:**

The Schedules form part of an Act. Therefore, they must be read together with the Act for all purposes of construction. However, the expressions in the Schedule cannot control or prevail over the expression in the enactment. If there appears to be any inconsistency between the schedule and the enactment, the enactment shall always prevail. They often contain details and forms for working out the policy underlying the Sections of the statute for example schedules appended to the Companies Act, 2013, to the Constitution of India.