

**PAPER- 4 – CORPORATE AND ECONOMIC LAWS**

Question No. 1 is compulsory.

Answer any **four** from the rest

**Question 1**

- (a) ABC Limited showed a net profit of ₹ 70 lakh after including the following items credited/debited to the Profit and Loss Statement for the year ending on 31<sup>st</sup> March, 2021 for arriving at Profit before tax.

Other Revenue	Amount (₹)
Profit on Sale of Fixed Assets	7,00,000
Revaluation of assets	5,00,000
Change in carrying amount of an assets on measurement of the asset at fair value	9,00,000
<b>Expenditure</b>	<b>Amount (₹)</b>
Debt considered bad and written off	6,00,000
Loss of capital nature including sale of the undertaking	3,00,000
Tax Expenses, Current Tax payable	15,00,000

Details of Sale of Fixed Assets:

Sale Value	20,00,000
Original Cost	16,00,000
Written down value	13,00,000

Referring to the above details, you are requested to analyse the provisions of the Companies Act, 2013 and answer the following:

- (i) Compute the Company's net profit as laid down under Section 198 of the provisions of the companies Act, 2013 to calculate the managerial remuneration.
  - (ii) Reporting Requirement in auditor's report regarding managerial remuneration.
  - (iii) What are the modes of payment of managerial remuneration? **(6 Marks)**
- (b) Mr. Sid has applied for directorship in Tees Limited after complying with the provisions of Section 160 of the Companies Act, 2013 and Rule 13 of the Companies (Appointment and Qualification of Directors) Rules, 2014. Tees Limited decided to conduct the general meeting on 17<sup>th</sup> July, 2021, regarding the candidature of Mr. Sid for the office of director and listed the notice in its website on 5<sup>th</sup> July, 2021. On 8<sup>th</sup> July, 2021 one of the shareholders objected to the company that the notice was not issued properly. Examine the following situations and comment as per the provisions of the Companies Act, 2013.
- (i) Whether action taken by Tees Limited regarding service of notice is valid?

- (ii) Whether there is any alternative available to Tees Limited, if it is decided not to serve notice individually to its members? **(4 Marks)**
- (c) (i) In MAP Limited, the following directors are getting sitting fees.

Director's Name	Sitting fees (INR)
Mr. X (Non-Executive Independent Director)	INR 70,000
Mrs. Y (Non-Executive Woman Director)	INR 80,000
Mr. Z (Non-Executive Director)	INR 60,000
Mr. L (Non-Executive Director)	INR 50,000

The Boards of Directors of MAP Limited increased the sitting fees of Mr. Z and Mr. L to one lakh rupees each and continued the sitting fees of Mr. X and Mrs. Y at the old fees stated above. Referring to the provisions of the Companies Act, 2013, examine whether the decision of the Board of Directors to increase the sitting fees of few directors and maintaining the same sitting fees for remaining directors shall be deemed to be valid.

- (ii) Whether Mr. X, an Independent Director and Mrs. Y, a Woman Director shall be entitled for remuneration, other than the sitting fees, and if so, what shall be the maximum remuneration payable to each of them per annum in case the Company has no profit and its effective capital is ₹ 250 crore as at the 31<sup>st</sup> March, 2021. **(4 Marks)**

#### Answer

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

#### Credit shall not be given for those sums specified in Section 198(3)

**Less:** (if credited to the P & L A/c for arriving at Profit before tax)

- Profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets:
- Provided that where the amount for which any fixed asset is sold exceeds the written-down value thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written-down value;
- Any change in carrying amount of an asset or of a liability recognized in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.
- any amount representing unrealized gains, notional gains or revaluation of assets.

In making the computation aforesaid, the following sum specified under Section 198(4) shall be deducted:

- debts considered bad and written off or adjusted during the year of account.

**Non-Deductible Items [Section 198(5)]**

- Loss of a capital nature including loss on sale of the undertaking
- Current Taxes payable by the Company.

(i) **Computation of Net Profit for the purpose of calculating Managerial Remuneration as laid down under Section 198 of the Act.**

Particulars	Amount (₹)
Net Profit as per Statement of Profit and Loss	70,00,000
<i>Less:</i> Profits on Sale of Fixed Assets not to be included in Profit (Refer working note below)	(4,00,000)
<i>Less:</i> Revaluation of Assets	(5,00,000)
<i>Less:</i> Change in carrying amount of an assets on measurement of the asset at fair value	(9,00,000)
Balances	52,00,000
<i>Add:</i> Tax Expenses, Current Tax Payable	15,00,000
<i>Add:</i> Loss of a capital nature including loss on sale of the undertaking	3,00,000
Net Profits as per Section 198 of the Act for the purpose of calculating the managerial remuneration	70,00,000

**Working Note:**

S.No	Particulars	Amount (₹).
A.	Original Cost	16,00,000
B.	Written Down Value	13,00,000
C.	Sale Value	20,00,000
D.	Profit on Sale of Fixed Asset	7,00,000
E.	Amount to be included in Profit (A) – (B)	3,00,000
F.	Amount not to be included in Profit (D) - (E)	4,00,000

**Note:** Credit shall not be given for profits from the sale of any immovable property or fixed assets (provided credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written-down value). Profit on sale of fixed assets = ₹ 20,00,000 (-) ₹ 13,00,000 (wdv) ₹ 7,00,000, but credit cannot be greater than the difference of ₹ 16,00,000(original cost) (-) ₹ 13,00,000(wdv) = ₹ 3,00,000. Hence ₹ 4,00,000 should be deducted from the Net Profit.

