SELF-PACED ONLINE MODULE

SET – A

CORPORATE AND ECONOMIC LAWS

[RELEVANT FOR MAY, 2025 EXAMINATION AND ONWARDS]

BOOKLET ON CASE SCENARIOS

BOARD OF STUDIES

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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PREFACE

In the ever-evolving corporate landscape, understanding the regulatory framework that governs businesses is essential for professionals, academics, and practitioners alike. Corporate laws form the bedrock upon which the corporate sector operates, ensuring transparency, accountability, and fairness in the pursuit of economic growth. This Case Scenario Booklet, Set A: Corporate and Economic Law, serves as a comprehensive resource for those seeking to delve deeper into the practical application of corporate legislation.

The booklet covers a wide range of laws that are pivotal to the functioning of modern corporations. These include:

The Companies Act, 2013 covering provisions 149 onwards along with the significant rules therein, The SEBI Act, 1992 read with the SEBI(LODR)Regulations 2015, the SEBI(ICDR)Regulations 2018, the SEBI(SAST)Regulations, 2011 and the SEBI(PIT)Regulations, 2015, The FEMA, 1999, The FCRA, 2010 & The IBC, 2016.

This booklet is designed to bridge the gap between theoretical understanding and practical application. The MCQs are crafted to simulate real-world scenarios, allowing our students to develop analytical skills and ability to apply the same. Some questions present “multiple correct answers”, encouraging students to analyse scenarios comprehensively and identify all relevant options. This approach mirrors the multifaceted integration of the legal provisions encountered in legal context. Additionally, questions using terms such as "most likely" or "most appropriate" require students to prioritise and contextualise their reasoning based on the scenario provided. To further enhance critical thinking, "NOT" MCQs are included, challenging students to identify exceptions and sharpen their attention to detail. These questions test the ability to distinguish between similar concepts and pinpoint deviations from established criteria. This comprehensive approach ensures that the assessment not only evaluates theoretical knowledge but also emphasizes the application of concepts in practical situations.

To enhance learning, the booklet includes multiple-choice questions (MCQs) supported by detailed reasonings. These MCQs not only test conceptual clarity but also provide insights into the reasoning behind the correct answers, making them an excellent tool for revision and self-assessment.

This booklet will serve as a valuable companion in your journey to mastering corporate and economic laws and serves as a valuable resource for fostering an engaging and practical learning experience, equipping students to excel in their professional roles.

Best Wishes for Happy Learning!

CASE SCENARIO 1

WRPC Limited (WRPC) is a Mumbai-based company in which the Central Government holds 35% of the share capital while the Governments of Maharashtra and Karnataka hold 15% and 10% of the share capital, respectively. WRPC manufactures corrosion resistant overhead transmission and distribution products.

The internal auditors of the company had raised serious concerns in respect of certain internal control irregularities. During the year 2018-19, WRPC also defaulted on complying with the statutory requirements pertaining to the filing of its financial statements under Section 137 and its annual return under Section 92. Consequently, the company received a notice from the Registrar of Companies, Mumbai (Maharashtra) to rectify the default.

The WPRC was also served Show Cause Notices (SCN) by the Revenue Officials on certain GST and Income-tax related issues.

The Board of Directors of WRPC consisted of 14 directors. Due to the increased volume of business, alleged internal control irregularities, and lack of professional skills needed for statutory compliance, the company felt the necessity of including some senior professionals on its board. Accordingly, it was thought of inducting Rajan, a chartered accountant, and Sanjay, a company secretary, as the executive directors.

Circuit Board Private Limited (CBPL), a Delhi-based company, and PISCO Electronics Limited (PISCO Electronics), a Pune-based company, are the two major component suppliers to WRPC. CBPL is a family-managed business with fifty-seven shareholders, and PISCO Electronics is yet to be listed, but in near future it intends to get listed.

As per the audited financial statements, the paid-up capital and turnover of CBPL and PISCO Electronics were as under:

	Paid-up Capital (₹ in Crore)		Turnover (₹ in Crore)	
	(as on 31.03.2019)	(as on 31.03.2020)	(F.Y. 2018-19)	(F.Y. 2019-20)
CBPL	100	100	315	350
PISCO Electronics	50	50	275	305

CBPL had four directors as of March 31, 2019, and five as of March 31, 2020. In the case of PISCO Electronics, there were 7 directors as of March 31, 2019 and 6 as of March 31, 2020. However, none of the companies had appointed any women directors during these two years.

Ajay Prakash is the Chairman and Managing Director (CMD) of CBPL. Considering his age and other health-related issues, he wants to retire from the company. Accordingly, he discussed the matter in a board meeting and also proposed to explore the possibilities of appointing his eldest son, Pranav Prakash (MBA from FMS, University of Delhi), as the managing director of the company for a period of 10 years from January 1, 2021 onwards.

The board meetings of PISCO Electronics were convened five times during the calendar year 2019. No board meeting was held in January or February 2020, but thereafter, six board meetings were held during the remaining part of the calendar year 2020.

Vasuki is one of the executive directors appointed by PISCO Electronics, willing to avail loan form the company (PISCO), Board is considering his request for loan.

MULTIPLE CHOICE QUESTIONS

1. From the case scenario, it is observed that WRPC had 14 directors but due to increased volume of business, alleged internal control irregularities and professional skills, etc., required for the statutory compliances, the company intended to induct Rajan, a chartered accountant and Sanjay, a company secretary, as the executive directors. Which of the following options is best suited to such a situation:

(a) WRPC could appoint either Rajan or Sanjay as executive director because in no case the statutory limit of 15 directors was to be crossed.

(b) WRPC increased the total number of directors to 16 by passing an ordinary resolution in a general meeting of shareholders with a view to appoint both Rajan and Sanjay.

(c) WRPC increased the total number of directors to 16 by passing a special resolution in a general meeting of shareholders with a view to appoint both Rajan and Sanjay.

(d) Being a Government company, since WRPC is exempt from passing the special resolution in a general meeting of shareholders for increasing the number of directors to 16, it increased the total number of directors to 16 from the existing 14 without passing a special resolution and appointed both Rajan and Sanjay.

2. From the case scenario, it is noticed that none of the companies had appointed any woman Director though CBPL had 4 Directors as on 31.03.2019 and 5 as on 31.03.2020 and PISCO Electronics had 7 Directors as on 31.03.2019 and 6 as on 31.03.2020. Which of the following option is applicable in the given situation:

(a) CBPL should appoint at least one woman Director based on audited financial statements as on 31.03.2019.

(b) PISCO Electronics should appoint at least one woman Director based on audited financial statements as on 31.03.2019.

(c) PISCO Electronics should appoint at least one woman Director based on audited financial statements as on 31.03.2020.

(d) CBPL should appoint at least one woman Director based on audited financial statements as on 31.03.2020.

3. Which of the following Whole-time Key-Managerial Personnel (KMP), both CBPL and PISCO Electronics are mandatorily required to appoint:

(a) A Whole-time Chief Financial Officer.

(b) A Whole-time Company Secretary.

(c) Both the Whole-time Chief Financial Officer and Whole-time Company Secretary.

(d) All the Whole-time Key Managerial Personnel as prescribed by the Companies Act, 2013.

4. In view of the request for loan from Vasuki, one of the Executive Directors of PISCO Electronics. Which of the following options is applicable in such a situation:

(a) The company is permitted to advance the loan to Vasuki in a duly convened Board Meeting where all the Directors present except Vasuki must consent to the proposal.

(b) The company is permitted to advance the loan to Vasuki in a duly convened Board Meeting where majority of the Directors present except Vasuki must consent to the proposal.

(c) The company is permitted to advance the loan to Vasuki in a duly convened General Meeting by passing a Special Resolution.

(d) The company shall not advance any loan to Vasuki, because Vasuki is one of the Executive Directors of PISCO Electronic.

5. Ajay Prakash, the Chairman and Managing Director of CBPL, desiring to retire due to his old age and health-related issues, wants to appoint his eldest son Pranav Prakash as the Managing Director of CBPL for a period of 10 years from 1.1.2021 onwards. From the following options, choose the correct one:

(a) Pranav Prakash can be appointed as the Managing Director for a term not exceeding 5 years at a time.

(b) Pranav Prakash can be appointed as the Managing Director for maximum upto 10 years without any restrictions.

(c) Pranav Prakash can be appointed as the Managing Director for maximum upto 15 years without any restrictions.

(d) Pranav Prakash can be appointed as the Managing Director for any period without any restrictions since CBPL is a private company.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (c)** WRPC increased the total number of directors to 16 by passing a special resolution in a general meeting of shareholders with a view to appoint both Rajan and Sanjay.

Reason

First Proviso to section 149(1)

A company may appoint more than fifteen directors after passing a special resolution.

Here it worth to note that First Proviso to section 149(1) shall not apply to Government companies vide notification no. G.S.R. 463 (E) dated 5th June, 2015

But notification no. G.S.R. 582 (E) dated 13th June, 2017 provides that the exceptions mentioned above (provided through notification no. G.S.R. 463 (E) dated 5th June, 2015) shall be applicable only to those Government Companies which has not committed a default in filing its financial statements under section 137 of the said act or annual return under section 92 of the said act with the registrar. Since WRPC defaulted hence not eligible to take benefit of notification no. G.S.R. 463 (E) dated 5th June, 2015; therefore first proviso to section 149(1) is applicable.

2. **Option (c)** PISCO Electronics should appoint at least one woman Director based on audited financial statements as on 31.03.2020.

Reason

Second Proviso to section 149(1) read with rule 3 of the Companies (Appointment and Qualification of Directors) rules, 2014.

Every listed company and every other public company having paid–up share capital of one hundred crore rupees or more; or turnover of three hundred crore rupees or more need to appoint at least one women director.

The turnover of PISCO Electronics cross 300 during 2019-2020 as per audited financial statements, therefore required to appoint at least one woman Director.

Since CBPL is private company, hence not required to appoint women director.

3. **Option (b)** A Whole-time Company Secretary.

Reason

Section 203(1) read with rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

Every listed company and every other public company having a paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel (managing director, or Chief Executive Officer or manager and in their absence, a whole-time director; Company Secretary; and Chief Financial Officer)

Further rule 8A of said rules prescribe that every private company which has a paid up share capital of ten crore rupees or more shall have a whole-time company secretary. Hence CBPL also required to appoint a whole-time company secretary.

Therefore it is only whole-time company secretary which both the companies (CBPL and PISCO Electronics) required to appoint.

4. **Option (c)** The company is permitted to alter the terms and conditions relating to outstanding loan of Vasuki in a duly convened General Meeting by passing a Special Resolution.

Reason

Section 185(2)

Empowers a company to advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that a special resolution is passed by the company in general meeting.

Proviso to clause a to section 185(2) further provides that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed

to be utilised by the recipient of the loan or guarantee or security and any other relevant fact.

5. **Option (a)** Pranav Prakash can be appointed as the Managing Director for a term not exceeding 5 years at a time.

Reason

Section 196 (2)

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.

Right to reappointment is there, but proviso to section 196(2) provides that no re-appointment shall be made earlier than one year before the expiry of his term.

Here it is worth noting that section 196(2) is not applicable to Government companies, vide notification no. G.S.R. 463 (E) dated 5th June, 2015.

CASE SCENARIO 2

Ullal Pharma Limited (UPL) is an unlisted company, with its Registered Office at Baidebettu, District Udupi, Karnataka. In addition to being the market leader in semi-synthetic penicillin, UPL has a presence in key therapeutic segments such as neurosciences, cardiovascular, anti-retroviral, anti-diabetics, gastroenterology and anti-biotic, among others. UPL also has three group companies.

From time to time, UPL had duly filed its annual accounts, annual returns and other documents, if required to be filed, with the jurisdictional Registrar of Companies (ROC).

The ROC had the whistle-blower information that the business of UPL is being carried on for fraudulent and unlawful purposes. There was also an allegation that some illegal secret drug dealings were being carried out by the UPL in the disguise of pharma business. Year-wise comparison of data extracted from annual accounts and annual returns filed by UPL indicated the possibilities of huge diversion of funds to the related parties and related entities. Questions were also raised within the company on the correctness of the accounts maintained by UPL.

Consequently, UPL received a written notice from the ROC on 10.06.2020 asking for the following information/explanations/papers. The notice required the UPL to produce the following documents before the Registrar in his office at Bengaluru within 30 days from the date of receiving the notice.

(a) Hard and soft copies of 'Books of Accounts' from the years 2017-18 onwards up to date.

(b) Ledger abstracts of all Inter-Company Accounts.

(c) All the documents relating to sales.

(d) All the 'Bank Statements' and 'Cash Books'.

The Registrar duly followed all other processes to call for the information, inspection of books and papers and conduct enquiries relating to UPL as specified under the Companies Act 2013.

It is to be noted that Rajeev, Director (Finance) had the exclusive responsibilities to supervise both 'sales accounts' and 'inter-company transactions'. The

information which Rajeev shared with ROC could not, to his dismay, convince the Registrar. He was also found to be evasive and willfully disobeying the directions given by the ROC.

The ROC also issued separate notices to Venkatesh, ex-Whole-time Director and Lokesh, ex-Chief Financial Officer (CFO) of the company. Both Venkatesh and Lokesh were in the employment of the UPL only up to 15.12.2018. Both of them through their separate representatives informed the ROC that the notice served on them was not valid since they are no longer associated with the company and while in service they had acted only in their capacity as the officers of the company. It was argued by both of them that they were independent of any obligations relating to the company and hence, not bound to furnish any information/explanations to the ROC.

The accounts of UPL were outsourced and maintained by a Chartered Accountant firm M/s Ajay Jyotsana & Co. The accounts were maintained in Tally system by three staff members under the supervision of Ajay. The 'Reports' were periodically submitted to Rajeev in the required formats. Rajeev, in turn, submitted the requisite information to the Board of Directors of UPL.

Based on the information in his possession, the Registrar had reasonable ground to believe that the books and papers relating to UPL were likely to be either destroyed, mutilated, altered, falsified or secreted.

Accordingly, the ROC decided to enter into the premises of M/s Ajay Jyotsana & Co. with the required assistance and seized the books and papers which he considered necessary for inspection. However, before seizure, ROC allowed the CA firm to take copies of such books and papers.

The Registrar retained all the required books and papers for a period of 110 days from the date of seizure and ensured the necessary inspection. Before returning the said books and papers, ROC took copies of them and placed necessary identification marks on some of the papers.

After the inspection of the books of accounts and other books and papers of UPL and after the requisite inquiries, ROC submitted a report in writing to the Central Government along with the necessary documents and recommendations.

Consequently, the necessary actions were taken. Rajeev, Director (Finance) was convicted and punished with imprisonment for a period of six months and also with fine of ₹ 70,000 under Section 207 (4) (i). It may be noted that Rajeev was also holding Directorships in two more companies as on that date.

MULTIPLE CHOICE QUESTIONS

1 From the case scenario, it is noticed that the concerned Registrar of Companies (ROC) issued separate notices to Venkatesh, ex-Whole-Time Director and Lokesh, ex-Chief Financial Officer (CFO) of UPL. Both Venkatesh and Lokesh through their separate representatives presented that they were in employment of UPL only up to 15.12.2018 and therefore, the notice issued to them was not valid since they are no longer associated with UPL and while in service they had acted only in their capacity as the officers of the Company. It was argued by both of them that they were independent of any obligations relating to the Company and hence, not bound to furnish any information/explanation to the ROC.

(a) Contention of both Venkatesh and Lokesh is valid since both of them are no longer associated with UPL.

(b) Venkatesh and Lokesh can only voluntarily furnish information/explanations to the ROC, but they are under no legal obligation to do so.

(c) Venkatesh and Lokesh are under legal obligation to furnish to the best of their knowledge the required information or explanation as asked by the ROC through respective notices.

(d) Venkatesh and Lokesh being the past employees of UPL shall furnish information or explanation only through UPL after obtaining written consent of the Company to respond to the Registrar and not directly to the ROC.

2. According to the case scenario, Rajeev, the Director (Finance) of UPL, was convicted and punished with imprisonment for a period of six months and with fine of ₹ 70,000 under 207(4) (i). It is further informed that Rajeev was also holding Directorships in two more other companies as on that date.

From the following options, choose the correct one which suitably applies to the given situation:

(a) Rajeev can continue to hold the office of Director (Finance) of UPL, since he has acted as per the instructions of the company and he can also continue Directorships in other two companies of which he is currently Director.

(b) Rajeev shall be deemed to have vacated the office of Director (Finance) of UPL from the date he is so convicted, but can continue as a Director in the other two companies.

(c) Rajeev can continue to hold the office of Director (Finance) of UPL, but shall be disqualified from holding Directorship in any other company.

(d) Rajeev shall be deemed to have vacated the office of Directorship of UPL from the date he is so convicted and on such vacation of office, shall also be disqualified from holding an office in any other company.

3. From the case scenario, it is revealed that the Registrar, on the basis of information in his possession, had reasonable ground to believe that the books and papers relating to UPL were likely to be either destroyed, mutilated, altered, falsified or secreted. Accordingly, ROC entered the premises of M/s Ajay Jyotsana & Co. with the required assistance and seized such books and papers as he considered necessary. Which of the following options best suits the given situation:

(a) The Registrar had to obtain an order from the Central Government before seizure of the books and papers.

(b) The Registrar had to obtain an order from the Special Court before seizure of the books and papers.

(c) The Registrar can *suo motu* proceeded with search and seizure of the books and papers.

(d) The Registrar had to obtain an order of a Civil Court before seizure of the books and papers.

4. From the case scenario, it is observed that the Registrar seized the books and papers of UPL from the premises of M/s Ajay Jyotsana & Co. and retained them for a period of 110 days from the date of seizure and returned them thereafter. What is the maximum time limit within which the Registrar is required to return the seized books and papers?

   (a) The Registrar is required to return the seized books and papers maximum within 120 days from the date of seizure.

   (b) The Registrar is required to return the seized books and papers maximum within 150 days from the date of seizure.

   (c) The Registrar is required to return the seized books and papers maximum within 180 days from the date of seizure.

   (d) The Registrar is required to return the seized books and papers maximum within 270 days from the date of seizure.

5. The above case scenario states that the Registrar, after the inspection of the books of accounts and other books and papers of UPL and after the requisite inquiries, submitted a report in writing to the Central Government along with the necessary documents and recommendations. What action is contemplated under Section 210 of the Companies Act, 2013 that the Central Government may initiate in such a situation?

   (a) On receipt of a report of the Registrar, the Central Government may order an investigation into the affairs of the company by the Serious Fraud Investigation Office (SFIO).

   (b) On receipt of a report of the Registrar, the Central Government may order an investigation into the affairs of the company by the Inspectors appointed by it.

   (c) On receipt of a report of the Registrar, the Central Government may order an investigation into the affairs of the Company by a Criminal Court.

   (d) On receipt of a report of the Registrar, the Central Government may order an investigation into the affairs of the Company by the jurisdictional Tribunal.

6. The case scenario states that the Registrar retained all the required accounts and papers for a period of 110 days from the date of seizure, ensured the necessary inspection and returned them to the UPL. After so return, if the Registrar again calls for the books and papers, then for maximum how many days he can retain them.

   (a) The Registrar cannot call for the books and papers once again since he has already returned them after seizure.

   (b) If the Registrar again calls for the books and papers, then he can retain them maximum for a period of 120 days.

   (c) If the Registrar again calls for the books and papers, then he can retain them maximum for a period of 180 days.

   (d) If the Registrar again calls for the books and papers, then he can retain them maximum for a period of 210 days.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (c)** Venkatesh and Lokesh are under legal obligation to furnish to the best of their knowledge the required information or explanation as asked by the ROC through respective notices.

Reason

Proviso to Section 206(2)

Provides that where such information or explanation relates to any past period, the officers who had been in the employment of the company for such period, if so called upon by the Registrar through a notice served on them in writing, shall also furnish such information or explanation to the best of their knowledge.

2. **Option (d)** Rajeev shall be deemed to have vacated the office of Directorship of UPL from the date he is so convicted and on such vacation of office, shall also be disqualified from holding an office in any other company.

Reason

Section 207(4)(ii)

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.

Here it is also worth noting that section 167(1) (f) also provides that the office of a director shall become vacant in case he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months. Here the punishment is of 6 months.

3. **Option (b)** The Registrar had obtained an order from the Special Court before seizure of the books and papers.

Reason

Section 209 (1)

Where, upon information in his possession or otherwise, the Registrar or inspector has reasonable ground to believe that the books and papers of a company, or relating to the key managerial personnel or any director or auditor or company secretary in practice if the company has not appointed a Company Secretary, are likely to be destroyed, mutilated, altered, falsified or secreted, he may, after obtaining an order from the Special Court for the seizure of such books and papers,

Enter, with such assistance as may be required, and search, the place or places where such books or papers are kept; and

Seize such books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books or papers at its cost.

4. **Option (c)** The Registrar is required to return the seized books and papers maximum within 180 days from the date of seizure.

Reason

Section 209 (2)

The Registrar or inspector required to return the books and papers seized under subsection (1), as soon as may be, and in any case not later than one hundred and eightieth day after such seizure, to the company from whose custody or power such books or papers were seized.

It is worth noting that the books and papers may be called for by the Registrar or inspector for a further period of one hundred and eighty days by an order in writing if they are needed again.

5. **Option (b)** On receipt of a report of the Registrar, the Central Government may order an investigation into the affairs of the company by the Inspectors appointed by it.

Reason

Section 210 (1)

Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company, on the receipt of a report of the Registrar or inspector under section 208; it may order an investigation into the affairs of the company.

Further sub-section (3) to section 210 empowers the Central Government to appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.

6. **Option (c)** If the Registrar again calls for the books and papers, then he can retain them maximum for a period of 180 days.

Reason

First proviso to section 209 (2)

The Books and papers may be called for by the Registrar or inspector for a further period of one hundred and eighty days by an order in writing if they are needed again.

It is worth noting that, second proviso to section 209(2) empowers the registrar or inspector, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such other manner as he considers necessary; before returning such books and papers (when first seized).

CASE SCENARIO 3

Based at Shivamogga, Karnataka, Lotus Switchgears Limited (LSL) is a noted manufacturer, exporter and supplier of electrical products like Miniature Circuit Breakers (MCBs), Molded Case Circuit Breakers (MCCBs), Residual Current Circuit Breakers (RCCBs), Electric Leakage Circuit Breakers (ELCBs), Solar water Pumping Systems, Wires and Cables, etc. and has a good network of factories and distribution channels. The business grew by leaps and bounds due to the sincere and dedicated efforts of founding directors, Arjun, Ramakrishnan, Ravi Bhatt, Ramesh and Ripudaman. However, the company is facing some difficult times for the past four years or so. Arjun is the Managing Director while Ramesh and Ripudaman are the Whole-time Directors.

In a quest to overcome the difficulties faced by the company, Raghuram, a visionary, was appointed as the Executive Director at the EGM held on 12th January, 2018.

Shruthi Components Private Limited (SCPL) is one of the subsidiaries of LSL. The Board of Directors of LSL wished to exercise the power to dispose of its whole investment in SCPL. Accordingly, Mahadevan, whole-time Company Secretary of the company was directed to ascertain the procedure for disposing of company's investment in SCPL.

Following data was extracted from the Audited Financial Statements of LSL for the year ending 31.03.2021:

S. No	Description	Amount (₹ in Crore)
1	Paid -up Capital	50
2	General Reserves	54
3	Securities Premium Account	5
4	Accumulated Losses	7
5	Revaluation Reserves created out of revaluation of assets	30
6	Deferred Revenue Expenditure & Miscellaneous Expenditure not written off	2
7	Investment in SCPL	25

Based on the above data and considering Section 2 (57)[1] of the Companies Act, 2013, Mahadevan calculated the 'net worth' of LSL as under:

Particulars	Amount (₹ in Crores)
Paid-up Capital	50
Add: General Reserves	54
Add: Securities Premium Account	5
Less: Accumulated Losses	7
Less: Deferred Revenue Expenditure & Miscellaneous Expenditure not written off	2
Net Worth	100

In view of the 'net worth' of ₹ 100 crore, Mahadevan informed the Board that as per the relevant provisions SCPL was an undertaking of LSL.

Earlier during April, 2020, in the course of normal business, LSL entered into a contract for the continuous supply of some consumables and components with Swastik Supplies Private Limited (SSPL) for a period of 3 years to be renewed with mutual consent thereafter. Ramesh, the Whole-time Director of LSL, was not an interested party at the time of entering into this Supply Contract with SSPL. However, during the second year of the Supply Contract, Rajesh, son of Ramesh, purchased about 30% of the equity shares of SSPL through one of his family owned business entities and also lent ₹ 25 lakh as unsecured loan to SSPL. Ramesh did not inform LSL or the Board of Directors regarding the new developments since he was of the opinion that there was no need for such disclosure. However, the Company Secretary and the Board had their own reservations, after the matter came to their knowledge from a third party.

[1] According to Section 2 (57) of the Companies Act, 2013, 'Net Worth' means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

During the statutory audit for the F.Y. 2020-21, while verifying the earlier years' documents in connection with certain matter, the newly appointed auditors observed that the appointment of Raghuram as an Executive Director was invalid by reason of certain defects and also disqualification. During the month of August, 2021, the statutory auditors discussed the issue of irregular appointment with the Board of Directors of LSL.

The Board apprised the auditors that since his appointment as Executive Director of the company, Raghuram had participated in several Board Meetings and assented to various decisions, which had both pecuniary and operational impact. In addition, the Board had also passed several resolutions during that period. Accordingly, the Board, in one of its meetings, decided by passing a resolution that the wrongfully appointed Director Raghuram shall make good the losses, if any, for the period he remained Executive Director but all the resolutions passed during his period shall be valid and stand good.

One of the investors, Raman had invested substantially in the equity shares of Lotus Switchgears Limited. However, he was quite worried about his investment after going through the latest audited financial statements of 2020-21, for he found that there was continuous downward trend in earning per share (EPS). He was of the opinion that the Directors of LSL have been getting exorbitant remuneration, resulting in lesser profits for the company.

Accordingly, he approached the Registered Office of the company at Shivamogga and requested for inspection of the copies of the recent Service Contracts of Arjun, the Managing Director as well as Ramesh and Ripudaman, the Whole-time Directors of the company. He was utterly surprised when he was informed by the official concerned that the Service Contracts with Arjun, Ramesh and Ripudaman were not in writing and therefore, could not be produced for inspection. However, he was also informed that only copies of the written Memorandum setting out the terms and conditions of the service could be provided for inspection. Raman was not convinced and thought it to be a fraudulent practice for which the company and every defaulting officer of the company must be punished.

LSL, after complying with the required legal formalities, had made some political contributions and had incurred certain expenses during the financial year 2020-21. The details are as under:

(a) Payment of ₹ 10,00,000 as contributions to LMS party.

(b) Donation of ₹ 2,00,000 for a public function and a dance program of Ravi Shankar, a film star and it can be reasonably presumed that his activities support Janta Welfare Party.

(c) Publication cost of ₹ 1,00,000 incurred for inserting an advertisement in the Souvenir published on behalf of Janta Welfare Party.

(d) Publication of pamphlets costing ₹ 1,00,000 though not meant for any political party but incurred for promoting a candidate of political party who is going to contest in upcoming elections.

LSL disclosed in its financial statements ₹ 11,00,000 as political contributions and ₹ 3,00,000 as 'Advertisement and Business Promotion Expenses'.

MULTIPLE CHOICE QUESTIONS

1. Raman, who had invested substantially in LSL, was informed that only copies of the written Memorandum setting out the terms and conditions of the service could be provided for inspection as no written Service Contracts with Arjun (Managing Director) as well as Ramesh and Ripudaman (Whole-time Directors) were available. Raman was not convinced and thought it to be a fraudulent practice for which the company and every defaulting officer of the company must be punished. From the following options, choose the most appropriate one:

   (a) The Company shall be liable to a penalty of ₹ 25,000 and every officer of the Company, who is in default, shall be liable to a penalty of ₹ 5000 for each default for non-production of Service Contracts for inspection.

   (b) It shall be in order, if the Company provides copies of the written Memorandum setting out the terms and conditions of the services for inspection.

   (c) The Company shall be liable to a penalty of ₹ 50,000 and every officer of the Company, who is in default, shall be liable to a penalty of ₹ 10,000 for each default for non-production of Service Contracts for inspection.

(d) The Company shall be liable to a penalty of ₹ 1,00,000 and every officer of the Company, who is in default, shall be liable to a penalty of ₹ 25,000 for each default for non-production of Service Contracts for inspection.

2. According to Mahadevan, whole-time Company Secretary, SCPL was an undertaking of LSL. If the Board of Directors of LSL decided to dispose of its investment in SCPL, considering SCPL as an undertaking of LSL, which of the following options shall be applicable:

(a) The Board of Directors of LSL shall exercise the power of disposing of its investment in SCPL, considering SCPL as an undertaking of LSL, by means of a Board Resolution assented to by all the Directors present at a duly convened Board Meeting.

(b) The Board of Directors of LSL shall exercise the power of disposing of its investment in SCPL, considering SCPL as an undertaking of LSL, only with the consent of the company by an Ordinary Resolution.

(c) The Board of Directors of LSL shall exercise the power of disposing of its investment in SCPL, considering SCPL as an undertaking of LSL, only with the consent of the company by a Special Resolution and thereafter, by seeking approval of the jurisdictional Registrar of Companies.

(d) The Board of Directors of LSL shall exercise the power of disposing of its investment in SCPL, considering SCPL as an undertaking of LSL, only with the consent of the company by a Special Resolution.

3. According to the case scenario, the Board of Directors of LSL stated that since January, 2018 Raghuram had participated in several Board Meetings and assented to various decisions, which had both pecuniary and operational impact. In addition, the Board had passed several resolutions during that period. Accordingly, the Board, in one of its meetings, decided by passing a resolution that the wrongfully appointed Director Raghuram shall make good the losses, if any, over the period he remained Executive Director and all the resolutions passed during his period and assented to by him shall be valid and stand good.

(a) The decision of the Board is correct because no act done by a person as a Director shall be deemed to be invalid if it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification, etc.

(b) The Board is required to get all the resolutions passed during the tenure of Raghuram and assented by him, ratified by an Ordinary Resolution at a General Meeting of the shareholders.

(c) The Board is required to get all the resolutions passed during the tenure of Raghuram and assented by him, ratified by a Special Resolution at a General Meeting of the shareholders.

(d) The Board is required to cancel all the resolutions passed during the tenure of Raghuram and assented by him since they were void and inoperative *ab-initio*.

4. The case scenario states that LSL, after complying with the required legal formalities, made some political contributions and incurred some expenses during the financial year 2019-20. LSL showed in its financial statements ₹ 11,00,000 as political contributions and ₹ 3,00,000 as 'Advertisement and Business Promotion Expenses'. From the following options choose the correct one:

(a) The disclosure made by LSL in its financial statements showing ₹ 11,00,000 as political contributions and ₹ 3,00,000 as 'Advertisement and Business Promotion Expenses' is correct.

(b) LSL was required to disclose ₹ 10,00,000 as political contributions and ₹4,00,000 as 'Advertisement and Business Promotion Expenses'.

(c) LSL was required to disclose all the sums totaling ₹ 14,00,000 as political contributions.

(d) LSL was required to disclose ₹12,00,000 as political contributions and ₹ 2,00,000 as 'Advertisement and Business Promotion Expenses'.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (b)** It shall be in order, if the Company provides copies of the written Memorandum setting out the terms and conditions of the services for inspection.

Reason

Section 190 (1)

Every company shall keep at its registered office a contract of service with a managing or whole-time director is in writing, a copy of the contract; and where such a contract is not in writing, a written memorandum setting out its terms.

It is worth noting that the copies of the contract or the memorandum kept under sub-section (1) shall be open to inspection by any member of the company without payment of fee.

2. **Option (d)** The Board of Directors of LSL shall exercise the power of disposing of its investment in SCPL, considering SCPL as an undertaking of LSL, only with the consent of the company by a Special Resolution.

Reason

Section 180(1)(a)

The Board of Directors of a company shall exercise the powers to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings only with the consent of the company by a special resolution.

3. **Option (a)** The decision of the Board is correct because no act done by a person as a Director shall be deemed to be invalid if it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification, etc.

Reason

Section 176

No act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles of the company.

4. **Option (c)** LSL was required to disclose all the sums totaling ₹ 14,00,000 as political contributions.

Reason

Section 182 (2)

Political Contribution shall include a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose; or/and

The amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed, where such publication is by or on behalf of a political party, and where such publication is not by or on behalf of, but for the advantage of a political party.

CASE SCENARIO 4

Kumar Beverages Limited (KBL), a 10-year old listed company, is a leading beverage manufacturer and trader. All the brands under aegis of KBL are popular household names in India, Middle East, Europe and Africa. Being a fast-growing company, the turnover of KBL was ₹ 300 crore during the financial year 2019-20. The Registered Office and manufacturing plants of KBL are situated at Kolluru, Karnataka.

Akshay Beverages Limited (ABL), an 18-year old unlisted company, is one among the leading competitors of KBL and has market presence mainly in South Asia, South East Asia, Japan as well as Australia. It had turnover of ₹ 700 crore during the financial year 2019-20. The Registered Office of ABL is in Kundapura and manufacturing units are in Hattiangadi, Karnataka.

Considering various factors like elimination of competition, scaling up of operations for competitive advantages, economies of large-scale business, increase in market share, cost reduction by reducing overheads, increasing the efficiencies of operations, tax benefits, access to foreign markets etc., both the companies have been in negotiation for the last several months and a proposal to merge KBL with ABL is in the waiting.

It is proposed that KBL shall transfer all of its assets and liabilities to ABL. It is estimated that around 95% of equity shareholders of KBL shall become shareholders of ABL Further, purchase consideration shall be discharged wholly by issuing equity shares of ABL. The beverage business shall continue as earlier. The assets and liabilities taken over from KBL shall be recorded at existing carrying amounts except where adjustment is required to ensure uniformity of Accounting Policies.

The 'object clauses' contained in the Memorandums of Association of ABL and KBL empower both the companies to undergo merger. All the required Institutional and statutory approvals were taken for merger. A Draft Scheme of merger was approved in the Board Meetings of both the companies.

Both ABL and KBL filed an Application for merger in the form of petition along with the necessary documents and information as required under the Companies Act 2013 read with the relevant Rules, with the jurisdictional

National Company Law Tribunal (NCLT) [in short 'Tribunal'] for the purpose of sanctioning the Scheme of Merger.

The Tribunal ordered for the required meeting and gave such directions as it felt necessary for conducting the meeting. For the purposes of the meeting, merging companies also circulated some additional documents/information, as required under the Companies Act 2013.

The Tribunal satisfied itself with the procedure followed including filing of the Auditor's Certificate on accounting treatment proposed in the Scheme of Merger certifying that it was in conformity with the prescribed Accounting Standards.

The Tribunal by Order sanctioned the arrangement leading to merger and made provisions for all the required matters which, *inter-alia*, included valuation of shares and payment to such shareholders of KBL, who decided to opt out of the transferee company ABL.

A certified copy of the Order was also filed with the Registrar of Companies for registration within the due date. One of the earlier Directors of KBL, contended that the Scheme shall be effective from the date the certified copy is registered by the Registrar of Companies. However, the Scheme had indicated an 'appointed date' being the completion of 15 days from the date of receipt of the certified copy of the Order of the Tribunal, from which the merger shall be effective.