(ii) **Reporting requirement in Auditors' report regarding managerial remuneration [Section 197(16) of the Act]:** The auditor of the company shall, in his report under Section 143, make a statement regarding remuneration as under:

- whether the remuneration paid by the company to its directors is in accordance with the provisions of Section 197;
- whether remuneration paid to any director is in excess of the limit laid down under Section 197; and
- give such other details as may be prescribed.

(iii) **Mode of payment of Managerial Remuneration [Section 197(6) of the Act]:** A director or manager may be paid remuneration in any of the following manner, either–

- by way of a monthly payment, or
- at a specified percentage of the net profits of the company, or
- partly by one way and partly by the other.

(b) (i) As per **Section 160** of the Companies Act, 2013 read with **Rule 13 of the Companies (Appointment and Qualifications of Directors) Rules, 2014**, a person (other than a retiring director) shall be eligible for appointment as a director in a company at any general meeting (whether in AGM or EGM), if he has given a notice in writing under his hand signifying his candidature as a director **at least 14 days before the meeting** at the registered office of the company.

Even, other member of the company who intends to propose such other person as a director can also give a written notice at the registered office of the company signifying his intention to propose the other person as a candidate for directorship **at least 14 days before the meeting**.

The company shall inform its members regarding the candidature of a person for the office of director in accordance with the manner prescribed in Rule 13 of the Companies (Appointment and Qualifications of Directors) Rules, 2014. **At least 7 days before the general meeting**, the company shall inform its members of such candidature–

- (1) **by serving individual notices** through electronic mode to such members who have provided their e-mail addresses for communication purposes and in writing to all other members; and
- (2) **by placing notice** of such candidature on its website, if any.

**When there is no need to serve notices individually:** It shall not be necessary for the company to serve individual notices if it **advertises such candidature**, not less than 7 days before the meeting:

- (a) at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and

- (b) at least once in English language in an English newspaper circulating in that district.

Accordingly, in the given case, the action taken by Tees Limited regarding service of notice is **not valid** as no individual notices were served to the members and neither had it advertised Mr. Sid's candidature in any vernacular newspapers. Placing the notice on the website will not suffice.

- (ii) Yes, there is an alternative available to Tees Limited, if it is decided not to serve notice to its members if the following procedure is followed:

As per proviso to Rule 13 of the Companies (Appointment of Directors) Rules, 2014 it shall not be necessary for the company to serve individual notices if it advertises such candidature, not less than 7 days before the meeting:

- (a) at least in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and circulating in that district
- (b) at least once in English language in an English newspaper circulating in that district.

(c) (i) **Sitting Fees to Directors [Section 197(5) of the Companies Act, 2013]**

A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board subject to the conditions imposed by **Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014** as under:

- The sitting fees shall not exceed one lakh rupees per meeting of the Board or committee thereof. (As per Rule 4)
- The sitting fee payable to the Independent Directors and Women Directors shall not be less than that payable to other directors. (As per Proviso to Rule 4)

Accordingly, increasing the sitting fees of Mr. Z and Mr. L is within the limit prescribed under the said Rule 4. However, maintaining the same sitting fees for the Mr. X and Mrs. Y is not valid in line with the requirement to the stated provision i.e., it shall not be less than that payable to Mr. Z and Mr. L.

Therefore, the decision of the Board of Directors to increase the sitting fees of few directors and maintaining the same sitting fees for remaining directors shall be deemed to be invalid.

- (ii) According to proviso to **Section 149(9) of the Companies Act, 2013**, if a company has no profits or its profits are inadequate, an independent director may receive remuneration, exclusive of any fees payable under sub-section (5) of section 197, in accordance with the provisions of Schedule V.

Further Schedule V specifies that where in any financial year during the currency of

tenure of a managerial person or other director, a company has no profits or its profits are inadequate, it may pay remuneration to the managerial person or other director not exceeding the limits under table (A) and (B).

**Explanation.-** For the purposes of Section I, Section II and Section III, the term "or other director" shall mean a non-executive director or an independent director.

As per the above provision, if in any financial year, a company has no profits or its profits are inadequate, the company shall not pay by way of remuneration any sum (exclusive of sitting fees) to its directors, including any managing or whole-time director or manager or any other non-executive director (includes a woman director) or an independent director, except in accordance with the provisions of Schedule V i.e. ₹ 24 Lakh plus 0.01% of the effective capital in excess of ₹ 250 crore, where the effective capital of the Company is ₹ 250 crore and above.

Accordingly, the maximum remuneration payable per annum to Mr. X an Independent Director and Mrs. Y, a woman Director (who is also non-executive director) individually will be ₹ 24 Lakhs plus 0.01% of the effective capital in excess of ₹ 250 crores, where the effective capital is ₹250 crore and above.

Since in the given case, the effective capital of the Company is ₹ 250 crore, therefore, Mr. X and Mrs. Y can be paid maximum annual remuneration of ₹ 24 Lakh each.