It is expected that the actual implementation of the Scheme of merger is going to take some time. The Board of Directors of ABL wanted to understand the implementation monitoring procedure by the authorities and the Company Secretary was directed to explain the same.

It was decided that once the required implementation procedure of merger is completed, the manner of disposing of the books and papers of KBL shall be discussed.

It came to light that Neelesh, one of the Directors of KBL, had committed various offences by contravening different provisions of the Companies Act, 2013. On merger with ABL, it was contended by Neelesh that the wrongful acts were committed before the merger and therefore, he should be relieved from all the liabilities, punishments and penalties for the offences earlier committed.

MULTIPLE CHOICE QUESTIONS

1. From the case scenario, it is observed that KBL, a listed company is being merged with ABL which is an unlisted company and under the scheme of merger, the KBL shall transfer all of its assets and liabilities to ABL. From the following four options, choose the one which indicates as to when the ABL shall become a listed company after KBL is merged with it.

   (a) ABL shall remain an unlisted company until it on its own becomes a listed company.

   (b) ABL shall immediately become a listed company after merger since KBL, a listed company is being merged with it.

   (c) ABL shall become a listed company after merger of KBL, a listed company, with it once the certified copy of the merger is registered with ROC.

   (d) ABL shall become a listed company once the application for sanctioning the merger is filed with the Tribunal since the merger is proposed with KBL, a listed company.

2. According to the case scenario, the Tribunal by Order sanctioned the arrangement leading to merger and made provisions for all the required matters which, *inter-alia*, included valuation of shares and payment to such shareholders of KBL, who decided to opt out of the transferee company ABL. From the following options choose the appropriate one:

   (a) Amount of payment or valuation for any share shall not be less than what has been specified by the Registrar of Companies.

   (b) Amount of payment or valuation for any share shall not be less than what has been specified by the Reserve Bank of India (RBI).

   (c) Amount of payment or valuation for any share shall not be less than what has been specified by the Securities and Exchange Board of India (SEBI).

   (d) Amount of payment or valuation for any share shall not be less than what has been specified in the Valuation Report of the Registered Valuer.

3. According to the contention of one of the earlier Directors of KBL, the Merger Scheme shall be effective from the date the certified copy is registered by the Registrar of Companies. From the following options you are required to choose the one which indicates the correct 'effective date':

   (a) The Merger Scheme shall be deemed to be effective from the date of passing of an Order by the Tribunal.

   (b) The Merger Scheme shall be deemed to be effective from the date of receipt by ABL the certified copy of the Order as passed by the Tribunal.

   (c) The Merger Scheme, as contended by an earlier Director of KBL, shall be deemed to effective from the date the certified copy is registered by the Registrar of Companies.

   (d) The scheme shall be deemed to be effective from the 'appointed date' being the completion of 15 days from the date of receipt of the certified copy of the Order of the Tribunal.

4. It is expected that the actual implementation of the Scheme of merger is going to take some time. The Board of Directors of ABL wanted to understand the implementation monitoring procedure by the authorities and the Company Secretary was directed to explain the same. Which of the following options, do you think, the Company Secretary might have suggested:

   (a) ABL shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed, with the Tribunal every year, duly certified by a Chartered Accountant or a Cost Accountant or a Company Secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not

   (b) ABL shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed, with the Registrar every year duly certified by a Chartered Accountant or a Cost Accountant or a Company Secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not

(c) ABL shall, only on completion of the implementation of the scheme, file a statement in such form and within such time as may be prescribed, with the Registrar, duly certified by a Chartered Accountant or a Cost Accountant or a Company Secretary in practice indicating whether the implementation of the scheme is complied with in accordance with the orders of the Tribunal or not

(d) ABL shall, only on completion of the implementation of the scheme, file a statement in such form and within such time as may be prescribed, with the Tribunal, duly certified by a Chartered Accountant or a Cost Accountant or a Company Secretary in practice indicating whether the implementation of the scheme is complied with in accordance with the orders of the Tribunal or not.

5. According to the case scenario, Neelesh, one of the Directors of KBL, had committed various offences by contravening different provisions of the Companies Act, 2013. On merger with ABL, it was contended by Neelesh that the wrongful acts were committed before the merger and therefore, he should be relieved from all the liabilities, punishments and penalties for the offences earlier committed. From the following options choose the correct one:

(a) The contention of Neelesh is not correct since the liability in respect of offences committed under the Companies Act 2013 by the officers in default, of the transferor company prior to its merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.

(b) The contention of Neelesh is correct since the liability in respect of offences committed under the Companies Act 2013 by the officers in default, of the transferor company prior to its merger, amalgamation or acquisition shall not be continued after such merger, amalgamation or acquisition.

(c) The contention of Neelesh is partially correct since he is liable only for the wrongful acts which have a bearing on the merger.

(d) The Board of Directors of ABL are permitted to relieve Neelesh from the liabilities in respect of offences committed earlier in KBL by

passing a Board Resolution with the consent of all the Directors present at a duly convened Board Meeting.

6. According to the case scenario, once the required implementation procedure of merger is complete, the manner of disposing of the books and papers of KBL shall be discussed. From the given options, choose the appropriate one:

   (a) The books and papers of KBL can be disposed of immediately on merger of KBL with ABL.

   (b) The books and papers of KBL can be disposed of not earlier than 8 years from the financial year to which they relate.

   (c) The books and papers of KBL can be disposed of only after obtaining permission from the Central Government.

   (d) The books and papers of KBL can be disposed of only after obtaining permission from the Tribunal, which had sanctioned the merger.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (a)** ABL shall remain an unlisted company until it on its own becomes a listed company.

Reason

Section 232(3)(h)(A)

Where the transferor company is a listed company and the transferee company is an unlisted company, the transferee company shall remain an unlisted company until it becomes a listed company.

2. **Option (c)** Amount of payment or valuation for any share shall not be less than what has been specified by the Securities and Exchange Board of India (SEBI).

Reason

Proviso to section 232(3)(h)(B)

Where the transferor company is a listed company and the transferee company is an unlisted company, and if shareholders of the transferor

company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal.

The proviso further provided that the amount of payment or valuation under this clause for any share shall not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it.

3. **Option (d)** The scheme shall be deemed to be effective from the 'appointed date' being the completion of 15 days from the date of receipt of the certified copy of the Order of the Tribunal.

Reason

Section 232(6)

The scheme under section 232 (i.e. Merger and amalgamation of companies) shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.

4. **Option (b)** ABL shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed, with the Registrar every year duly certified by a Chartered Accountant or a Cost Accountant or a Company Secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not

Reason

Section 232(7)

Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed in *Rule 21 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016* with the Registrar every year duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.

It is worth noting Rule 21 provides the statement shall be filled in Form No. CAA.8 along with such fee as specified in the Companies (Registration Offices and Fees) Rules, 2014 within two hundred and ten days from the end of each financial year.

5. Option (a) The contention of Neelesh is not correct since the liability in respect of offences committed under the Companies Act 2013 by the officers in default, of the transferor company prior to its merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.

Reason

Section 240

Section 240 deals with Liability of officers in respect of offences committed prior to merger, amalgamation, etc. and provides Notwithstanding anything in any other law for the time being in force, the liability in respect of offences committed under this Act by the officers in default, of the transferor company prior to its merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.

4. Option (c) The books and papers of KBL can be disposed of only after obtaining permission from the Central Government.

Reason

Section 239

The books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another company under this Chapter shall not be disposed of without the prior permission of the Central Government.

It worth noting that before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the transferor company or its amalgamation or the acquisition of its shares.

CASE SCENARIO 5

Lagus Transport Services Limited (LTSL) is operating in the domain of logistics and public transport. The company has pan-India presence. As per its Articles of Association, the company can appoint a maximum of 15 Directors and all of them shall be rotational Directors. Presently, the company has a strength of 14 Directors, of which 9 are executive Directors and the remaining 5 are non-executive Directors.

Following information was extracted from the audited financial statements as on 31st March, 2020:

S. No.	Particulars	Amount (₹ in Crores)
1.	Authorised Share Capital (15,00,00,000 Equity Shares of ₹ 1 each)	15.00
2.	Paid-up Share Capital	8.42
3.	Turnover	84.00
4.	Outstanding Loans, Debentures and Deposits (in aggregate)	42.00

In the Annual General Meeting (AGM), held on 20th August, 2020, Anil, Badal, Chanchal and Damodar were appointed as Directors in place of Mohan, Navin, Om and Prasad by passing a single resolution with simple majority. It is to be noted that earlier, a motion authorising the appointment of Anil, Badal, Chanchal and Damodar by a single resolution was passed in the meeting and not a single vote was cast against such motion.

Based on the audited financial statements as on 31st March, 2021, following information emerged:

S. No.	Particulars	Amount (₹ in Crores)
1.	Authorised Share Capital (15,00,00,000 Equity Shares of ₹ 1 each)	15.00
2.	Paid-up Share Capital	8.42

3.	Turnover	120.52
4.	Outstanding Loans, Debentures and Deposits (in aggregate)	40.00

It is noteworthy that due to the increased turnover there arose the requirement of appointing two independent Directors.

Since the company was required to appoint two independent Directors, the total strength of the Board with such appointments would go up to 16 Directors from the present 14 whereas according to the Articles, the company can have a maximum of 15 Directors. Accordingly, the Articles were altered and the total strength was increased to 20 Directors.

After altering the Articles, the company proceeded to appoint four independent Directors instead of the mandatorily required two since it was felt that such step would strengthen the corporate governance to the maximum extent. The independent Directors were:

(i) Mrs. Eekam, who is considered 'influencer' on supply chain management and has a lot of expertise in the logistics field;

(ii) Mrs. Prajna who is a marketing expert;

(iii) Mrs. Ruchita, who is MBA (Finance and Accounting) from IIM, Ahmedabad; and

(iv) Mr. Amit, who is skilled in developing customised software.

Subsequent to the above developments, the time to hold Annual General Meeting (AGM) approached and it was conducted on 12th August, 2021 through video conferencing after complying with applicable provisions of the Companies Act, 2013 read with General Circular 20/2020, dated 05-05-2020, issued by MCA.

MULTIPLE CHOICE QUESTIONS

1. In this case scenario, Anil, Badal, Chanchal and Damodar were appointed as Directors by passing a single resolution at the AGM. Is such appointment valid?

(a) The appointment of Anil, Badal, Chanchal and Damodar by a single resolution is valid because beforehand, a motion authorising their appointment by a single resolution was passed in the meeting and not a single vote was cast against such motion.

(b) The appointment of Anil, Badal, Chanchal and Damodar by a single resolution is not valid because passing of resolution by simple majority indicates that it was not passed unanimously.

(c) The appointment of Anil, Badal, Chanchal and Damodar by a single resolution with simple majority is not valid because such resolution is required to be passed as a special resolution.

(d) The appointment of Anil, Badal, Chanchal and Damodar by a single resolution is not valid because in no case more than one Director can be appointed by passing a single resolution.

2. In the given case scenario, according to the Articles all the Directors are rotational. Had this been not the case, how many Directors were required to retire at the AGM which was held on 20th August, 2020?

(a) Five Directors

(b) Four Directors

(c) Three Directors

(d) Two Directors

3. In the given case scenario, if it is presumed that as on 31st March, 2021, the turnover of the company is ₹ 87.00 crores and the paid-up share capital is ₹ 12.00 crores, would the company be still mandatorily required to appoint two independent Directors?

(a) There is no need to appoint two independent Directors since the aggregate of turnover and paid-up share capital has not crossed the threshold of ₹ 100 crore.

(b) Instead of appointing two independent Directors, the company is required to appoint only one independent Director since the aggregate of turnover and paid-up share capital is above ₹ 90 crores but less than ₹ 100 crores.

(c) The company is required to appoint minimum two independent Directors since the paid-up share capital is ₹ 12 crore.

(d) The company is required to appoint only one independent Director since the paid-up share capital is below ₹ 15 crore.

4. According to the case scenario, the company altered its Articles of Association so as to increase the total strength of Directors up to 20 from the present 15 Directors. Which of the following options is applicable in such a case of alteration:

(a) The articles were altered by passing an ordinary resolution.

(b) The articles were altered by passing an ordinary resolution followed by approval sought from the jurisdictional Registrar of Companies.

(c) The articles were altered by passing a Board Resolution with more than seventy-five percent majority.

(d) The articles were altered by passing a special resolution.

5. As on 12th August, 2021, when the AGM of LTSL was held, the total strength of Directors reached to 18 due to the appointment of four independent Directors. When all the Directors are rotational, how many Directors would have got retired at this AGM?

(a) Six Directors

(b) Five Directors

(c) Four Directors

(d) Two Directors

ANSWER TO MULTIPLE CHOICE QUESTION

1. Option (a) The appointment of Anil, Badal, Chanchal and Damodar by a single resolution is valid because beforehand, a motion authorising their appointment by a single resolution was passed in the meeting and not a single vote was cast against such motion.

Reason

Section 162

At a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall

not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.

Since in given case, a motion authorising appointment of Anil, Badal, Chanchal and Damodar by a single resolution was passed in the meeting and not a single vote was cast against such motion, Hence their appointment by a single resolution is valid.

2. Option (c) Three Directors

Reason

Section 152(6)

Number of directors retiring by rotation shall be not less than 2/3 of total numbers of directors i.e. 2/3rd of 14 which comes out to 9.33, but shall be round off (round up) to 10, because at least 2/3 shall be retiring by rotation.

Out of such directors who are retiring by rotation (10 in this case), at each AGM 1/3rd shall retire. Note if number of director retiring by rotation is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

In this case 1/3rd of 10 that comes out to be 3.33 shall be round off to nearest i.e. 3 (three).

3. Option (c) The company is required to appoint minimum two independent Directors since the paid-up share capital is ₹ 12 crores.

Reason

Section 149(4) read with Rule 4 of the Companies (Appointment and Qualification of Directors) rules, 2014.

Said rule provides that the following class or classes of companies shall have at least two directors as independent directors;

(i) the Public Companies having paid up share capital of ten crore rupees or more; or

(ii) the Public Companies having turnover of one hundred crore rupees or more; or

(iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.

4. Option (d) The articles were altered by passing a special resolution.

Reason

First Proviso to section 149(1)

A company may appoint more than fifteen directors after passing a special resolution.

Here it worth to note that First Proviso to section 149(1) shall not apply to Government and section 8 companies vide notification no. G.S.R. 463 (E) and G.S.R. 466 (E), respectively; both dated 5th June, 2015

5. Option (b) Five Directors

Reason

Section 152(6) read with Section 149(13)

Section 152(6) deals with retirement of directors by rotation, but as per section 149(13) the provisions of section 152(6) shall not be applicable to appointment of independent directors.

Hence for purpose of 152(6) total strength despite being 18 shall be considered 14 (i.e. excluding 4 independent directors).

It is specified in fact of concerned MCQ and case that all the directors are retiring by rotation i.e. all 14.

As per section 152(6)(c), out of such directors who are retiring by rotation (14 in this case), at each AGM 1/3rd shall retire. Further it provides if their number is neither three nor a multiple of three (like 14 in case), then, the number nearest to one-third, shall retire from office.

In this case 1/3rd of 14 that comes out to be 4.66 shall be round off to nearest i.e. 5 (Five).

CASE SCENARIO 6

Sheetal Chemicals Limited (SCL) is a listed company dealing in petrochemicals which are used in numerous household products like wax, detergents, dyes, carpeting, safety glasses, etc. As per the latest audited balance sheet as at 31st March, 2021, its paid-up capital stood at ₹ 40.00 crores against its Authorised Capital of ₹ 50.00 crore. The turnover for the FY 2020-21 was to the tune of ₹ 300.00 crore.

The company has thirteen Directors on its Board namely, A1, B2, C3, D4, E5, F6, G7, H8, I9, J10, K11, L12 and M13 of which A1, B2, C3, D4 and E5 are the Independent Directors. The Articles of Association of the company restrict the maximum number of Directors to fifteen.

SCL remains ever-conscious to corporate governance and ensures compliance to legal provisions in both letter and spirit. L12 is the Managing Director of the company whereas M13 is the only woman Director on the board of SCL. The company has constituted requisite committees as per the requirements of law. The Audit Committee consists of seven Directors as members *i.e.* A1, B2, C3, D4, E5, I9 and J10.

Earlier, for the financial year ending 31st March, 2020, the company successfully convened and held Annual General Meeting (AGM) on 25th September, 2020 at its registered office at Pune. On the fateful day of AGM, while returning to Mumbai from Pune by road after her re-appointment at AGM, a fatal accident claimed the life of M13 thus snatching an efficient and trustworthy Director from the hands of the company. Later on, a Board Meeting was held on 09-01-2021 and N14, a finance professional and daughter of deceased woman Director M13 was appointed as Director to fill the vacancy of woman Director so created due to the death of her mother M13. It may be noted that before 09-01-2021, a Board Meeting was held on 15-09-2020.

SCL is a growing company which wants to diversify its business into the sphere of agrochemicals also and therefore, desires to bring on its Board O15 who is a chemical engineer with hands-on experience of about twenty years post his qualification in the field of agrochemicals and other petroleum products. Besides production, he is well versed in marketing of agrochemicals both in India and abroad. It is hoped that he shall prove to be a valuable asset to the

company. Accordingly, a Board Meeting was held on 6th April, 2021 to appoint O15 as additional Director. As the total strength of Directors was well within the limit prescribed by the Articles, there was no need to alter the Articles.

MULTIPLE CHOICE QUESTIONS

1. After the appointment of O15 as additional Director on 06-04-2021, another Board Meeting of SCL was held on 17-08-2021 through video conferencing[2]. From the given options, choose the correct one which indicates the quorum for the current Board Meeting.