### Question 2

- (a) *Sigma Limited is ordered to be wound-up compulsory by the Tribunal. The Commencement date of winding-up is the 30<sup>th</sup> July 2019. Mr. Rajesh is the company's liquidator. There were few onerous properties that Mr. Rajesh was unaware of and could not be disclaimed by 29<sup>th</sup> August 2019. Meanwhile, Mr. Mahesh applied with Tribunal to claim an interest in disclaim property. Referring to the provisions of the Companies Act, 2013, examine (i) whether Mr. Rajesh can disclaim those properties after 29<sup>th</sup> August 2019 and (ii) what the order can the Tribunal pass after hearing of Mr. Mahesh's Application? (4 Marks)*
- (b) *BKK Ltd. had filed its annual returns and other documents with the Registrar of Companies in Mumbai. Based on the documents, the inspector appointed by the Registrar was conducting an inquiry under Section 206 of the Companies Act, 2013. In the inspection, the inspector has called for books of account for review. Mr. R, a director of the company, refused to produce the books of account for the inspection. Mr. R is also a director in MKK Limited and SKK Limited. Examine the validity of the action of Mr. R and state the penalties for which he shall be liable for contraventions, if any, as per the provisions of the Companies Act, 2013. Further, examine whether he can continue to be the director of MKK Limited and SKK Limited. (4 Marks)*
- (c) *Hill Limited, a Public Limited company in India, obtained an External Commercial Borrowing ('ECB') of USD 50,000 dated 30<sup>th</sup> June 2020, from a foreign lender. On 2<sup>nd</sup> July 2021, based on mutual consent of the parties, ECB is fully converted into equity. The shares were issued to foreign lender at the par value and not at fair value. You are required*

*to provide the correct legal position regarding the valuation of shares and state the reporting requirements by Hill Limited at the time of conversion of ECB into equity in the light of the provisions of the Foreign Exchange Management Act, 1999 and the Rules made thereunder.*

**(3 Marks)**

- (d) *Mr. Vivek, an Indian citizen, was working in Singapore for ten years. He is currently holding assets and bank balances in Singapore and planning to settle down in India. Mr. Vivek seeks your advice as to whether he can hold, own, transfer or invest in a foreign currency, foreign security or any immovable property situated outside India as per the Foreign Exchange Management Act, 1999.*

**(3 Marks)**

**Answer**

- (a) (i) **Disclaim of onerous property by Company Liquidator:** As per Section 333(1) of the Companies Act, 2013, where any part of the property of a company which is being wound up, the Company Liquidator may, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto or done anything in pursuance of the contract, with the leave of the Tribunal and subject to the provisions of this section, by writing signed by him, **at any time within 12 months after the commencement of the winding up** or such extended period as may be allowed by the Tribunal, **disclaim the property.**

Where the Company Liquidator had not become aware of the existence of any such property within 1 month from the commencement of the winding up, the power of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Tribunal.

Therefore, accordingly, Mr. Rajesh, the Company's liquidator, can disclaim those properties after 29<sup>th</sup> August, 2019 at any time within till twelve months after he has become aware thereof.

- (ii) **Order of Tribunal after hearing Mr. Mahesh's application (SECTION 333(7):** In terms of Section 331(6) of the Companies Act, 2013 the Tribunal may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged under this Act in respect of any disclaimed property, and after hearing any such persons as it thinks fit, make an order for the –

- **vesting of the property** in, or
- **the delivery of the property** to any person entitled thereto or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid,
- **or a trustee for him,** and

on such terms as the Tribunal considers just and proper, and on any such vesting

order being made, the property comprised therein shall vest accordingly in the person named therein in that behalf without any conveyance or assignment for the purpose.

(b) In line with **Section 207** of the Companies Act, 2013 w.r.t. the conduct of inspection and inquiry -

(i) Where a Registrar or inspector calls for the books of account and other books and papers under sub section (1) of section 206, it shall be the duty of **every director, officer or other employees** of the company:

(a) **to produce** all such documents; and

(b) **to furnish** with such statements, information or explanations in such form as may require; and

(c) **to render all assistance** in connection with such inspection.

(ii) **In terms of Section 207 (4) (i) of the Companies Act, 2013**, if any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to 1 year and with fine which shall not be less than 25,000 rupees but which may extend to 1 lakh rupees.

**In terms of Section 207 (4)(ii) of the Companies Act, 2013**, if a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.

**Accordingly**, the action of Mr. R, the director of the BKK Ltd. **is in contravention** to the stated provision as regards the production of the books of accounts called for inspection.

Therefore, he shall be liable and punishable with imprisonment extend to 1 year and with fine which shall not be less than 25,000 rupees but which may extend to 1 lakh rupees.

And also on conviction under the Section, Mr. R, on and from the date on which he is so convicted, **be deemed to have vacated his office** from BKK Ltd. and on such vacation of office, shall be disqualified from holding an office in any company, i.e. MKK Ltd. and SKK Ltd. and **so cannot continue** to be the director in these companies.

(c) **Legal position regarding valuation of shares**

For conversion of ECB dues into equity, the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion or any lesser rate can be applied with a mutual agreement with the ECB lender. It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only.

In view of the above, Hill Limited cannot convert ECB into shares at par value. It has to issue shares to the borrower at fair value at the conversion date (i.e. based on applicable pricing guidelines prevailing on the date of conversion).

#### Reporting requirements

Conversion of ECB, including those which are matured but unpaid, into equity is permitted subject to the following conditions:

In case of **full conversion of ECB** into equity, the reporting to the Reserve Bank will be of the entire portion, reported in Form FC-GPR. While reporting to DSIM in Form ECB 2 Return should be done with remarks "ECB fully converted to equity". Subsequent filing of Form ECB 2 Return is not required.

- (d) **A per Section 6 of the FEMA, 1999**, a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

Here, in the given case, Mr. Vivek, an Indian Citizen, who was working in Singapore for ten 10 years, currently planning to settle in India wanted to hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India.

Hence in the given case, Mr. Vivek, earned income through employment or business or vocation when he was outside India. After his settlement in India, he may freely utilize all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of Reserve Bank.

#### NOTE:

The residential status of Mr. Vivek that he is a 'person resident in India' is not given in the question. The word 'Indian citizen' in the question may be read as 'Indian Resident'.

#### Question 3

- (a) *Referring to the provisions of the Companies Act, 2013 and the Companies (Registered Valuer and Valuation Rules), 2017 answer the following:*
- (i) *Mr. Shah was convicted by Court in case of valuation report issued to X Limited for preferential allotment to angel investors. The valuer made no due diligence, and methods adopted while valuing the company intended to defraud its members. What will be the liability of Mr. Shah in the above-mentioned conviction?*
  - (ii) *Mr. Ravi, a Chartered Accountant, was convicted by the Court to civil offence dated 31<sup>st</sup> July, 2012 for 10 years. On 1<sup>st</sup> August, 2021, he wants to register himself as a registered valuer. Can Mr. Ravi register himself as a registered valuer? (4 Marks)*

- (b) (i) *Tokyo Ferro Alloys Limited, a company registered in Japan, started its operations in India by establishing a Marketing Division in Mumbai on 1<sup>st</sup> April, 2021. Recently, the Company decided to issue certain securities in India and therefore, is planning to circulate in India, a prospectus offering for subscription in securities of the Company. Assuming that all the other formalities in this respect have been complied with, advise the person in-charge of Indian operations regarding the other documents required to be annexed to the prospectus in order to registered the same, referring to the relevant provisions of the Companies Act, 2013 and the rules made thereunder,*
- (ii) *Vibav Pte, a company incorporated in Singapore is having a liaison office in Delhi. The Liaison office seeks your advice regarding the documents to be filed with the Registrar along with the financial statement under the Companies Act, 2013 read with the Companies (Registration of Foreign Companies) Rules, 2014. (4 Marks)*
- (c) *The Special Court at Jaipur passed the final order that Mr. Rohit has committed the offences of money laundering. The Special Court ordered to confiscate the property of Mr. Rohit. However, his friend Mr. Mohit claimed that he is the beneficial owner of the property since he has given finance against the property and have encumbrance on it. Based on the above scenario, referring to provisions of the Prevention of Money Laundering Act, 2002, comment whether Mr. Mohit has encumbrance on the property after the final order having been passed by the special court and conclude who has the vested interest in the property? (3 Marks)*
- (d) *A Police officer arrested Mr. Radhe without any warrants for the offence under the Prevention of Money Laundering Act, 2002(PMLA). Is the police officer right in his action? When can the special court take cognizance of any offence under the PMLA, 2002? (3 Marks)*

#### Answer

- (a) (i) Mr. Shah was convicted by Court for valuation report wherein he made no due diligence and conducted valuation with the intention to defraud the members of the company. Hence, he shall be liable to the following:
1. According to **Section 247(4)** of the Companies Act, 2013, if the valuer has contravened the provisions of Section 247 with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to **1 year** and **with fine** which shall not be less than **₹ 1 Lakh** but which may extend to **₹ 5 lakhs. [Section 247(3)]**
  2. Where a valuer has been convicted as given in point above, he shall be liable to—
    - (a) refund the remuneration received by him to the company; and
    - (b) pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

- (ii) According to **Chapter II, Rule 3 of the Companies (Registered Valuer and Valuation Rules), 2017**, a person shall be eligible to be a registered valuer if he has not been convicted by any competent Court for an offence punishable with **imprisonment** for a term exceeding **6 months** or for an offence involving moral turpitude, and a period of **5 years** has not elapsed from the date of expiry of the sentence;

**Provided that** if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of **7 years or more**, he shall not be eligible to be registered.

As per the facts of the question and provision of law, since, Mr. Ravi has been convicted by the Court for 10 years (i.e. more than 7 years) imprisonment, **he is not eligible to be registered as a registered valuer.**

- (b) (i) **According to this Section 389 of the Companies Act, 2013 read with Rule 11 of the Companies (Registration of Foreign Companies) Rules, 2014,**

The Following documents shall be annexed to the prospectus, namely:

- (a) any consent to the issue of the prospectus required from any person as an expert;
- (b) a copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;
- (c) a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years;
- (d) A copy of underwriting agreement; and
- (e) A copy of power of attorney, if prospectus is signed through duly authorized agent of directors.

Accordingly, the person in charge of the Indian operations shall be advised in accordance with the above provisions.

- (ii) According to Rule 4 of the Foreign Companies (Registration of Foreign Companies) Rules, 2014, every foreign company, shall, along with the financial statement required to be filed with the Registrar, attach thereto the following documents; namely: -
1. Statement of related party transaction
  2. Statement of repatriation of profits
  3. Statement of transfer of funds (including dividends, if any).

The above statement shall include such other particulars as are prescribed in the Companies (Registration of Foreign Companies) Rules, 2014.

- (c) According to **Section 9** of the Prevention of Money Laundering Act, 2002, where an order of confiscation has been made under **Section 8(5) or Section 8(7) or Section 58B or Section 60(2A)** 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.

However, where the Special Court or the Adjudicating Authority, as the case may be, after giving an opportunity of being heard to any other person interested in the property attached under this Chapter, or seized or frozen, is of the opinion that any encumbrance on the property or lease-hold interest has been created with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrance or lease-hold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrances or lease-hold interest.

Further, nothing in this section shall operate to discharge any person from any liability in respect of such encumbrances, which may be enforced against such person by a suit for damages.

Thus, **Mr. Mohit does not have encumbrance on the property** after the final order by the Special Court and the Central Government has vested interest in the property has been passed.

- (d) **Section 45** of the Prevention of Money Laundering Act, 2002, provides that the offences under the Act shall be **cognizable and non-bailable**. As per Code of Criminal Procedure, cognizable offence is an offence in which police officer may arrest without any warrants or orders of the court.