   (a) Nine Directors

   (b) Five Directors

   (c) Four Directors

   (d) Two Directors

2. For the purpose of meeting of the Audit Committee of SCL, how many members should be present at such meeting in order to constitute the quorum.

   (a) All the seven members.

   (b) Only five members of which minimum two should be independent members.

   (c) Only three members of which minimum two should be independent members.

[2] In view of the difficulties arising due to resurgence of COVID-19, General Circular No. 08/2021, dated 03-05-2021 issued by MCA states that the requirement of holding meetings of the Board of the companies within the intervals provided in section 173 of the Companies Act, 2013 (120 days) stands extended by a period of 60 days for the first two quarters of Financial Year 2021-22. Accordingly, the gap between two consecutive meetings of the Board may extend to 180 days during the Quarter – April to June 2021 and Quarter – July to September, 2021, instead of 120 days. This amendment is given to make you understand the given situation in a realistic manner under practical scenario.

(d) Only two members of which minimum one should be independent member.

3. From the case scenario, it is observed that after the death of M13, her daughter N14 was appointed at a Board Meeting held on 09-01-2021 to fill the vacancy of woman Director. Is the appointment of N14 on 09-01-2021 justified?

(a) No. The appointment of N14 should have been made within three months from 25-09-2020.

(b) No. The appointment of N14 should have been made within two months from 25-09-2020.

(c) No. The appointment of N14 should have been made within one month from 25-09-2020.

(d) Yes. The appointment of N14 made at the Board Meeting held on 09-01-2021 is justified.

4. In the above case scenario, L12 is the Managing Director of SCL. If it is assumed that there is no managing or Whole-Time Director, then in such a situation, how much remuneration the company can pay to all the Directors for the Financial Year 2020-21.

(a) 11% of the net profits available for the Financial Year 2020-21.

(b) 5% of the net profits available for the Financial Year 2020-21.

(c) 3% of the net profits available for the Financial Year 2020-21.

(d) 1% of the net profits available for the Financial Year 2020-21.

5. In this case scenario, the Audit Committee formed by SCL contains seven members. If there are only six members in the Audit Committee then out of such six members, minimum how many shall be the independent members?

(a) Five

(b) Four

(c) Three

(d) Two

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (b)** Five Directors

Reason

Section 174

The quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.

One third of 15 come out to be 5 which is higher than 2. Hence quorum for broad meeting shall be of 5 (five) directors.

2. **Option (c)** Only three members of which minimum two should be independent members.

Reason

Regulation 18(2)(b) of the SEBI (LODR) Regulations, 2015

Note – SCL is listed company.

The quorum for audit committee meeting shall either be two members or one third of the members of the audit committee, whichever is greater, with at least two independent directors.

3. **Option (d)** Yes. The appointment of N14 made at the Board Meeting held on 09-01-2021 is justified.

Reason

Second proviso to Section 149(1) read with second proviso to Rule 3 of the Companies (Appointment and Qualification of Directors) rules, 2014.

Any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

Since immediate next meeting held on 09-01-2021, in which N14 was appointed to fill vacancy caused by death of M13; hence the appointment of N14 is justified.

4. **Option (c)** 3% of the net profits available for the Financial Year 2020-21

Reason

Second proviso to section 197(1)

The remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed, three percent of the net profits; if there is neither a managing nor whole-time director and nor even manager

Note - If there is a either of managing or whole-time director or manager, then the maximum remuneration can be one percent of the net profits of the company

5. **Option (b)** Four

Reason

Regulation 18(1)(b) of LODR 2015

Note – SCL is listed company, hence abide by LODR 2015

At least Two-thirds of the members of audit committee shall be independent directors. 2/3 of 6 comes out to be 4 (four).

It worth noting that, in case of a listed entity having outstanding superior right equity shares, the audit committee shall only comprise of independent directors.

Student also advised to take note that as per section 177(2) the Audit Committee shall consist of a minimum of three directors with independent directors forming a majority; even in that case also majority number of 6 shall be 4.

CASE SCENARIO 7

Global Trade and Securities (India) Limited (GTSIL) is a listed company having been listed at BSE and NSE. It was incorporated way back in June, 2019 and has its registered office at Connaught Place, New Delhi. The authorised and paid-up share capital of the company is ₹ 30.00 crore. GTSIL is profit making entity.

GTSIL is duly registered with the Securities and Exchange Board of India (SEBI) for providing merchant banking services. The company offers a varied range of services including issue management, handling of buy-back of shares, debt and equity syndication, mergers and acquisitions, listing and delisting, etc. GTSIL is a well-established and reputed name among the regulatory authorities, Government Agencies, law firms, share-brokers, mutual funds, banks and other prominent organisations.

The company is being managed by nine directors out of which three are independent directors. Of the other non-independent six directors, two are non-executive. The four executive directors i.e. Skand, Srishti, Rina and Rohan are energetic, self-driven, and dynamic professionals with vast experience in the field of merchant banking. In the current financial year 2021-22, a chance scrutiny of accounts revealed that during the last financial year, by oversight, Rohan, who heads the new issue division of the company, had drawn remuneration in excess of the limit provided by the relevant statutory provisions.

The shareholding base of the company is quite wide, and therefore, the number of small shareholders having a stake in the company is substantial. It so happened that some of them wished to appoint Mukund, a seasoned finance professional, as a small shareholders' director on the board of the company. After due process, Mukund was appointed by the company as a director to represent small shareholders.

It is a proven fact that STEEPLE analysis3 (i.e. analysis of social, technological, economic, environmental, political, legal, and ethical factors affecting

[3] STEEPLE is a tool for businesses to scan the external environment. It helps to understand phenomena and imagine new opportunities as well as identifying new threats.

organisations) has always been a critical aspect for the success of any organisation. Keeping this crucial fact in view, the Directors of the company desiring to improve political understanding, after following the due procedure of law in this respect, made one-time political contribution of certain amount in the current Financial Year to Janta Vikassheel Dal which is one of the prominent political parties of the country duly registered under Section 29A of the Representation of the People Act, 1951.

MULTIPLE CHOICE QUESTIONS

1. According to the case scenario, small shareholders got appointed Mukund as small shareholders' Director on the Board of the company. Out of the following four options, choose the one which correctly indicates the minimum number of small shareholders who might have assembled together to get Mukund appointed as Director to represent them.

   (a) The minimum number of small shareholders must have been not less than one thousand or one-tenth of the total number of such shareholders whichever is lower.

   (b) The minimum number of small shareholders must have been not less than one thousand or one-tenth of the total number of such shareholders whichever is higher.

   (c) The minimum number of small shareholders must have been not less than one thousand or one-fifth of the total number of such shareholders whichever is lower.

   (d) The minimum number of small shareholders must have been not less than one thousand or one-fifth of the total number of such shareholders whichever is higher.

2. From the case scenario it is evident that the company made political contributions of certain amount to Janta Vikassheel Dal, a prominent political party of the country. As the company is in existence for less than five years, how much amount it might have contributed to the political party in question.

   (a) Any amount as approved by the Directors.

(b) Any amount within the limit of 5% of the average net profits of the last three years.

(c) Any amount within the limit of 7.5% of the average net profits of the last three years.

(d) Political contribution made by the company is invalid as it is yet to complete five years of its existence.

3. The above case scenario states that Mukund was appointed as small shareholders' Director on the Board of the company. To be a Director of the small shareholders, what is the nominal value of shares which such Director is required to own:

(a) Such Director is required to own shares of the nominal value of ₹ 20,000 in the company prior to his appointment as small shareholders' Director.

(b) Such Director is required to own shares of the nominal value of at least ₹ 10,000 in the company prior to his appointment as small shareholders' Director.

(c) Such Director is required to own shares of the nominal value of at least ₹ 5,000 prior to his appointment as small shareholders' Director.

(d) Such Director is not required to own shares of any nominal value in the company prior to his appointment as small shareholders' Director.

4. For a board meeting to be conducted after appointment of Mr. Mukund as small shareholder's director, than what is the number of quorum for the board meeting:

(a) Two

(b) Three

(c) Four

(d) Five

5. The above case scenario reveals that Rohan, one of the Directors, had drawn remuneration in excess of the limit prescribed by the relevant provisions. As regards recovery of the excess remuneration drawn by him, which of the following options is applicable:

   (a) The company shall not waive recovery of excess remuneration paid unless approved by a special resolution within one year from the date the sum becomes refundable.

   (b) The company shall not waive recovery of excess remuneration paid unless approved by a special resolution within two years from the date the sum becomes refundable.

   (c) The company shall not waive recovery of excess remuneration paid unless approved by the Central Government.

   (d) The company shall not waive recovery of excess remuneration paid unless approved by a special resolution within three years from the date the sum becomes refundable.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (a)** The minimum number of small shareholders must have been not less than one thousand or one-tenth of the total number of such shareholders whichever is lower.

Reason

Section 151 read with Rule 7(1) of the Companies (Appointment and Qualification of Directors) Rules,2014

A listed company, may upon notice of not less than one thousand small shareholders or one-tenth of the total number of such shareholders, whichever is lower, have a small shareholders' director elected by the small shareholders.

2. **Option (a)** Any amount as approved by the Directors.

Reason

Section 182 (1)

A company, other than a Government company and a company which has been in existence for less than three financial year, may contribute any amount directly or indirectly to any political party.

Note – Section 182 has overriding effect over act as sections starts with words 'Notwithstanding anything contained in any other provision of this Act'.

Provided further, that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.

3. **Option (d)** Such Director is not required to own shares of any nominal value in the company prior to his appointment as small shareholders' Director.

Reason

No such requirement specified by Section 151 read with Rule 7(1) of the Companies (Appointment and Qualification of Directors) Rules,2014

Note – Since the correct answer/option for this MCQ is negative statement i.e. stating anything that is not required/specified by the law; hence legal provisions as reason can't quoted

4. **Option (b)** Four Directors

Reason

Section 174

The quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.

Note – Any fraction shall be rounded off as 1

One third of 10 (Nine existing directors + Mr. Mukund) come out to be 3.33 which shall be round up to 4. Higher 4 and 2 is 4, hence quorum for broad meeting shall be of 4 (four) directors.

5. **Option (b)** The company shall not waive recovery of excess remuneration paid unless approved by a special resolution within two years from the date the sum becomes refundable.

Reason

Section 197 (10)

The company shall not waive the recovery of any sum refundable to it (excess remuneration paid), unless approved by the company by special resolution within two years from the date the sum becomes refundable.

Note – Prior to 03.01.2018 the approval of central government was required.

CASE SCENARIO 8

Hibiscus Powergear Limited (HPL), an unlisted company, is "One Stop Shop" for all the custom-built electrical switchboards, battery chargers and bus ducts. It manufactures comprehensive range of products from small industrial distribution boards to the large state-of-the-art intelligent motor and power control centers. The Registered Office of the company is located in Belthangadi and two manufacturing plants are situated at Dabaspet Industrial Area near Bengaluru.

PL has been incurring huge losses for the last three years. There were accumulated losses to the extent of ₹ 19 Crores as on 31.03.2020. The Board of Directors had been evaluating all the possible options to bring the company back on the track. One of the options considered was Corporate Debt Restructuring (CDR) with the creditors, through Compromise.

Following data was extracted from the latest Audited Financial Statements of HPL as on 31.03.2020:

S. No.	Particulars	Amount (₹ in Crores)
1.	Secured Creditors (a) 8% Debentures (Secured by creating Charge on Freehold Property)	20.00
	(b) Accrued Interest on 8% Debentures	1.60
	(c) Cash Credit (availed from National Commercial Bank against hypothecation of stocks and book debts)	15.00
2.	Unsecured Creditors	
	Loans from Directors @ 8% p.a.	30.00
	Trade Payables	18.00
	Other creditors	0.40
Total Outstanding Debt payable by HPL		85.00

After deliberations, a Scheme of Corporate Debt Restructuring was consented by 78% of the secured creditors and all other stake holders. Brief outlines of the Scheme are given below:

(a) 8% Debenture-holders were to take over the Freehold Property at the current valuation of ₹ 12 Crores (book value ₹ 8 Crores) in part payment of their dues and to provide additional ₹10 Crores @ 9% p.a. secured by a floating charge on the assets of HPL. Interest accrued on Debentures was to be paid immediately.

(b) National Commercial Bank agreed to reduce interest rate from 11% p.a. to 8% p.a. on Cash Credit till next one year. It also in-principle agreed to provide ₹ 3 Crores as non-fund based limits for a period of two years.

(c) Directors were to waive off all the outstanding interest payable to them upto 31.3.2020 and also had no objection if interest rate on their loans was reduced to 6% p.a.

(d) Suppliers and other creditors consented to waiving off their debts to the extent of all the amounts outstanding for a period beyond 2 years as on 31.03.2020. In essence, HPL was required to pay only for the last 2 years to the suppliers and other creditors.

(e) Patents and goodwill were to be written off to the extent of ₹ 0.50 Crores. Value of obsolete items in the inventory was quantified to ₹ 0.80 Crores and was to be written off.

(f) Bad debts identified to the extent of ₹ 0.75 Crores were to be written off.

(g) Remaining Freehold property worth ₹ 15 Crores was revalued at ₹ 23 crore.

After the above exercise, an application for the Compromise was filed by HPL with the jurisdictional National Company Law Tribunal (hereinafter referred to as 'Tribunal') and made the necessary disclosures by filing an Affidavit. The disclosures contained all the material facts in respect of HPL, a copy of the Scheme of Corporate Debt Structuring as consented to by the creditors, methodology on the basis of which creditors had been identified, creditors' responsibility statement in the prescribed form, safeguards for the protection of other secured and unsecured creditors, Auditor's Report, Valuation Report, etc.

After hearing the Application, the Tribunal gave necessary directions in respect of conducting of the meeting of the creditors, fixed the date and place of the meeting, gave directions for the appointment of the Chairperson and scrutinizer, fixed the quorum, stated the procedure to be followed at the meeting including methodology of voting which could be either in person or by proxy or by postal ballot or by voting through electronic means, the time within which the Chairperson was required to report the result of the meeting to the Tribunal, etc.

To ensure transparency that may facilitate all the stakeholders to take proper decisions, extensive disclosures were made by HPL along with the Notice for the Meeting and then the company, as per the directions of the Tribunal, sent Notices to all the creditors and to all those who were entitled to receive it. Further, it was also sent to all the relevant Regulators seeking their representations. In addition, the Notice was advertised in English in Times of India and in the local Kannada Newspaper Udayavani in Kannada language. The company also published the Notice on its website.

It is worth noting that United Belts Private Limited (UBPL), supplying some of the components to HPL, had raised objections to the proposed Scheme of Compromise after receiving the Notice. As on 31.03.2020, HPL was required to pay ₹ 0.80 Crores to UBPL for the supply of various components.

The Meeting was duly convened and the majority representing 78% of the value of creditors agreed to the Scheme of Compromise. The Tribunal provided for the protection of minority creditors and by an Order sanctioned the Scheme of Compromise relating to Corporate Debt Structuring (CDR), after considering the Certificate issued by the Auditor of HPL. The order of the Tribunal was filed with the Registrar by HPL within the specified period of the receipt of the order.

However, in the due course of time, HPL faced many practical hurdles in the implementation of the Scheme of Compromise sanctioned by the Tribunal.

MULTIPLE CHOICE QUESTIONS

1. The case scenario states that an Application for Compromise was filed by HPL with the jurisdictional National Company Law Tribunal (NCLT) along with all the necessary documents including Auditor's Report. From the

following options, choose the one which the auditor must include in the Auditor's Report when the Application for Compromise relates to the Scheme of Corporate Debt Restructuring (CDR):

(a) That all the Fixed Assets of HPL have been properly revalued by the Registered Valuer for the purpose of Compromise and the Valuation Report being submitted to the Tribunal is true and correct;

(b) That the total value of creditors shown in the financial statements of HPL as on 31.03.2020 is true and correct and there are no material discrepancies.

(c) That the fund requirements of HPL after the corporate debt restructuring as approved shall conform to the liquidity test, based upon the estimates provided to the auditor by the Board of HPL.

(d) That all the contents of the Application and other documents submitted to the Tribunal are true and correct to the best of his knowledge and belief and reflect a true and fair position of HPL as on the date of submission of Application to the Tribunal.

2. According to the case scenario, with a view to ensure transparency that might facilitate all the stakeholders to take proper decisions, extensive disclosures were made by HPL along with the Notice for the Meeting and the notices were sent to all the creditors and all those who were entitled to receive it. As regards the adoption of the Compromise, the Notice needs to provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot:

(a) Within 21 days from the date of receipt of such Notice.

(b) Within one month from the date of receipt of such Notice.

(c) Within 14 days from the date of receipt of such Notice.

(d) Within 7 days from the date of receipt of such Notice.

3. It is stated in the case scenario that United Belts Private Limited (UBPL), supplying some of the components to HPL, had raised objections to the proposed Scheme of Compromise. For raising any objection to the Scheme of Compromise, the value of UBPL as trade creditor in the books of HPL must be:

(a) Not less than 5% of the total outstanding debt as per the audited financial statements as on 31.03.2020 of HPL.

(b) Not less than 10% of the total outstanding debt as per the audited financial statements as on 31.03.2020 of HPL.

(c) Not less than ₹ 1 Crore as per the audited financial statements as on 31.03.2020 of HPL.

(d) Not less than 25% of the total outstanding debt as per the audited financial statements as on 31.03.2020 of HPL.

4. The Notice was also sent to all the relevant Regulators seeking their representations which was to be made within the specified period from the date of receipt of such notice. From the following options, choose the one which specifies the correct time period for making representations:

(a) Representation needs to be made within 10 days from the date of receipt of notice.

(b) Representation needs to be made within 15 days from the date of receipt of notice.

(c) Representation needs to be made within 30 days from the date of receipt of notice.

(d) Representation needs to be made within 45 days from the date of receipt of notice.