As per the facts of the question and provision of law, the police officer can validly arrest Mr. Radhe without any warrants for the offence under the Prevention of Money Laundering Act, 2002, and shall investigate into an offence if specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.

**Cognizance of offence:** The Special Court cannot take cognizance of any offence punishable under section 4 of the Act, unless a complaint in writing is made by:-

- (a) The Director, or
- (b) Any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

#### Question 4

- (a) *The Securities and Exchange Board of India (SEBI), at present, is having a Chairman, 2 members from the Union Ministry, 1 member from the Reserve Bank of India and 5 other members (nominated by the Government of India). Out of the 5 other members, 4 members are whole-time members. Mr. A is one of those 4 whole-time members, who is also a director of PQR Limited. A matter relating to PQR Limited came up for consideration in a*

meeting of the Board (SEBI), in which Mr. A had some indirect pecuniary interest. Mr. A declared the fact of interest at the meeting of the SEBI, but took part in the deliberation and decision of the Board in respect to the matter. Out of the total 9 members (including the chairman), who were all present in the meeting, 5 members including the chairman and Mr. A (both are in strong support of the proposal), voted in favour of the matter and the remaining 4 members voted against the matter. Referring to the provisions of the Securities and Exchange Board of India Act, 1992, advise, how the matter will be decided. Will your answer differ in case Mr. A was only a part-time member and not a whole-time member of the SEBI? **(4 Marks)**

- (b) You are the compliance officer appointed by the Board of Directors of PR Limited, a listed company. Advice, referring to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 about the reporting timelines requirements with Stock Exchanges:
- (i) Change in the Capital structure of the listed company exceeding 2% of the total paid-up share capital-
  - (ii) Proposal for buyback of securities
  - (iii) Change in contents of the listed company website
  - (iv) Record Date or date of closure of transfer book. **(4 Marks)**
- (c) Mr. Rajesh seeks your expert advice for reporting compliance in respect of receiving the following foreign contribution/gift article in India referring to the provision of the Foreign Contribution (Regulation) Act, 2010.
- (i) Foreign Contribution from his brother who stays in Singapore to the extent of INR 12,20,000 in a financial year.
  - (ii) A TV set of USB 1300 gifted to him by his friend who stays in Japan for his personal use. The market value of the said gifted article in India on the date of gift is ₹ 1,00,000. **(4 Marks)**
- (d) In the case of Mr. Lal Vs QPR Limited, the Arbitrator in his Arbitration Award asked Mr. Lal to pay INR 10 crore towards his dues to QPR Limited, who is not a financial creditor. However, the financial creditors of Mr. Lal wants to challenge the arbitration award given by the arbitrator. In the light of the provisions of the Arbitration and Conciliation Act, 1996 answer the following:
- (i) Whether the financial creditors of Mr. Lal will be successful in challenging the Arbitration award?
  - (ii) What are the timelines for challenging the Arbitration award?
  - (iii) Is the automatic stay on the enforcement of Arbitration award, shall be operated, if challenged? **(3 Marks)**

**Answer**

- (a) According to Section 7(3) of the Securities and Exchange Board of India Act, 1992, all questions which come up before any meeting of the Board shall be decided by majority vote of the members present and the Chairman or the presiding member will have a second or casting vote, in the event of equality of votes.

Section 7A, provides that any member-

- who is a director of a company, and
- who as such director has any indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board,

shall, disclose (as soon as possible after relevant circumstances have come to his knowledge) the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Board, and the member shall not take any part in any deliberation or decision of the Board with respect to that matter.

As per facts of the question and provision of law, the matter ought to be decided excluding Mr. A (considering Section 7A).

Thus, the matter should have been decided by the remaining 8 members. Further the chairman has a second or casting vote which he can exercise in case of equality of votes. Hence in the given case if there is equality of votes the Chairman will cast his second vote and the matter will be decided accordingly.

In terms of section 7A, any member who falls within the purview of this section, cannot take part in any deliberation or decision of the Board with respect to that matter. Hence, **Mr. A shall not take part in the proceedings related to PQR Limited, whether he is a part time member or whole time member.**

- (b) (i) According to **Regulation 31(1)** of the SEBI (Listing Obligations and Disclosure Requirements), a listed entity (here, PR Limited) shall submit a statement showing holding of securities and shareholding pattern separately for each class of securities, **within 10 days** of any capital restructuring of the listed entity resulting in a change **exceeding 2% per cent** of the total paid-up share capital.
- (ii) The listed entity shall give prior intimation to stock exchange about the meeting of the board of directors **at least 2 working days in advance**, excluding the date of the intimation and date of the meeting where the proposal of buyback of securities is to be considered.
- (iii) As per **Regulation 46(3)**, the listed entity shall update any change in the content of its website **within 2 working days from the date of such change in content**.
- (iv) Record Date or Date of Closure of Transfer Books [**Regulation 42(2)**]: The listed entity shall give notice in advance of **at least 7 working days** (excluding the date of intimation and the record date) to stock exchange(s) of record date (i.e. before record date) specifying the purpose of the record date.

- (c) (i) As per **Section 4(e)** of the FCRA, 2010 and **Rule 6** of FCRR, 2011, even the persons prohibited under section 3, i.e., persons not permitted to accept foreign contribution, are allowed to accept foreign contribution from their relatives. However, in terms of Rule 6 of FCRR, 2011, any person receiving foreign contribution in excess of one lakh rupees or equivalent thereto in a financial year from any of his relatives shall inform the Central Government regarding the details of the foreign contribution received by him in electronic form in Form FC-1 within thirty days from the date of receipt of such contribution.