5. According to the case scenario, the Tribunal while providing for the protection of minority creditors, sanctioned by an order the Scheme of Compromise relating to Corporate Debt Structuring (CDR), after considering the Certificate issued by the Auditor of HPL. The Auditor's Certificate at the Sanctioning stage shall be to the effect that:

(a) HPL has duly followed all the procedure required for the Compromise as required under the Companies Act 2013 and the relevant Rules thereunder.

(b) All the documents submitted by HPL to the Tribunal for the purpose of Compromise are true and correct and the Auditors have duly verified them.

(c) The accounting treatment, if any, proposed in the Scheme of Compromise by HPL is in conformity with the prescribed accounting standards.

(d) The Auditors have reasonable grounds to believe that HPL will continue its business as a going concern after the implementation of Compromise.

6. The given case scenario states that in due course of time, HPL faced many practical hurdles in the implementation of the Scheme of Compromise sanctioned by the Tribunal. Which of the following options is applicable, if the Tribunal is satisfied that the sanctioned Compromise cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the Scheme:

(a) HPL and every officer of HPL who was in default shall be liable for fine of minimum ₹ one lac and maximum of ₹ ten lacs.

(b) The Tribunal may make an order for winding up of HPL.

(c) The company shall be liable to pay fine of ₹ twenty-five lacs and every Director and the defaulting officers of HPL shall be liable for imprisonment ranging between one year and 5 years and also fine not exceeding ₹ five lacs.

(d) The Tribunal may order for confiscation and sale of properties of HPL to settle the debts to the creditors.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (c)** That the fund requirements of HPL after the corporate debt restructuring as approved shall conform to the liquidity test, based upon the estimates provided to the auditor by the Board of HPL.

Reason

230(2)(c)(iii)

The company or any other person, by whom an application is made under sub section(1) for compromise or arrangement, shall disclose to the Tribunal by affidavit any scheme of corporate debt restructuring

consented to by not less than 75% of the secured creditors in value, including a report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board.

2. **Option (b)** Within one month from the date of receipt of such Notice.

Reason

230(4)

A notice under sub-section (3) shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice.

3. **Option (a)** Not less than 5% of the total outstanding debt as per the audited financial statements as on 31.03.2020 of HPL

Reason

Proviso to Section 230(4)

Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than 10% of the shareholding or having outstanding debt amounting to not less than 5% of the total outstanding debt as per the latest audited financial statement

4. **Option (c)** Representation needs to be made within 30 days from the date of receipt of notice.

Reason

Section 230(5)

A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the RBI, the SEBI, the Registrar, the respective stock exchanges, the Official Liquidator, the CCI, if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from

the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

5. **Option (c)** The accounting treatment, if any, proposed in the Scheme of Compromise by HPL is in conformity with the prescribed accounting standards.

Reason

Proviso to section 230(7)

Sub-section 7 deals with order of tribunal for compromise and arrangements. It is provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

6. **Option (b)** The Tribunal may make an order for winding up of HPL.

Reason

Section 231(2)

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.

CASE SCENARIO 9

Blessed with both artistic and business approach, Deb, Debosmita and Divyanshi, putting their best foot forward entered India's ₹ 2,000 crore fragrance market by floating Daffodils Perfumes and Scent Limited (DPSL) in the year 2009 with an Authorised Capital of ₹ 30.00 crore. Along with them, there were ten other family members who became subscribers to the Memorandum of Association. It goes without saying that the trio were the first Directors of the company. Having Registered Office at Kannauj, the perfume capital of India, Uttar Pradesh, DPSL focused on natural fragrances and made perfumes from flowers, camphor, saffron and other aromatic substances.

In the very next year, during April, 2010, Anirudh, a qualified Chartered Accountant and financial advisor was appointed to head the Finance Department of the company. After the promulgation of the Companies Act, 2013, his appointment was regularised as Chief Financial Officer (CFO) under the relevant provisions requiring appointment of Key Managerial Personnel (KMP).

Knowing the fact that perfumes have emerged as an essential product, driven by growing trend of personal care and forming part of everyone's pride as well as confidence, they roped in Devpriya, a smart market analyst, and Divya, an IT Professional, as Directors at the time of conducting Annual General Meeting (AGM) on 25th September, 2011. The company was doing well and its yearly turnover was increasing gradually.

As on 31-03-2020, DPSL, yet to be listed, had paid-up share capital of ₹ 15.00 crore with 355 shareholders and its free reserves as on that date were ₹ 12.00 crore. DPSL also had secured and unsecured debts aggregating to ₹ 2.00 crore. Its turnover for the financial year 2019-20 was ₹ 85.00 crore. Based on the audited financial statements as on 31-03-2020 when paid-up capital exceeded the threshold limit, four independent Directors, namely, Rajan, Rahul, Ranjit and Raima were appointed in April, 2020.

Prior to the above development, Anirudh, the CFO of the company took early retirement in December, 2019. However, in one of the Board Meetings held on 25th June, 2020, Deb expressed his desire to again engage Anirudh by appointing him as independent Director during the current year 2020, in

addition to the already appointed four independent Directors. As of now, the Articles of Association provide for the payment of sitting fee of ₹ 40,000 to each of the non-independent Directors of the company for attending every Board or Committee Meeting.

The Audited financial results as on 31-03-2020 also required constitution of an Audit Committee. Accordingly, an Audit Committee was constituted which comprised Deb and Debosmita as non-independent Directors besides certain independent Directors.

It came to light that the company was sitting on crore of rupees in terms of cash and bank balance. Due to the pandemic COVID-19 and subsequent lockdown in the country, the production almost came to a standstill and the demand dived southwards. As there was not much to invest in terms of any new projects, the Board of Directors thought to provide investors an opportunity to exit from their investment in the company. Accordingly, in a duly convened Board Meeting which was held on 25-03-2021, the Directors proposed buy-back of equity shares keeping in view the relevant clause of the Articles providing for the said buy-back.

MULTIPLE CHOICE QUESTIONS

1. According to the case scenario, Deb expressed his desire to again engage Anirudh by appointing him as independent Director during the current year 2020. Which of the following options is applicable with respect to the appointment of Anirudh as an independent Director of DPSL in the year 2020:

   (a) Anirudh can be appointed as an independent Director of DPSL at a Board Meeting where all the Directors present at the meeting agree to such appointment.

   (b) Anirudh cannot be appointed as an independent Director of DPSL.

   (c) Anirudh can be appointed as an independent Director of DPSL by passing an ordinary resolution at a meeting of the shareholders.

   (d) Anirudh can be appointed as an independent Director of DPSL by passing a special resolution at a meeting of the shareholders.

2. It is observed from the case scenario that the non-independent Directors are being paid sitting fee of ₹ 40,000 for attending every Board/Committee Meeting. From the following options, choose the one which indicates the sitting fee payable to the independent Directors for attending a Board or Committee Meeting:

   (a) Sitting fees payable to independent Directors per meeting shall not be less than ₹ 40,000.

   (b) Sitting fees payable to independent Directors per meeting shall not be less than 75% of ₹ 40,000.

   (c) Sitting fees payable to independent Directors per meeting shall not be less than 60% of ₹ 40,000.

   (d) Sitting fees payable to independent Directors per meeting shall not be less than 50% of ₹ 40,000.

3. The case scenario states that in a duly convened Board Meeting which was held on 25-03-2021, the Directors of DPSL proposed buy-back of equity shares keeping in view the relevant clause of the Articles providing for the said buy-back. In case the Articles of the company did not contain any clause providing for buy-back, then which of the following options is applicable in such a situation:

   (a) The Articles of DPSL are required to be altered for including a clause which authorises buy-back.

   (b) There is no need to alter the Articles to provide for buy-back if any two Directors attending the related Board Meeting vote in favour of buy-back.

   (c) There is no need to alter the Articles to provide for buy-back if any three Directors attending the related Board Meeting vote in favour of buy-back.

   (d) There is no need to alter the Articles to provide for buy-back if all the Directors attending the related Board Meeting vote in favour of buy-back.

4. According to the case scenario, the Audit Committee constituted at DPSL comprises Deb and Debosmita as non-independent Directors besides certain independent Directors. Minimum how many independent Directors might have been included in the Audit Committee if there were two non-independent Directors in it.

   (a) One independent Director.

   (b) Two independent Directors.

   (c) Three independent Directors.

   (d) Four independent Directors.

ANSWER TO MULTIPLE CHOICE QUESTION

1. Option (b) Anirudh cannot be appointed as an independent Director of DPSL.

Reason

Section 149(6)(e)

Sub-clause i to clause e of section 149(6) while explaining who can/can't be independent director provides;

Who, neither himself nor any of his relatives holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed.

2. Option (a) Sitting fees payable to independent Directors per meeting shall not be less than ₹ 40,000.

Reason

section 197(5) read with the rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

A company may pay a sitting fee to a director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of directors thereof (in this case prescribed in AOA @ 40,000/- per

meeting) which shall not exceed one lakh rupees per meeting of the Board or committee thereof: Provided that for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors.

3. **Option (a)** The Articles of DPSL are required to be altered for including a clause which authorises buy-back.

Reason

Section 179(3)(b) read with Section 68(2)(a)

Undoubtedly section 179(3)(b) empower the board of Directors of a company to exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely to authorise buy-back of securities under section 68; but clause (a) to sub-section 2 to Section 68 prohibits the buy-back if not authorised by articles. It provides no company shall purchase its own shares or other specified securities under sub-section (1), unless the buy-back is authorised by its articles.

4. **Option (c)** Three independent Directors.

Reason

Section 177(2)

The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority.

Since already two non-independent directors are there at audit committee, hence to form majority of independent directs at-least 3 such independent directors shall be appointed to audit committee.

CASE SCENARIO 10

XYZ Auto Limited, an unlisted Company is engaged in the manufacturing of auto components and spare parts. Its Registered Office is situated in Chennai, Tamil Nadu and its branches are located in Metropolitan cities i.e. Delhi, Mumbai and Kolkata. Following information is available from its audited financial statements:

Particulars	FY 2018-19 (₹ in Lakhs)	FY 2019-20 (₹ in Lakhs)	FY 2020-21 (₹ in Lakhs)
Paid-up Share Capital	1,500	1,500	1,500
Turnover	8,000	9,000	9,500
Outstanding Loans	1,500	1,300	1,100
Debentures	1,200	1,100	1,000

ABC Transporters Limited, an unlisted company, is engaged in the business of transport and logistics and has its Registered Office in Mumbai. ABC Transporters Limited purchased all the shares of XYZ Auto Limited in February, 2020 and became its holding company. It is to be noted that ABC Transporters Limited has 900 shareholders and 400 debenture-holders.

Following information is available from the audited financial statements of ABC Transporters Limited:

Particulars	FY 2018-19 (₹ in Lakhs)	FY 2019-20 (₹ in Lakhs)	FY 2020-21 (₹ in Lakhs)
Paid-up Share Capital	5,000	5,000	5,000
Turnover	35,000	40,000	45,000
Secured Loans from Super Commercial Bank and Other Unsecured Loans	3,500	4,000	4,500
Debentures	1,000	1,000	1,000

Sumit and Sumedh, the Directors of ABC Transporters Limited also happened to be the Directors of EFG Lights Limited, an unlisted company. However, in June, 2020, they exited from EFG Lights Limited as Directors. The turnover of EFG Lights Limited amounted to ₹ 110 crore, ₹ 99 Crores, ₹ 95 Crores and ₹ 91

Crores respectively in FY 2017-18, FY 2018-19, FY 2019-20 and FY 2020-21. The gradual decline in turnover is on account of inadequate marketing of the products and improper campaigning. Employees' unrest from time to time is also responsible for falling turnover. The aggregate, outstanding loans, debentures and deposits mounting to ₹ 42.54 crore at end of FY 2020-21. The total paid- up share capital of the EFG Lights Limited is ₹ 9.50 crore throughout the period. EFG Lights Limited is continuing with an Audit Committee which was constituted earlier.

MULTIPLE CHOICE QUESTIONS

1. In respect of constitution of Audit Committee by XYZ Auto Limited, out of the following options, which one is applicable?

   (a) XYZ Auto Limited, being not a private company, is required to constitute an Audit Committee.

   (b) Having paid-up share capital above the threshold limit, XYZ Auto Limited is required to constitute an Audit committee.

   (c) Based on the threshold limits, since ABC Transporters Limited has constituted its Audit Committee, XYZ Auto Limited, being wholly owned subsidiary of ABC Transporters Limited, is not required to constitute an Audit Committee.

   (d) In view of the average turnover and paid-up share capital of last three financial years exceeding the threshold limit, XYZ Auto Limited is required to constitute an Audit committee.

2. Is it permissible for EFG Lights Limited to discontinue its Audit Committee in the FY 2021-22?

   (a) Yes. EFG Lights Limited can discontinue its Audit Committee in the FY 2021-22, since both the Directors of ABC Limited have left the Directorship in EFG Limited.

   (b) Yes. EFG Lights Limited can discontinue its Audit Committee in the FY 2021-22, since it did not exceed the threshold limit.

(c) No. EFG Lights Limited cannot discontinue its Audit Committee in the FY 2021-22, since its aggregate turnover in the last three financial years exceeds ₹ 100 crore.

(d) No. EFG Lights Limited cannot discontinue its Audit Committee in the FY 2021-22, since its paid-up share capital is more than ₹ 5.00 crore.

3. Suppose ABC Transporters Limited did not constitute Vigil Mechanism as required by Section 177 (9) of the Companies Act, 2013. Out of the following four options, which one correctly states the penalty that is leviable on the company for contravening this provision?

(a) The company is liable to pay minimum fine of ₹ 50,000 and maximum of ₹ 1,00,000.

(b) The company is liable to pay minimum fine of ₹ 1,00,000 and maximum of ₹ 5,00,000.

(c) The company is liable to pay fine of ₹ 5,00,000.

(d) The company is liable to pay fine of ₹ 1,00,000.

4. As regards Stakeholders Relationship Committee, whether ABC Transporters Limited is required to form such a Committee as per the relevant provisions of the Companies Act, 2013:

(a) No. ABC Limited is not required to form a Stakeholders Relationship Committee since its shareholders are limited to 900.

(b) No. ABC Limited is not required to form a Stakeholders Relationship Committee since its debenture-holders are limited to 400.

(c) Yes. ABC Limited is required to form a Stakeholders Relationship Committee since its shareholders and debenture-holders total upto 1300.

(d) No. ABC Limited is not required to form a Stakeholders Relationship Committee since the combined strength of its shareholders and debenture-holders does not exceed 1500.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (c)** Based on the threshold limits, since ABC Transporters Limited has constituted its Audit Committee, XYZ Auto Limited, being wholly owned subsidiary of ABC Transporters Limited, is not required to constitute an Audit Committee.

Reason

Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014 read with Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

Rule 6 says the Board of directors of every listed public company and a company covered under rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 shall constitute an 'Audit Committee' and a 'Nomination and Remuneration Committee of the Board.

Whereas Rule 4 (1) covers those public companies

(i) having paid up share capital of ten crore rupees or more; or

(ii) having turnover of one hundred crore rupees or more; or

(iii) which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees

But Rule 4(2) specifically exclude the following classes of unlisted public company from scope of rule 4(1), namely:-

(a) a joint venture

(b) a wholly owned subsidiary; and

(c) a dormant company as defined under section 455 of the Act

Therefore, ABC Transporters Limited has constituted its Audit Committee, XYZ Auto Limited, being wholly owned subsidiary of ABC Transporters Limited, is not required to constitute an Audit Committee.

2. **Option (b)** Yes. EFG Lights Limited can discontinue its Audit Committee in the FY 2021-22, since it did not exceed the threshold limit.

Reason

Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014 read with Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

Turnover (INRs 91 crore for FY 2020-21) and Paid-up share capital (INRs 9.5 crore, through-out, in FY 2020-21 too), while aggregate, outstanding loans, debentures and deposits is INRs 42.54 crores at end of FY 2020-21)

3. **Option (c)** The company is liable to pay fine of ₹ 5,00,000.

Reason

Section 178(8)

In case of any contravention of the provisions of section 177 (i.e. Audit Committee and Vigil Mechanism) and this section, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of one lakh rupees

4. **Option (c)** Yes. ABC Transporters Limited is required to form a Stakeholders Relationship Committee since its shareholders and debenture-holders total upto 1300.

Reason

Section 178(5)

The Board of Directors of a company which consists of more than one thousand shareholders, debenture -holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.

CASE SCENARIO 11

Shri Hari Textiles Limited was incorporated in the year 2010. Its Registered Office is situated in Connaught Place, New Delhi. It filed its audited annual financial statements for the financial year 2020-21 well within time with the jurisdictional Registrar of Companies. The Registrar inspected the statements and after reviewing them, felt the need to seek clarifications on certain matters. Accordingly, a written notice was sent by the Registrar to the company and its officials directing them to comply with the notice within thirty days of its receipt. However, the company and its officials failed to reply within the time specified in the notice.

The Registrar initiated the inquiry and proceeded further for inspecting all the documents of the company. While conducting the inquiry, the Registrar on prudent grounds believed that some of the documents and other vital information in relation to the company would be destroyed or altered by the official of the company. With a view to safeguard the documents, the Registrar obtained an order from the Special Court and thereafter, seized all such material.

While inspecting some of the documents the Registrar came to know that the Board of Directors had passed a resolution in a Board Meeting held on 10-07-2020 and thereby, increased the remuneration payable to the Directors including two whole-time Directors and Managing Director to 12% of the net profits of the company which was a sharp increase of 5% from the preceding financial year.

Prior to the inquiry, two Directors of the company, namely, Mr. Alex and Mr. Disouza got retired. The Registrar found from the inspection of the documents that they were involved in certain dealings which included selling of the assets of the company. On the basis of such information gathered from the inspected documents, the Registrar sought some clarifications from both of them regarding the dubious transactions. However, both Mr. Alex and Mr. Disouza refused to appear before him showing their non-availability in the town and also represented through a common representative that they were no more a part of the Board of Directors of Shri Hari Textiles Limited.

After the completion of inspection and inquiry, the Registrar submitted a written report to the Central Government in respect of his findings against the company. The reports mentioned that there were major discrepancies in the assets and liabilities as well as profit and loss statements filed by the company.

On receipt of report from the Registrar, the Central Government considered it necessary to investigate the affairs of the company by the Serious Fraud Investigation Office (SFIO). Accordingly, by an order SFIO was directed to conduct the investigation of Shri Hari Textiles Limited and submit its report within the stipulated time. As instructed by the Central Government, SFIO authorised some of its inspectors to investigate the affairs of the company. The team deputed by the SFIO included experts in the field of cost accounting, financial accounting, taxation, law and forensic auditing.

While inspecting the company, the team of SFIO came to know that the Income-tax authorities had already initiated investigation against Shri Hari Textiles Limited.

MULTIPLE CHOICE QUESTIONS

1. Shri Hari Textiles Limited and its officials failed to submit any reply to the written notice issued by the Registrar within the time specified in the notice. How much fine can be imposed for such failure?

   (a) The Company and every defaulting officer shall be punishable with a fine up to ₹ 1,00,000 and in case of continuing failure, with an additional fine up to ₹ 500 for every day after the first during which the failure continues.

   (b) The Company and every defaulting officer shall be punishable with a fine up to ₹ 1,50,000 and in case of continuing failure, with an additional fine up to ₹ 1,000 for every day after the first during which the failure continues.

   (c) The Company and every defaulting officer shall be punishable with a fine up to ₹ 1,00,000 and in case of continuing failure, with an additional fine up to ₹ 5,000 for every day after the first during which the failure continues.

(d) The Company and every defaulting officer shall be punishable with a fine up to ₹ 2,00,000 and in case of continuing failure, with an additional fine up to ₹ 5,000 for every day after the first during which the failure continues.

2. From the case scenario, it is observed that the Registrar seized certain important documents in the course of inquiry. After inspection what procedure is to follow pertaining to such documents?

(a) The Registrar is required to submit such documents in the Special Court which permitted seizure.

(b) The Registrar is required to forward all such documents along with the inquiry report to the Central Government.

(c) The Registrar is required to return such documents back to the company after making, if considered necessary, the copies of them.

(d) The Registrar is required to retain such documents till instructed further by the Special Court.

3. From the case scenario, it is noticed that the Board of Directors of Shri Hari Textiles Limited had passed a resolution in a Board Meeting held on 10-07-2020 increasing the remuneration payable to the Directors including two whole-time Directors and Managing Director to 12% of the net profits of the company. What is the requirement for increasing the remuneration of Directors including Whole-Time Directors and Managing Director to the extent of 12% so that the increased remuneration shall be in accordance with the relevant provisions of the Companies, Act, 2013?

(a) Board Resolution increasing the remuneration to 12% needs to be authorised at the General Meeting and thereafter, duly sanctioned by the ROC.

(b) Board Resolution increasing the remuneration to 12% needs to be authorised at the General Meeting and thereafter, duly sanctioned by the Tribunal.

(c) Board Resolution increasing the remuneration to 12% needs to be authorised at the General Meeting subject to Schedule V.

(d) Board Resolution increasing the remuneration to 12% needs to be authorised at the General Meeting and thereafter, duly sanctioned by the Central Government through Regional Director.

4. The case scenario states that the Registrar of Companies had called ex-Directors of Shri Hari Textiles Limited *i.e.* Mr. Alex and Mr. Disouza for examining them during the inquiry. Regarding power of the Registrar to call the ex-Directors and requirement of ex-directors to respond. Find the correct statement.

(a) The ex-Directors of Shri Hari Textiles Limited i.e. Mr. Alex and Mr. Disouza, is not bound to response to Registrar; in case.

(b) The ex-Directors of Shri Hari Textiles Limited i.e. Mr. Alex and Mr. Disouza bond to response to notice issued by registrar, call the for seeking the requisite information.

(c) The ex-Directors of Shri Hari Textiles Limited i.e. Mr. Alex and Mr. Disouza bond to response only in case the Registrar is appointed by the Central Government to conduct investigation, even then only registrar can call requisite information from ex-Directors of Shri Hari Textiles Limited.

(d) Except the Tribunal, no other authority is empowered to call ex-Directors of a company for any examination.

5. According to the case scenario, while inspecting the company, the team of SFIO came to know that the Income-tax authorities had already initiated investigation against the company. From the given options, choose the correct one that indicates as to how amidst such a situation SFIO will be continuing with the investigation.

(a) SFIO has to put its investigation on hold so long as the company is being investigated by Income-tax authorities.

(b) SFIO will proceed with its investigation on the basis of report submitted by Income-tax authorities.

(c) SFIO will proceed with its investigation while Income-tax authorities shall keep on hold its investigation.

(d) SFIO will simultaneously continue its investigation along with the Income-tax authorities.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (a)** The Company and every defaulting officer shall be punishable with a fine up to ₹ 1,00,000 and in case of continuing failure, with an additional fine up to ₹ 500 for every day after the first during which the failure continues.

Reason

Section 206(7)

No explanation is required, as penalty provision is self- explanatory.

2. **Option (c)** The Registrar is required to return such documents back to the company after making, if considered necessary, the copies of them.

Reason

Section 209(2)

The Registrar or inspector shall return the books and papers seized under subsection(1), as soon as may be, and in any case not later than one hundred and eightieth day after such seizure, to the company from whose custody or power such books or papers were seized.

First proviso empowers registrar or inspector to call (recall) the books and papers for a further period of one hundred and eighty days by an order in writing if they are needed again.

While second proviso gives power to the registrar or inspector that s/he may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such other manner as he considers necessary.

3. **Option (c)** Board Resolution increasing the remuneration to 12% needs to be authorised at the General Meeting subject to Schedule V.

Reason

First Proviso to Section 197(1)

It is provided that the company in general meeting may, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V.

4. **Option (b)** The Registrar may, by issuing a notice, call the ex-Directors of Shri Hari Textiles Limited i.e. Mr. Alex and Mr. Disouza for seeking the requisite information.

Reason

Section 206(1) and Proviso to section 206(2)

Section 206(1) empowers registrar to call for information and explanations,

Whereas proviso to section 206(2) provides where such information or explanation seek by registrar relates to any past period, the officers who had been in the employment of the company for such period, if so called upon by the Registrar through a notice served on them in writing, shall also furnish such information or explanation to the best of their knowledge.

5. **Option (c)** SFIO will proceed with its investigation while Income-tax authorities shall keep on hold its investigation.

Reason

Section 212(2)

Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.

CASE SCENARIO 12

Sunshine Software Private Limited having its Registered Office at Hyderabad was incorporated on 28th May, 2018 with Authorised Capital of ₹ 10,00,000 divided into 1,00,000 equity shares of ₹ 10 each. The main object of the company is to develop customised business software and provide software consulting services to various business houses.

Mr. Sumit, Mr. Samadhan, Mr. Saumitra and Mr. Aniket, the subscribers to the Memorandum of Association are also the Directors of the company. The company allotted the shares to the subscribers within the stipulated time. It is worth noting that the Directors are part of the core team for development of the software. However, due to some internal misunderstanding among all the Directors, more particularly serious disagreement in relation to working schedules, the company could not start its working since incorporation and therefore, no revenue was generated from operations. In fact, the Directors were busy pursuing their own business interests and seemingly, had no intention to devote any time for the company.

Following information has been extracted from the financial statements of the Sunshine Software Private Limited from the date of its incorporation:

Particulars	**2018-19 (Amount in ₹)**	**2019-20 (Amount in ₹)**
Paid-up Share Capital	10,00,000	10,00,000
Revenue from Operations	Nil	Nil
Expenses incurred towards fulfilment of various legal obligations	55,000	65,000

The company did not recruit even a single employee and therefore, no expenses on account of salary or on other material transactions were incurred. However, the company has complied with all the filing requirements under the Companies Act, 2013 and the Income Tax Act, 1961 since its incorporation. It incurred the following expenses:

(a) Payment of fees to the Registrar.

(b) Payments made to fulfil the requirements of the Companies Act, 2013 and any other applicable laws.

(c) Some payments were made for maintenance of office and records.

Mr. Saumitra also holds Directorship in Surya Energy Private Limited against which National Company Law Tribunal had passed an order under Section 420 of the Companies Act, 2013. After receipt of the order of Tribunal, Surya Energy is contemplating to file an appeal with National Company Law Appellate Tribunal (NCLAT).

MULTIPLE CHOICE QUESTIONS

1. On the basis of the facts mentioned in the case scenario, determine the status of the Sunshine Software Private Limited.

   (a) It is an inactive company since no significant accounting transactions have been undertaken for the last two financial years.

   (b) It is a defunct company since no significant accounting transactions have been undertaken for the last two financial years.

   (c) It is an active company since it makes regular payments to ROC.

   (d) None of the above.

2. In which form application shall be made by a 'Dormant Company' for obtaining the status of an 'active company'.

   (a) MSC- 1

   (b) MSC- 2

   (c) MSC- 3

   (d) MSC- 4

3. Choose from the following options, the number of minimum Directors which a dormant company shall have, if it is a public limited company.

   (a) Seven

   (b) Two

   (c) Three

(d) One

4. Assuming that the ROC issued a certificate to Sunshine Software Private Limited allowing it the status of a 'dormant company' w.e.f. 1st October, 2020, then what will be the date after which ROC is empowered to initiate the process of striking off the name of the company if it continues to remain as a dormant company.

(a) After 30th September, 2021.

(b) After 30th September, 2022.

(c) After 30th September, 2024.

(d) After 30th September, 2025.

5. From the case scenario, it is observed that Surya Energy Private Limited, aggrieved by the order of the Tribunal, wants to file an appeal with NCLAT. Within how much time from the date of receipt of the order of Tribunal it can file such appeal with NCLAT:

(a) Surya Energy Private Limited can file an appeal with NCLAT within a period of 15 days from the date of the receipt of the order of Tribunal.

(b) Surya Energy Private Limited can file an appeal with NCLAT within a period of 30 days from the date of the receipt of the order of Tribunal.

(c) Surya Energy Private Limited can file an appeal with NCLAT within a period of 45 days from the date of the receipt of the order of Tribunal.

(d) Surya Energy Private Limited can file an appeal with NCLAT within a period of 60 days from the date of the receipt of the order of Tribunal.

ANSWER TO MULTIPLE CHOICE QUESTION

1. Option (a) It is an inactive company since no significant accounting transactions have been undertaken for the last two financial years.

Reason

Explanations to section 455

Explanation i defines inactive company as a company which has not been carrying on any business or operation, or has not made any **significant accounting transaction** during the last two financial years , or has not filed financial statement and annual returns during the last two financial years;

Further explanation ii defines significant accounting transaction means any transaction other than;

(a) payment of fees by a company to the Registrar;

(b) payments made by it to fulfil the requirements of this Act or any other law;

(c) allotment of shares to fulfil the requirements of this Act; and

(d) payments for maintenance of its office and records

2. Option (d) MSC- 4

Reason

Section 355 (5) read with Rule 8 of Companies (Miscellaneous) Rules, 2014

Section 355 (5) read as a dormant company may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed.

Further rule 8 (1) of Companies (Miscellaneous) Rules, 2014, says an application, under sub-section (5) of section 455, for obtaining the status of an active company shall be made in Form MSC-4 along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by a return in Form MSC-3 in respect of the financial year in which the application for obtaining the status of an active company is being filed.

It is worth here to note that registrar shall initiate the process of striking off the name of the company if the company remains as a dormant company for a period of consecutive five years. Hence application shall be filled before 5 years for obtaining active status.

3. Option (c) Three

Reason

Section 355 (5) read with Section 149(1) Section 355(5) provides 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.

Since section 149(1) prescribe minimum of 3 directors in case of public company, hence to retain status dormant company (basically to comply with 355(5) it shall have at least three directors.

4. Option (d) After 30th September, 2025.

Reason

Rule 8 of Companies (Miscellaneous) Rules, 2014

Proviso to rule 8 (1) of Companies (Miscellaneous) Rules, 2014, provides registrar shall initiate the process of striking off the name of the company if the company remains as a dormant company for a **period of consecutive five years**.

Here it is worth to refer section 355 (6) as well, The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of section 355.

5. Option (c) Surya Energy Private Limited can file an appeal with NCLAT within a period of 45 days from the date of the receipt of the order of Tribunal.

Reason

Sub-section (1) of section 421 read with Sub-section (3).

Sub-section 1 empower any person who is aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.

Further sub-section 3 requires that every appeal under sub-section (1) shall be filed within a **period of forty-five days** from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed.

CASE SCENARIO 13

Paavan Nidhi Limited having its Registered Office at Karol Bagh, New Delhi, has been declared as Nidhi by notification published in the Official Gazette. The company is incorporated with the object of cultivating the habit of thrift and savings among its members, receiving deposit from, and lending to, its members only, for their mutual benefit.

Paavan Nidhi Limited has six Directors, namely, Padam, Prakash, Puneet, Pratima, Poorva and Piyush and two hundred fifty members. All the Directors are shrewd businessmen having full dedication to the cause of the company. They are committed to run the company in accordance with the Nidhi Rules, 2014 and being law-abiding persons shall not do anything which is not permitted in case of a Nidhi like carrying on the business of chit fund or hire-purchase finance or leasing finance or insurance, etc. Padam is the senior-most Director with vast experience in the field of finance and therefore, he has been honoured by the company to hold Directorship for a term up to ten consecutive years.

The company offers following services for the benefit of its members:

1. Fixed Deposit Plans of different maturities;
2. Recurring Deposit Plans for members who do not wish to deposit lump-sum;
3. Opening of Savings Accounts in the name of members;
4. Gold Loans to the needy members on easy terms;
5. Mortgage Loans, etc.

PQR Traders Private Limited, having its Registered Office at Munirka, New Delhi, was incorporated last year. It had a chance to go through the operations of Paavan Nidhi Limited and finding them to be on sound footing, it applied for becoming its member. The Nidhi company is analysing the proposals received.

During the current year, Mr. Kshitij, a member of Paavan Nidhi Limited deposited ₹ 1,00,000 in the name of his minor son Rudra who is of 12 years of age. Mr. Kshitij also desires that Rudra becomes a member of Paavan Nidhi and for that purpose he is negotiating with the company. As regards the validity of this matter, Piyush,

one of the Directors has raised certain objections. The company wants to sort out the issue amicably.

MULTIPLE CHOICE QUESTIONS

1. From the case scenario, it is observed that PQR Traders Private Limited has applied for becoming a member of Paavan Nidhi Limited. From the following options, choose the one which is applicable in such a situation:

   (a) PQR Traders Private Limited cannot become a member of Paavan Nidhi Limited.

   (b) PQR Traders Private Limited can become a member of Paavan Nidhi Limited by investing minimum ₹ 5,00,000 as capital.

   (c) PQR Traders Private Limited can become a member of Paavan Nidhi Limited by including a clause in its Articles of Association which permits it to become a member of a Nidhi company.

   (d) PQR Traders Private Limited must be in existence for a minimum period of three years to be eligible for becoming member of a Nidhi company.

2. Piyush, one of the Directors of Paavan Nidhi Limited has raised objection on acceptance of deposit amounting to ₹ 1,00,000 in the name of Rudra, a minor, and negotiations initiated by his father Mr. Kshitij to make him a member of the Paavan Nidhi. From the following options choose the one which is applicable in the given situation:

   (a) Paavan Nidhi Limited can neither accept deposit in the name of Rudra, a minor, nor can make him a member.

   (b) Paavan Nidhi Limited may accept deposit in the name of Rudra, a minor, since it is made by Mr. Kshitij, a member and the father of Rudra but being minor, he cannot be made a member.

   (c) Paavan Nidhi Limited cannot accept deposit in the name of Rudra exceeding ₹ 25,000 but he can become a member by contributing minimum amount.

(d) Paavan Nidhi Limited can accept deposit in the name of Rudra up to ₹ 2,00,000 and he can become a member of the company.

3. From the case scenario, it is evident that Padam, the senior-most Director, has been honoured by Paavan Nidhi Limited to hold Directorship for a term up to ten consecutive years. After relinquishing his office as Director at the expiry of ten years, when can Padam be re-appointed as Director of the company.

(a) Padam shall be eligible for re-appointment only after the expiry of two years of ceasing to be a Director.

(b) Padam shall be eligible for re-appointment only after the expiry of one year of ceasing to be a Director.

(c) Padam shall be eligible for re-appointment only after the expiry of six months of ceasing to be a Director.

(d) Padam shall not be eligible for re-appointment once he ceases to be a Director.

4. If M/s A & A Associates, a firm of auditors, has been appointed as auditors of Paavan Nidhi Limited for a term of five years commencing from FY 2016-17 to FY 2020-21 and if the company is desirous of re-appointing the said firm of auditors for another term of five years commencing from FY 2021-22, then which of the following options is applicable in such an eventuality:

(a) M/s A & A Associates cannot be re-appointed as auditors for another term of five years since no Nidhi company shall appoint or reappoint any auditing firm for two terms of five consecutive years.

(b) M/s A & A Associates can be re-appointed as auditors for another term of five years since a Nidhi company is permitted to appoint or reappoint any auditing firm for two terms of five consecutive years.

(c) M/s A & A Associates cannot be re-appointed as auditors for another term of five years since no Nidhi company is permitted to re-appoint any auditing firm before the expiry of two years if an

auditing firm ceases to be its auditors after completion of the term of five years.

(d) M/s A & A Associates cannot be re-appointed as auditors for another term of five years since no Nidhi company is permitted to re-appoint any auditing firm before the expiry of one year if an auditing firm ceases to be its auditors after completion of the term of five years.