Since, the amount of contribution is ₹ 12,20,000, Mr. Rajesh has to inform the Central Government regarding the details of the foreign contribution received by him (from his brother who stays in Singapore) in electronic form in Form FC-1 within thirty days from the date of receipt of such contribution.

- (ii) As per Section 6A of the Foreign Contribution (Regulation) Act, 2010, “foreign contribution” as defined in Section 2(1)(h) means the donation, delivery or transfer made by any foreign source, of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf. (This sum has been specified as Rupees One lakh/-currently).

In the given situation, Mr. Rajesh received the TV set (market value ₹1,00,000) as gift from his friend, who stays in Japan. Since, the value of the TV set is within the prescribed limit, hence, **Mr. Rajesh is permitted to receive the article.**

Therefore, the TV set received by Mr. Rajesh shall not be deemed to be the foreign contribution and no reporting compliance shall be attracted in this case.

- (d) (i) **Challenging of Arbitral award:** According to the Arbitration and Conciliation Act, 1996, only a party to the arbitration agreement can challenge an arbitral award. A person who is not a party to the arbitration cannot raise a challenge against an arbitral award.

Since in the question, financial creditors of Mr. Lal, who wants to challenge the arbitration award, are not party to the arbitration (in the case of Mr. Lal vs. QPR Limited), hence, **cannot raise a challenge against an arbitral award.**

- (ii) **Timeline** – Timeline refers to by when a challenge against arbitral award can be raised. The law notes an initial time period of **three months** from when the award is received by party, with a maximum extension of thirty more days by the Court.

- (iii) **Automatic stay** –According to the Act, **there is no automatic stay** on the enforcement. A party has to specifically request for a stay, and the court at the time of granting stay can impose conditions. [**Section 36(2)&(3)**]

Thus, there **will not be automatic stay** on the enforcement of Arbitration award, if it is challenged.

**Question 5**

- (a) *The shareholders and creditors of Fume Limited, in a meeting convened for approval of a scheme of reconstruction of the company, passed the necessary resolutions. The Tribunal makes an order sanctioning a scheme of reconstruction of the company. After a few days the Tribunal decided to modify the scheme of reconstruction of the company. After modifications of the scheme based on the order of the Tribunal, the company could not implement the scheme satisfactorily and the Tribunal decided to go for winding-up of the company. The directors of the company objected to the above acts of the Tribunal. Comment with reference to the provisions of the Companies Act, 2013, whether the objection raised by the directors is right on the decision of the Tribunal modifying the scheme and winding-up of the company.* **(4 Marks)**

- (b) *TIM Limited is undergoing Corporate Insolvency Resolution Process (CIRP) under the jurisdiction of National company Law Tribunal (NCLT), Delhi. During the CIRP process, the Resolution Professional needs the assistance of the District Collector due to non-cooperation from the directors of TIM Limited to take control of all the property, books of account or other documents and has approached NCLT, Delhi, regarding this matter. In the meanwhile, TIM Limited applied with High Court objecting the assistance from the District Collector.*

*Referring to the provisions of the Companies Act, 2013, examine whether the District Collector can deny the request of NCLT, Delhi and further comment whether the High Court has the power to question the act of the District Collector.* **(4 Marks)**

- (c) *Mr. Kush, an operational creditor, filed an application with the Adjudicating Authority (NCLT, Delhi) to initiate the Corporate Insolvency Resolution Process (CIRP) against M Limited, and the application was accepted. On 10<sup>th</sup> July 2021, NCLT Delhi appointed Mr. Ajay to act as an Interim Resolution Professional of M Limited. After the appointment, Mr. Ajay issued the public announcement on 12<sup>th</sup> July 2021, of the initiation of CIRP process and called for the submission of claims. On 20<sup>th</sup> July 2021, the Committee of Creditors was constituted by Mr. Ajay. Thereafter, Mr. Kush wants to withdraw his application under Section 12A of the Insolvency and Bankruptcy Code, 2016. However, Mr. Ajay denied filing a withdrawal application stating that the Committee of Creditors has already been constituted.*

*Referring to the provisions of the Insolvency and Bankruptcy Code, 2016, answer the following with reference to the above facts.*

- (i) *Is Mr. Ajay right to deny Mr. Kush to file a withdrawal application with NCLT, Delhi? Explain in detail.*
- (ii) *Would your answer differ in case the Committee of Creditors is not constituted?*
- (iii) *Who is the authority to pass the final order of withdrawal application?* **(6 Marks)**

**Answer**

- (a) According to **Section 231** of the Companies Act, 2013,
- (1) **Power of tribunal to enforce the order:** Where the Tribunal makes an order under Section 230 sanctioning a compromise or an arrangement in respect of a company, it—
    - (a) shall have power to supervise the implementation of the compromise or arrangement; and
    - (b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper implementation of the compromise or arrangement.
  - (2) **Winding up order by tribunal:** If the Tribunal is satisfied that the compromise or arrangement sanctioned under section 230 cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding up the company and such an order shall be deemed to be an order made under Section 273.
 

As per the facts of the question and provisions of law, the Tribunal has the right to modify, monitor the implementation and order for winding- up of company in case the scheme is not implemented satisfactorily.