5. The rate of interest charged on loan given by Nidhi can be;

(a) Five per cent above the highest rate of interest offered on deposits by Nidhi and shall be calculated on reducing balance method.

(b) Five per cent above the highest rate of interest offered on deposits by Nidhi and shall be calculated on as flat rate basis.

(c) Seven and half per cent above the highest rate of interest offered on deposits by Nidhi and shall be calculated on reducing balance method.

(d) Seven and half per cent above the highest rate of interest offered on deposits by Nidhi and shall be calculated on as flat rate basis.

ANSWER TO MULTIPLE CHOICE QUESTION

1. Option (a) PQR Traders Private Limited cannot become a member of Paavan Nidhi Limited.

Reason

Rule 8 (1) of Nidhi Rules 2014

A Nidhi shall not admit a body corporate or trust as a member. Therefore PQR Traders Private Limited (being body corporate) cannot become a member of Paavan Nidhi Limited.

2. Option (b) Paavan Nidhi Limited may accept deposit in the name of Rudra, a minor, since it is made by Mr. Kshitij, a member and the father of Rudra but being minor, he cannot be made a member.

Reason

Rule 8 (3) of Nidhi Rules 2014

A minor shall not be admitted as a member of Nidhi.

Further proviso to said rule suggests that deposits may be accepted in the name of a minor, if they are made by the natural or legal guardian who is a member of Nidhi.

3 **Option (a)** Padam shall be eligible for re-appointment only after the expiry of two years of ceasing to be a Director.

Reason

Rule 17 (3) of Nidhi Rules 2014

The Director of Nidhi shall be eligible for re-appointment only after the expiration of two years of ceasing to be a Director.

4. Option **(b)** M/s A & A Associates can be re-appointed as auditors for another term of five years since a Nidhi company is permitted to appoint or reappoint any auditing firm for two terms of five consecutive years.

Reason

Rule 19 (2) of Nidhi Rules 2014

No Nidhi shall appoint or re-appoint an audit firm as auditor for more than **two terms of five consecutive years**.

It is worth noting that an auditor (whether an individual or an audit firm) shall be eligible for subsequent appointment after the expiration of two years from the completion of his or its term.

5. Option **(c)** Seven and half per cent above the highest rate of interest offered on deposits by Nidhi and shall be calculated on reducing balance method.

Reason

Rule 16 of Nidhi Rules 2014

The rate of interest to be charged on any loan given by a Nidhi shall not exceed seven and half per cent above the highest rate of interest offered on deposits by Nidhi and shall be calculated on reducing balance method.

CASE SCENARIO 14

Yash, Yuvraj, Yatharth and Yatin are the Directors of Yukta Developers Limited (YDL), an Agra based unlisted company having significant insight in constructing apartments, residencies and malls in Agra, Kanpur and Bareilly for the last ten years. Its latest project was to develop Sky Snow Residency at a prominent place in Dehradun, Uttarakhand. The blue print of the project contained construction of luxurious 3/4 BHK villas with the latest amenities.

As on 31st March, 2021, YDL had paid-up share capital of ₹ 60.00 crore and free reserves of ₹ 25.00 crore. Its turnover for the F.Y. 2020-21 was ₹ 450.00 crore and the borrowings aggregated to ₹ 45.00 crore. Included in the list of total assets of the company were investments made in other companies and loans advanced to the extent of ₹ 40.00 crore. The proposal to advance a loan of ₹ 15.00 crore to Srilekha Engineering Private Limited is under the active consideration of YDL.

YDL, with a view to expand its network decided to show its presence in New Delhi, the capital city of the country. Keeping in mind the influx of challenging responsibilities, Mr. Vikalp Kumar and Mr. Ravindra were appointed as Director on 07-08-2020.

As regards holding of Board Meetings by the Directors of YDL, there were six such meetings held from 01-08-2020 to 31-03-2021. Yash, due to some extraneous reasons, took leave of absence for the first three meetings and in case of next three meetings he did not even inform the Board regarding his absence.

Yatharth thought of assigning his office of Directorship to Janeesh, Vice President (Operations) for his absence for a period of four months starting from 01-09-2020 as he was to go to Singapore to acquire higher technical expertise in connection with the upcoming Sky Snow Residency project in Dehradun.

MULTIPLE CHOICE QUESTIONS

1. From the case scenario, it is observed that YDL has not appointed any woman Director. Is it necessary for YDL to appoint a woman Director?

(a) YDL is not required to appoint a woman Director because it is an unlisted company.

(b) YDL is required to appoint a woman Director since its paid-up share capital is ₹ 60 crore.

(c) YDL is required to appoint a woman Director since its turnover is ₹ 450 crore.

(d) YDL is required to appoint a woman Director since its combined paid-up share capital and turnover is more than ₹ 500 crore.

2. According to the case scenario, Yatharth thought of assigning his office of Directorship to Janeesh, Vice President (Operations) for his absence for a period of four months starting from 1.09.2020 as he was to go to Singapore to acquire higher technical expertise in connection with the upcoming Sky Snow residency project in Dehradun. From the following options, choose the correct one:

(a) Yatharth is authorised to assign his office of Directorship to Janeesh, Vice President (Operations) for his absence for a period of four months starting from 01.09.2020.

(b) Yatharth is not authorised to assign his office of Directorship to Janeesh, Vice President (Operations) for his absence for a period of four months starting from 01.09.2020.

(c) Yatharth himself can appoint an alternate Director for his absence for a period of four months starting from 01.09.2020.

(d) Yatharth can instruct Yatin, another Director who is junior to him in age, to attend Board Meetings on his behalf besides himself whenever a meeting is held during his absence starting from 01.09.2020.

3. As per the case scenario, Yash did not attend six Board Meetings consecutively which were held from 01-08-2020 to 31-03-2021. He took leave of absence for the first three meetings and in case of next three meetings he did not even inform the Board regarding his absence. Out of the following four options, which one is applicable in such a situation?

(a) Yash is required to vacate his office as Director since without seeking leave of absence from the Board he absented himself from the last three Board Meetings consecutively.

(b) Yash is required to vacate his office as Director since he did not attend six Board Meetings consecutively and it is immaterial whether he took leave of absence or not from the Board.

(c) Yash is not required to vacate his office as Director since he has not absented himself from the Board Meetings for a continuous period of twelve months yet.

(d) Yash is required to vacate his office as Director since he did not attend Board Meetings consecutively for more than six months.

4. The case scenario states that a proposal to advance a loan of ₹ 15.00 crore to Srilekha Engineering Private Limited is under the active consideration of YDL. In this respect, which of the following options is best applicable:

(a) YDL can advance a loan of ₹ 15.00 crore to Srilekha Engineering Private Limited by passing a board resolution.

(b) YDL can advance a loan of ₹ 15.00 crore to Srilekha Engineering Private Limited but only after passing an ordinary resolution.

(c) YDL can advance a loan of ₹ 15.00 crore to Srilekha Engineering Private Limited but only after passing a special resolution.

(d) YDL cannot advance a loan of ₹ 15.00 crore to Srilekha Engineering Private Limited since it has already made investments in other companies and has advanced loans to the extent of ₹ 40.00 crore.

5. After appointment of Mr. Vikalpa and Mr. Ravindra what shall be quorum for the board meeting?

(a) 2 Directors

(b) 3 Directors

(c) 4 Directors

(d) 5 Directors

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (c)** YDL is required to appoint a woman Director since its turnover is ₹ 450 crore.

Reason

Second Proviso to section 149(1) read with rule 3 of the Companies (Appointment and Qualification of Directors) rules,2014

At least one woman director shall be appointed by every listed company and those public companies that have

Paid–up share capital of one hundred crore rupees or more; or

Turnover of three hundred crore rupees or more:

2. **Option (b)** Yatharth is not authorised to assign his office of Directorship to Janeesh, Vice President (Operations) for his absence for a period of four months starting from 01.09.2020.

Reason

Section 166(6)

A director of a company shall not assign his office and any assignment so made shall be void.

3. **Option (c)** Yash is not required to vacate his office as Director since he has not absented himself from the Board Meetings for a continuous period of twelve months yet.

Reason

Section 167(1)(b)

The office of a director shall become vacant in case he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;

4. **Option (c)** YDL can advance a loan of ₹ 15.00 crore to Srilekha Engineering Private Limited but only after passing a special resolution.

Reason

Sub-section 2 to section 186 read with sub-section 3.

Sub-section 2 put a limit by providing no company shall directly or indirectly give any loan, guarantee or provide security; and acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding;

60% of its paid-up share capital, free reserves, and securities premium account (51 crores in this case as 60% of 60+25 crores) or

100% of its free reserves and securities premium account (25 crores in this case),

Whichever is more (i.e. 51 crores)

Note – Since loan of INRs 40 crores already made hence further loan of INRs 11 crores (instead of INRs 15 crores) can only be advanced.

But sub-section 3 provides where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under sub-section (2), no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting.

5. Option (a) 2 Directors

Reason

Section 174(1)

The quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.

After appoint of Vikalpa and Ravindra the total strength reach to 6, 1/3rd of same amounts to 2; therefore 2 directors shall form quorum for board meeting.

CASE SCENARIO 15

Shree Ram Garments Limited, a listed public company, was incorporated in the year 2001 under the Companies Act, 1956. Its Registered Office is situated in Statesman House at Connaught place, New Delhi. As on 31st March, 2021, the company had 12 Directors as under:

1.	Mr. Amit	Managing Director
2.	Mr. Rohan	Whole-time Director
3.	Mr. Rohit	Whole-time Director
4.	Mr. Sudarshan	Director
5.	Mr. Bharat	Director
6.	Mrs. Anisha	Woman Director
7.	Mr. Kapil	Director
8.	Mr. Anup	Director
9.	Mr. Farhan	Director
10.	Mr. Pritam	Independent Director
11.	Mr. Anuj	Independent Director
12.	Mr. Anil	Independent Director

During the current year, Mr. Sunil was also appointed as the independent Director of the company.

The Articles of Association of Shree Ram Garments Limited provide that the maximum number of Directors in the company shall not exceed twenty. After the appointment Mr. Sunil as Independent Director the total number of directors in the company has increased to thirteen. However, keeping in view the excessive workload, the Board of Directors is contemplating to increase the number of Directors to seventeen. A meeting of the Board of Directors was held to discuss the same.

Shree Ram Garments Limited, at present, is having 1000 small shareholders who are desirous of appointing Mr. Parag as their Director on the Board of Directors. Mr. Parag held 500 equity shares of ₹ 10 each in the said company. According to the provisions of the Companies Act, 2013, a listed company may have one

Director elected by such small shareholders in such manner and on such terms and conditions as may be prescribed. Hence, Mr. Parag was appointed as a small shareholders' Director by the company.

An urgent meeting of the Board was called on 2nd December, 2021, by the company at its Registered Office at 4 P.M., to discuss certain matters pertaining to buying of sophisticated machineries. A three days' prior notice was issued to each Director for attending the meeting. Mr. Anil, due to his surgery, was advised full time rest by his surgeon and even his attendance through video conferencing was not allowed. Accordingly, he informed the Company Secretary Mrs. Shyamala beforehand. Mr. Anuj, Mr. Sudarshan and Mr. Pritam were out of station for the last one week and due to poor connectivity at their respective places, they were unable to attend the meeting even through video conferencing. Mr. Farhan was extremely busy due to his son's marriage. Mr. Anup was also held up because his grandmother had suddenly developed respiratory problem and therefore, was to be hospitalised for further check-up. In addition, her doctor wanted her to remain admitted in the hospital for next two days for thorough check-up. On the day of the meeting, while coming to the meeting venue, Mr. Bharat met with an accident and was to be hospitalised. Mr. Rohit and Mr. Kapil had gone to their native places and were sure of attending the meeting since they expected to reach Delhi much before the time of meeting but their flight got delayed unexpectedly due to which they were unable to come to Delhi at the scheduled time. Mrs. Anisha's daughter Mehak called her to visit her at Chandigarh urgently and therefore, she was also not available for attending the meeting. Since only three directors Mr. Amit, Mr. Rohan and Mr. Sunil could reach the Registered Office for attending the meeting, it could not be held for want of quorum and was to be adjourned. This adjourned Board Meeting was again held on 9th December, 2021, at the Registered Office at 4 P.M. to discuss the pending issue of buying the sophisticated machineries.

Another Board Meeting was held on 12th January, 2022, at the Registered Office at 3 P.M. The agenda of the Board Meeting was to increase the sitting fees of Directors and sale of one of the undertakings of the company. The Board of Directors of the company decided to raise the payment of sitting fees for each meeting of Board of Directors to a maximum of ₹ 40,000 by altering its Articles of Association.

The Articles of Association of Shree Ram Garments Limited contain a provision by which Directors are empowered to sell or otherwise deal with the property/undertaking of the company. The Board was of the view that the sale consideration received from selling the undertaking would be used to clear off the part of existing term loan availed from Super Commercial Bank Limited. However, except Mr. Rohit and Mr. Anil who objected to the selling of company's undertaking, all other directors were in favour of said sale.

MULTIPLE CHOICE QUESTIONS

1. Mr. Sunil was recently appointed as independent Director of Shree Ram Garments Limited. Select the correct alternative from those given below regarding giving of declaration by Mr. Sunil as to his independence under the applicable provisions of the Companies Act, 2013, after assuming his position as an independent Director?

   (a) Mr. Sunil is required to give declaration as to his independence on the first day of attending his office.

   (b) Mr. Sunil is required to give declaration as to his independence at the first Board Meeting in which he participates as independent Director.

   (c) Mr. Sunil is required to give declaration as to his independence at the first Annual General Meeting of Shree Ram Garments Limited.

   (d) Mr. Sunil is required to give declaration as to his independence at the first meeting of Audit Committee in which he participates as independent Director.

2. According to the case scenario, Shree Ram Garments Limited, at present, has thirteen Directors on its Board. In case the company desires to increase the strength of number of Directors from thirteen to seventeen, what is the way out through which number of Directors can be increased to the desired seventeen?

   (a) Shree Ram Garments Limited can increase the number of directors from present thirteen to seventeen by passing an Ordinary Resolution at any General Meeting of the shareholders.

(b) Shree Ram Garments Limited can increase the number of directors from present thirteen to seventeen by passing a Special Resolution at a General Meeting of the shareholders.

(c) Shree Ram Garments Limited can increase the number of directors from present thirteen to seventeen by passing a board resolution by 2/3rd majority of Directors attending the meeting.

(d) Shree Ram Garments Limited can increase the number of directors from present thirteen to seventeen by passing a board resolution by $3/4^{th}$ majority of Directors attending the meeting.

3. The small shareholders of Shree Ram Garments Limited want to appoint Mr. Parag as their Director. Choose the correct option from those stated below as to minimum how many small shareholders are required to give notice to the company for appointment of their Director and also what is the minimum time period of giving such notice before the meeting where the issue of appointment of small shareholders' Director shall be considered:

(a) Minimum 100 small shareholders of Shree Ram Garments Limited are required to give notice to the company for appointment of Parag as their Director and such notice needs to be given minimum 14 days before the meeting where the issue of appointment of small shareholders' Director shall be considered.

(b) Minimum 200 small shareholders of Shree Ram Garments Limited are required to give notice to the company for appointment of Parag as their Director and such notice needs to be given minimum 15 days before the meeting where the issue of appointment of small shareholders' Director shall be considered.

(c) Minimum 150 small shareholders of Shree Ram Garments Limited are required to give notice to the company for appointment of Parag as their Director and such notice needs to be given minimum 21 days before the meeting where the issue of appointment of small shareholders' Director shall be considered.

(d) Minimum 300 small shareholders of Shree Ram Garments Limited are required to give notice to the company for appointment of Parag as their Director and such notice needs to be given minimum

30 days before the meeting where the issue of appointment of small shareholders' Director shall be considered.

4. The Board of Directors of Shree Ram Garments Limited decided to raise the sitting fees payable to the Directors for each meeting of the Board of Directors upto ₹ 40,000. In case, the company desires to increase sitting fees of independent Directors as well as woman Director from the existing ₹ 40,000 per meeting, whether it can do so. Choose the correct answer from the following given options:

   (a) The proposal of giving sitting fees to independent Directors as well as woman Director in excess of ₹ 40,000 can be accepted by Shree Ram Garments Limited but such fees cannot exceed the maximum limit of ₹ 50,000 per meeting for each such Director.

   (b) The proposal of giving sitting fees to independent Directors as well as woman Director in excess of ₹ 40,000 cannot be accepted by Shree Ram Garments Limited because all the Directors are eligible for equal sitting fees per meeting and that too maximum upto ₹ 50,000.

   (c) The proposal of giving sitting fees to independent Directors as well as woman Director in excess of ₹ 40,000 can be accepted by Shree Ram Garments Limited but such fees cannot exceed the maximum limit of ₹ 1,00,000 per meeting for each such Director.

   (d) Since women Directors unlike other independent Directors are not eligible for higher sitting fees per meeting, only independent Directors are eligible to be paid sitting fees in excess of ₹ 40,000 but maximum upto ₹ 50,000 per meeting.

5. The Board of Directors of Shree Ram Garments Limited decided to sell one of the undertakings of the company. Choose the correct alternative from those stated below as to the procedure which is required to be followed before selling the undertaking to some other interested party:

   (a) The Board of Directors of Shree Ram Garments Limited can sell the undertaking with the consent of 3/4th majority of the Directors present at the Board Meeting.

   (b) The Board of Directors of Shree Ram Garments Limited can sell the undertaking but the proposal needs to be approved by a special resolution passed at a General Meeting of the company.

(c) The Board of Directors of Shree Ram Garments Limited can sell the undertaking but only with the unanimous consent of all the Directors of the company and thereafter, seeking the approval of the shareholders through passing an ordinary resolution at a General Meeting.