Thus, the objection raised by the directors on the decision of the Tribunal modifying the scheme and winding- up of the company, **is not correct.**
- (b) **Power to seek assistance of Chief Metropolitan Magistrate, etc., (Section 429 of the Companies Act, 2013).**
- (1) The Tribunal may, in any proceedings for winding up of a company under this Act or in any proceedings under the Insolvency and Bankruptcy Code, 2016, in order to take into custody or under its control all property, books of account or other documents, request, in writing, the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector within whose jurisdiction any such property, books of account or other documents of such company under this Act or of corporate persons under the said Code, are situated or found, to take possession thereof, and the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector, as the case may be, shall, on such request being made to him, —
    - (a) take possession of such property, books of account or other documents; and
    - (b) cause the same to be entrusted to the Tribunal or other persons authorised by it.
  - (2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector may

take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.

- (3) No act of the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector done in pursuance of this section shall be called in question in any court or before any authority on any ground whatsoever.

Referring to the above, the District Collector cannot deny the request of NCLT, Delhi and the High Court has no power to question the act of the District Collector.

- (c) (i) According to **Section 12A of the Insolvency and Bankruptcy Code, 2016**, read with Regulation 30A of the IBBI (Insolvency Resolution process for Corporate persons) Regulations, 2016, the Adjudicating Authority may allow the withdrawal of application admitted under Section 7 or Section 9 or Section 10, on an application made by the applicant with the approval of **ninety per cent voting share of the Committee of Creditors**, in such manner as may be specified.

Thus, the application can be withdrawn if approval of ninety per cent. voting share of the Committee of Creditors is obtained.

Hence, Mr. Ajay cannot deny Mr. Kush for filing of withdrawal application only on the basis that committee of creditors has been constituted.

- (ii) **Before Constitution of Committee of Creditors**

The applicant shall make an application for withdrawal to the Adjudicating Authority through the interim resolution professional. The resolution professional shall submit such withdrawal application to the Adjudicating Authority on behalf of the applicant, within three days of receipt of request.

Further, the final approval of such withdrawal shall be by way of an order passed by the Adjudicating Authority.

Thus, if Committee of Creditors is not constituted Mr. Kush shall apply to the Adjudicating Authority (NCLT, Delhi) through the Interim Resolution Professional, for withdrawal.

Hence, the answer will not differ and Mr. Ajay cannot deny Mr. Kush to file a withdrawal application with NCLT, Delhi.

- (iii) The final approval of such withdrawal shall be by way of an order passed by the Adjudicating Authority i.e. NCLT, Delhi.

#### Question 6

- (a) *The following balances are extracted from the audited financial statement of BLM Private Limited for the financial year ending the 31<sup>st</sup> March, 2021:*

	₹ in crore
<i>Paid-up share capital</i>	20
<i>Balance in Profit and Loss Account</i>	6

Borrowing from banks and financial institutions	49
Current Liabilities and Provisions	8

No other body corporate has invested any money in the share capital of BLM Private Limited. The Company has no default in repayment of the above borrowings subsisting at the proposed time of making the above transaction. The Company has also not committed a default in filing its financial statements or Annual Return with the Registrar.

The Company proposes to provide a loan of ₹50 lakh to its director Mr. B, who is in dire need of funds for financing his daughter's education. Another Director Mr. L contended that the loan should not be provided by the Company to Mr. B due to the restrictions imposed by the provisions of the Companies Act, 2013. Mr. B, on the other hand, is of the opinion that the Company being a Private Company, the restrictions are not applicable to the Company. Analysing and referring to the relevant provisions of the Companies Act, 2013 and the relevant notifications issued by the MCA, examine the validity of the proposal of BLM Private Limited to provide the loan to its Director, Mr. B.

Mrs. Reena, one of the directors in MAP Limited (Listed company) got evidence against Mrs. Meena, Chief Financial officer (CFO), that she is indulged in the revenue leakage activities in the company. Mrs. Reena is scared to report the above matter since Mrs. Meena is a very close relative of other Directors, and Mrs. Reena won't get adequate safeguards from the company. Since you are an expert in the secretarial matter, advice Mrs. Reena, referring to provisions of the Companies Act, 2013, regarding the vigil mechanism, on the following points.

- (i) Can Mrs. Reena (Director) use the safeguards mechanism option available in the company regarding the above reporting?
  - (ii) Who is the reporting authority to whom victims can access to report the above matter?
  - (iii) What are the disclosure requirements of details of Vigil Mechanism? **(4 Marks)**
- (b) Referring to the recent Amendment in Rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014 vide notification dated G.S.R. 774 (E) dated 18<sup>th</sup> December, 2019, advice the directors in the following situation:
- (i) Mr. Anup intends to get an appointment as an independent director in a company and hence applied in the data bank. However, he has not cleared the online proficiency self-assessment test from the last one year from the date of enrolment in the data bank. Whether Mr. Anup is eligible to get appointed as an independent Director?
  - (ii) Mrs. Vandana intends to get an appointment as an independent Director in a company and hence applied in the data bank. She has not cleared the online proficiency self-assessment test yet. She has served as an independent director in a listed company for more than four years from the date of inclusion of her name in the data bank. Whether Mrs. Vandana is eligible to get appointed as an independent Director?

**(4 Marks)**

- (c) *Mr. Ranjit, an officer, received an information in the morning of the 1<sup>st</sup> December, 2021 that some assets involved in money laundering have been stored in a certain premises and they are likely to be shifted to a place out of the State by the evening of the same day. The matter being serious and needs urgent action, Mr. Ranjit, in exercise of his powers, under the Prevention of Money Laundering Act, 2002, entered immediately in that premises and arrested the In-charge of the premises without reasons recorded in writing. You are being an expert, examine, whether Mr. Ranjit shall be liable for any punishment for such action under the provisions of the Prevention of Money Laundering Act, 2002. (3 Marks)*
- (d) *ABC Limited is undergoing voluntary liquidation process under Section 59 of the Insolvency and Bankruptcy Code, 2016(IBC, 2016). Mrs. Rita was appointed as liquidator by ABC Limited after complying with the provisions of the IBC, 2016. During the process, Mrs. Rita got occupied with other professional assignments, and hence ABC Limited decided to replace the liquidator with other insolvency professional. Referring to the provisions of IBC, 2016, answer the following:*
- (i) *Whether ABC Limited can replace Mrs. Rita with another liquidator?*
- (ii) *What will be the reporting requirements to be fulfilled by the newly appointed liquidator immediately after appointment under the IBC, 2016?*
- (iii) *What are the reporting requirements under the IBC, 2016, after receiving the order of dissolution from the Adjudicating Authority? (3 Marks)*

#### Answer

- (a) **Section 185** of the Companies Act, 2013 contains provisions which impose restrictions on the loans, etc. being given to directors, etc.

Accordingly, a company is not permitted directly or indirectly to advance any loan to

- (a) any director of the company or of a company which is its holding company or any partner or relative of any director or
- (b) any firm in which director or relative is a partner.

As per the **Notification No. G.S.R 464(E), dated 5th June 2015 as amended by Notification No. G.S.R 583(E), dated 13th June 2017**, Section 185 shall not apply to a private company which means that loan to directors may be provided subject to following conditions:

- (a) In whose share capital no other body corporate has invested any money;
- (b) If the borrowings of such a company from banks or financial institutions or anybody-corporate is less than twice of its paid-up share capital or fifty crore rupees, whichever is lower, and
- (c) Such company has no default in repayment of such borrowings subsisting at the time of making transactions under this section.

The above exemption is applicable to a private company if it has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar.

Here in the given case, requirement given in clause(a), and no commission of default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar, are met with, However, as per clause (b), borrowings of BLM Private Limited from banks or financial institutions is ₹ 49 crore which is more than twice of its paid-up share capital (i.e. ₹20 core X 2 = ₹40 crore).

Hence, the contention of Mr. L that loan shall not be provided to Mr. B is correct. Accordingly, as the exemption is not applicable to BLM Private Limited, **the proposal of providing a loan of ₹ 50 Lakh to its director Mr. B, by BLM Private Limited is invalid.**

OR

The provisions related to vigil mechanism is contained in Section 177 (9) and (10) of the Companies Act, 2013 (the Act) read with Rule 7 of the Companies (Meetings of Board and its Powers) Rules, 2014.

- (i) According to Section 177(9) of the Act, vigil mechanism shall be formed by the listed companies for the directors and employees who may report genuine concerns in the manner prescribed in Rule 7 for adequate safeguards against their victimization by use of such mechanism and make provision for direct access to the Chairperson of the Audit Committee in appropriate or exceptional cases.

Accordingly, the answer is - Yes, Mrs. Reena Director can opt to use safeguard mechanism available to her under the Vigil Mechanism Policy of MAP Limited against Mrs. Meena, CFO who indulged in the revenue leakage activities in the company and she may directly report the matter to the Chairman of the Audit Committee and in case the Chairman of the Audit Committee has interest (being a relative of CFO) in the matter, Mrs. Reena may directly report the matter to the Chairman of the Board.

- (ii) Reporting Authority shall be the Chairperson of the Audit Committee or the director nominated to play the role of Audit Committee, as the case may be, in exceptional cases.
- (iii) It is imperative for the company to disclose the details of the establishment of vigil mechanism on the website of the company and in Board's report.
- (b) (i) As per **Sub-Rule (4) of Rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014**, every individual whose name is so included in the data bank under sub-rule (1) shall pass an online proficiency self-assessment test conducted by the institute within a period of **two years** from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the institute.

Yes, here, Mr. Anup **is eligible to get appointed** as an independent director, as per the availability of the time period for passing of an online proficiency self-assessment test. In other words, Mr. Anup is eligible to get an appointment as an independent director since one year only has lapsed from the date of inclusion of his name in the data bank as against two years time period.

- (ii) As per the proviso to Sub-Rule (4) of Rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014, an individual shall not be required to pass the online proficiency self-assessment test when the individual has served for a total period of not less than three years as on the date of inclusion of his name in the data bank, as a director or key managerial personnel, as on the date of inclusion of his name in the databank, in a listed public company, amongst other companies.

Hence, yes, Mrs. Vandana is eligible to get appointment as an Independent Director, in line with the fulfilment of said compliance.

**[Note: Given Notification G.S.R. 774 (E) dated 18<sup>th</sup> December, 2019 in the question is to be read as 18<sup>th</sup> December, 2020]**

- (c) **Punishment for Vexatious Search:** As per the provisions of Section 62 of the Prevention of Money Laundering Act, 2002, any Authority or officer exercising powers under this Act or any Rules made thereunder, who, without reasons recorded in writing :-

- (a) Searches or causes to be searched any building or place; or  
(b) Detains or searches or arrests any person,

Shall for every such offence be liable on conviction for imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both.

Mr. Ranjit has acted in contravention of the said provisions and hence he may be liable on conviction for imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both.

- (d) As per Section 59 of the Insolvency and Bankruptcy Code, 2016, following shall be answers:

- (i) Yes, ABC Limited can replace Mrs. Rita with another liquidator **by passing a special resolution**.
- (ii) Newly appointed insolvency professional shall, **within three days of his appointment** as liquidator intimate the IBBI about such appointment.
- (iii) The Adjudicating Authority shall on an application filed by the liquidator, pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly. Such a copy of an **order of dissolution shall within fourteen days from the date of such order**, be forwarded to the authority with which the corporate person is registered.