(d) The Board of Directors of Shree Ram Garments Limited can sell the undertaking but only after seeking the approval of the shareholders through passing an ordinary resolution at a General Meeting and thereafter, obtaining the permission of the jurisdictional Registrar of Companies.

6. The case scenario states that an urgent Board Meeting was called on 2nd December, 2021, by Shree Ram Garments Limited at its Registered Office at 4 P.M. to discuss certain matters pertaining to buying of sophisticated machineries but the same could not held for want of quorum. What is the required quorum in this case:

(a) The required quorum in this case is participation of minimum seven directors in the Board Meeting.

(b) The required quorum in this case is participation of minimum six directors in the Board Meeting.

(c) The required quorum in this case is participation of minimum five directors in the Board Meeting.

(d) The required quorum in this case is participation of minimum four directors in the Board Meeting.

ANSWER TO MULTIPLE CHOICE QUESTION

1. Option (b) Mr. Sunil is required to give declaration as to his independence at the first Board Meeting in which he participates as independent Director.

Reason

Section 149(7)

Every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the

circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence as provided in sub-section (6).

Since the company in given case is listed hence required to comply with SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, **regulation 25(8)** provides every independent director shall, at the first meeting of the board in which he/she participates as a director and thereafter at the first meeting of the board in every financial year or whenever there is any change in the circumstances which may affect his/her status as an independent director, submit a declaration that he meets the criteria of independence as provided in clause (b) of sub-regulation (1) of regulation 16 and that he is not aware of any circumstance or situation, which exist or may be reasonably anticipated, that could impair or impact his/her ability to discharge his/her duties with an objective independent judgment and without any external influence.

2. **Option (b)** Shree Ram Garments Limited can increase the number of directors from present thirteen to seventeen by passing a Special Resolution at a General Meeting of the shareholders.

Reason

First Proviso to Section 149(1)

A company may appoint more than fifteen directors after passing a special resolution:

3. **Option (a)** Minimum 100 small shareholders of Shree Ram Garments Limited are required to give notice to the company for appointment of Parag as their Director and such notice needs to be given minimum 14 days before the meeting where the issue of appointment of small shareholders' Director shall be considered.

Reason

Rule 7 of Companies (Appointment and Qualification of Directors) Rules, 2014

Sub-rule 1 provides a listed company, may upon notice of not less than one thousand small shareholders or one-tenth of the total number of such

shareholders, whichever is lower (in this case 1/10th comes to 100; hence notice by 100 SSH fulfill the requirement), have a small shareholders' director elected by the small shareholders:

Further sub-rule 2 the small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall leave a notice of their intention with the company at least fourteen days before the meeting under their signatures specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director: Provided that if the person being proposed does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice:

4. **Option (c)** The proposal of giving sitting fees to independent Directors as well as woman Director in excess of ₹ 40,000 can be accepted by Shree Ram Garments Limited but such fees cannot exceed the maximum limit of ₹ 1,00,000 per meeting for each such Director.

Reason

Section 197(5) read with Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

Sub-section 5 to section provides that 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. Further first proviso to said sub-section provides that the amount of such fees shall not exceed the amount as may be prescribed in Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

Rule 4 says a company may pay a sitting fee to a director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of directors thereof which shall not exceed one lakh rupees per meeting of the Board or committee thereof.

It is also provided that for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors.

5. **Option (b)** The Board of Directors of Shree Ram Garments Limited can sell the undertaking but the proposal needs to be approved by a special resolution passed at a General Meeting of the company.

Reason

Section 180(1)

The Board of Directors of a company shall sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings only with the consent of the company by a special resolution.

6. **Option (c)** The required quorum in this case is participation of minimum five directors in the Board Meeting.

Reason

Section 174(1)

The quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.

After appointment of Mr. Sunil the total strength reach to 13, 1/3rd of same amounts to 4.33 that shall be round off to 5, which is more than 2; therefore 5 directors shall form quorum for board meeting.

It is worth noting, as per Regulation 17(2A) of the SEBI (LODR) Regulation, 2015 in case of listed companies (in given case also, the company is listed one) the quorum for every meeting of the board of directors of the top 2000 listed entities shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director.

CASE SCENARIO 16

Listed with BSE Limited and National Stock Exchange of India Limited, Superfast Motors Limited is a top player in the category of car dealers. The company, established in 2016 at New Delhi, always endeavored to achieve highest level of customer satisfaction and improving the buyers' experience for its customers. The company not only sells cars manufactured by Metro Motors Limited but also deals in used cars, insurance and finance. The company has showrooms in ten major cities of India. In addition, Superfast Motors Limited is also a leading original equipment manufacturer (OEM) offering an extensive range of integrated, smart and e-mobility solutions.

Superfast Motors Limited was planning for expansion in India and overseas. Accordingly, it negotiated with Jupiter Mauritius Auto Limited, a company registered in Mauritius, for merger with itself. Further, it also proposed a merger plan with Mars Ltd. of Kolkata, a company engaged in the business of manufacturing and distribution of tyre and auto accessories. Mars Ltd. is listed with BSE Limited and National Stock Exchange of India Limited and has a paid-up share capital of ₹ 40 crores. Superfast Motors Limited called a Board Meeting to draft the agreements for the merger of the aforesaid Jupiter Mauritius Auto Limited and Mars Ltd.

The paid-up share capital of Superfast Motors Limited is ₹ 90 crores consisting of 9000 members. As per the order of the National Company Law Tribunal (NCLT), the company called the general meeting of the members for the merger of Mars Ltd. with itself. The meeting was attended by 4400 members in person while 600 members appointed proxies in place of themselves to attend the said general meeting. Remaining 4000 members holding ₹ 15.00 crores worth of shares remained absent.

It is noteworthy that 3200 members representing shares of the value of ₹ 50.40 crores and 600 proxies representing shares of the value of ₹ 7.00 crores who attended the meeting, voted in favor of the scheme of merger. Thereafter, Mars Ltd. was successfully merged with Superfast Motors Limited as per the applicable laws. However, 3,000 absentee members of Superfast Motors Limited wanted the merger to be annulled because it was not valid. There was, however, not much resistance exerted by the members of Mars Ltd. against the merger

and it was approved by 93% of majority of members holding shares 94% in value.

A number of directors, officers and employees of Mars Ltd. lost their assignments after the merger of Mars Ltd. with Superfast Motors Limited. Mr. Ramneek the Managing Director, Mr. Lokesh, the Whole-time Director, Mr. Botham and Mr. Srikant, the other two non-executive directors of Mars Ltd. approached the company for compensation due to the loss of their respective offices. However, the company denied compensation but in case of Mr. Lokesh who, on the basis of his outstanding record, was given appointment as Manager in Superfast Motors Limited. Certain members of Mars Ltd. were of the opinion that transfer of funds and assets of the company would be affecting their interest. Accordingly, members numbering 110 out of 2000 members decided to file an application before NCLT.

Mr. Rakesh, one of the Directors of Superfast Motors Limited, in a Board Meeting pointed out that Mr. Bhaskar, another Director, was holding directorships in 21 companies, out of which 11 were private companies including Bright Cycles Pvt. Ltd. which was subsidiary of Zeta Mechanical Products Limited and 10 other public companies. The Board asked Mr. Bhaskar to resign from his office of directorship either in Superfast Motors Limited or any other company of his choice since the number of directorships in his case was exceeding the maximum limit.

In response to the direction given by the Board to resign from directorship, Mr. Bhaskar averred that he had not violated the provisions relating to holding of maximum number of directorships. In fact, out of 10 public companies in which he was holding the office of directorships, one was a dormant company. Further, in one of the companies out of 11 private companies, he was appointed as an alternate Director. So far as his knowledge was concerned, directorship in dormant company as well as alternate directorship were not includible while counting the maximum number of directorships. Rather, he was eligible to hold directorship in one more company because he held effective directorships in only 19 companies. Therefore, in no way, he had violated the provisions relating to holding of maximum number of 20 directorships in different companies. In view of the above facts, he stressed that he would not tender resignation in any company including Superfast Motors Limited and if the Board still wanted him

to remove from the office of director, it was at liberty to do so. The Board of Directors of Superfast Motors Limited agreed with the averments advanced by Mr. Bhaskar and dropped the idea of asking him to resign or moving a resolution for his removal from holding the office of director.

MULTIPLE CHOICE QUESTIONS

1. From the case scenario, it is noticed that the Board of Directors of Superfast Motors Limited agreed with the averments advanced by Mr. Bhaskar and dropped the idea of asking him to resign or moving a resolution for his removal from holding the office of director. Whether the decision of the Board is valid? Choose the correct option from those stated hereunder:

   (a) The decision of the Board of Directors of Superfast Motors Limited to drop the idea of asking Mr. Bhaskar to resign or to move a resolution for his removal is valid because alternate directorship is not includible while counting the number of 20 companies.

   (b) The decision of the Board of Directors of Superfast Motors Limited to drop the idea of asking Mr. Bhaskar to resign or to move a resolution for his removal is valid because directorship in a dormant company is not includible while counting the number of 20 companies.

   (c) The decision of the Board of Directors of Superfast Motors Limited to drop the idea of asking Mr. Bhaskar to resign or to move a resolution for his removal is not valid because while counting the number of 10 public companies, directorship in a private company which is subsidiary of a public company is also includible.

   (d) The decision of the Board of Directors of Superfast Motors Limited to drop the idea of asking Mr. Bhaskar to resign or to move a resolution for his removal is valid because he holds effective directorships in only 19 companies after excluding alternate directorship and directorship in a dormant company.

2. In response to demand for compensation made by Mr. Ramneek, Mr. Lokesh, Mr. Botham and Mr. Srikant, Mars Ltd. was not keen to compensate them. Whether such denial by Mars Ltd. is valid? Select the correct answer from the following options:

   (a) Denial for compensation by Mars Ltd. is valid because compensation for loss of office is not available in case of merger or amalgamation.

   (b) Absolute denial for compensation by Mars Ltd. is not valid because Mr. Ramneek and Mr. Lokesh are eligible for compensation for loss of office as Managing Director and Whole-time director respectively.

   (c) Absolute denial for compensation by Mars Ltd. is not valid in case of Mr. Ramneek since only he is eligible for compensation for loss of office as Managing Director.

   (d) Absolute denial for compensation by Mars Ltd. is not valid because Mr. Ramneek, Mr. Botham and Mr. Srikant are eligible for compensation for loss of office as Managing Director and non-executive directors respectively.

3. Choose the correct statement from those stated below:

   (a) Jupiter Mauritius Auto Limited can get merged with Superfast Motors Limited but only after obtaining prior approval of Reserve bank of India (RBI).

   (b) Jupiter Mauritius Auto Limited can get merged with Superfast Motors Limited but only after obtaining prior approval of Securities and Exchange Board of India (SEBI).

   (c) Jupiter Mauritius Auto Limited can get merged with Superfast Motors Limited but only after obtaining prior approval of National Company Law Tribunal (NCLT).

   (d) Jupiter Mauritius Auto Limited can get merged with Superfast Motors Limited but only obtaining prior approval of Ministry of Finance.

4. The case scenario states that Mars Ltd. was merged with Superfast Motors Limited. However, 3,000 absentee members of Superfast Motors Limited wanted the merger to be annulled because it was not valid. You are required to advise these members whether the approval accorded by the members of Superfast Motors Limited for the merger was valid or not. Select the correct alternative from those given hereunder:

   (a) The approval accorded by the members of Superfast Motors Limited for the merger was valid because the majority of members representing requisite value of shareholding voted in favour of the scheme of merger.

   (b) The approval accorded by the members of Superfast Motors Limited for the merger was not valid because the majority of the members who voted in favour of the scheme of merger must hold 80% or more worth of shares in value considering the total value of shares held by the members who attended the general meeting.

   (c) The approval accorded by the members of Superfast Motors Limited for the merger was not valid because the majority of the members who voted in favour of the scheme of merger must hold 90% or more worth of shares in value considering the total value of shares held by the members who attended the general meeting.

   (d) The approval accorded by the members of Superfast Motors Limited for the merger was not valid because only 3800 members out of total 9000 members voted in favour of the scheme of merger and it was not a majority.

5. Whether the petition filed by 110 members of Mars Ltd. with National Company Law Tribunal (NCLT) would be maintainable assuming the proposal made by Superfast Motors Limited to Mars Ltd. was a takeover offer and not a merger offer? Choose the correct option from the following alternatives.

   (a) Petition filed by 110 members of Mars Ltd. with National Company Law Tribunal (NCLT) would be maintainable because more than 100 members can apply for relief against oppression and mismanagement prevailing in a company.

(b) Petition filed by 110 members of Mars Ltd. with National Company Law Tribunal (NCLT) would not be maintainable because less than 1/10th of total number of members have applied for relief against oppression and mismanagement.

(c) Petition filed by 110 members of Mars Ltd. with National Company Law Tribunal (NCLT) would be maintainable because 100 members or 1/10th of total number of members, whichever is lower, can apply for relief against oppression and mismanagement.

(d) Petition filed by 110 members of Mars Ltd. with National Company Law Tribunal (NCLT) would not be maintainable because these members cannot file a case for redressal of their grievances to NCLT in case of takeover offer.

ANSWER TO MULTIPLE CHOICE QUESTION

1. Option (b) The decision of the Board of Directors of Superfast Motors Limited to drop the idea of asking Mr. Bhaskar to resign or to move a resolution for his removal is valid because directorship in a dormant company is not includible while counting the number of 20 companies.

Reason

Section 165(1)

No person, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time

Further it provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Explanation I also says for reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

While explanation II provides that for reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included.

Directorship at dormant company not to be included, but directorship at private company that is subsidiary of public company shall considered for threshold hence directorship in public company counts to 10 (i.e. 10+1-1), while Mr. Bhaskar is director in 10 private companies (i.e. 11-1 because subsidiary considered as public, hence excluded from here; but alternate directorship which is already including in 11 continue to be included); hence total amounts to 20, with public company count at 10.

It worth to note (because company specified in the given case is listed entity) that as per Regulation 17A of LODR 2015, a person shall not be a director in more than eight listed entities with effect from April 1, 2019 and in not more than seven listed entities with effect from April 1, 2020.

2. **Option (c)** Absolute denial for compensation by Mars Ltd. is not valid in case of Mr. Ramneek since only he is eligible for compensation for loss of office as Managing Director.

Reason

Section 191(2)

Payment made by a company to a managing director or whole-time director or manager of the company by way of compensation for loss of office or as consideration for retirement from office or in connection with such loss or retirement subject to limits or priorities, as may be prescribed in Rule 17 of Companies (Meetings of Board and its Powers) Rules, 2014.

3. **Option (a)** Jupiter Mauritius Auto Limited can get merged with Superfast Motors Limited but only after obtaining prior approval of Reserve bank of India (RBI).

Reason

Section 234 read with rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2017

Sub-rule 1 to rule 25A provides a foreign company incorporated outside India may merge with an Indian company after obtaining prior approval of Reserve Bank of India and after complying with the provisions of sections 230 to 232 of the Act and these rules.

4. **Option (a)** The approval accorded by the members of Superfast Motors Limited for the merger was valid because the majority of members representing requisite value of shareholding voted in favour of the scheme of merger.

Reason

Section 232 (1)(b) read with Section 230(6)

Where, at a meeting held, majority of persons representing three-fourths in value members or class of members, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be, and the contributories of the company.

Note - Majority in number representing 3/4th of value shall be of shareholders present and voted.

In given case, 3800 members holding shares of value INRs 57.40 crore voted in favour out of total of 5000 members holding shares of value INRs 75 crore (i.e. 90 crore – 15 crore) who attended the meeting either themselves or through proxy.

Therefore scheme of merge approved 76% members holding shares of 76.53% in value terms.

5. **Option (d)** Petition filed by 110 members of Mars Ltd. with National Company Law Tribunal (NCLT) would not be maintainable because these members cannot file a case for redressal of their grievances to NCLT in case of takeover offer.

Reason

Section 230 (12)

An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other

than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.

Note - Mars limited is listed entity.

It worth to note that for listed companies, the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("SEBI Takeover Regulations") are applicable which sets out the process for a takeover offer of shares of a listed company and, inter alia, requires an acquirer to make an open offer to acquire the shares of the company if the acquirer acquires shares of the company (whether by way of a primary infusion or a secondary acquisition) above a specified percentage.

CASE SCENARIO 17

SportsPoint Manufacturers and Traders Limited, having registered office at Meerut, Uttar Pradesh, was incorporated under the Companies Act, 1956, in the month of August, 1990. The company manufactures sports coaching equipments like bags, clipboards, pinnies, referee uniforms, whistles of different types, etc., and game equipments like goals, posts, nets, etc., of the finest quality and sells its products to various schools, colleges, clubs and other institutions pan India directly as well as through its dealers.

The issued, subscribed and paid-up equity share capital of SportsPoint Manufacturers and Traders Limited as on 31st March, 2021 is ₹ 25 crores, consisting of 2.50 crores equity shares of the face value of ₹ 10 each. These shares are listed both on the BSE Limited and National Stock Exchange of India Limited.

The company planned to issue bonus debentures to its shareholders as a reward since it is a known fact that the shareholders invariably welcome bonus debentures wholeheartedly simply because of the reason that they get regular interest during the tenure of the debentures.

Accordingly, after following the due procedure, SportsPoint Manufacturers and Traders Limited filed a scheme of arrangement before the jurisdictional National Company Law Tribunal (NCLT) for issue of secured, non-convertible and redeemable fully paid-up 9%Debentures by way of bonus to its members as on the record date out of the accumulated profits lying to the credit of Profit & Loss Account under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013.

The scheme of arrangement filed by SportsPoint Manufacturers and Traders Limited with the National Company Law Tribunal (NCLT) stipulates for issue and allotment by way of bonus, one fully paid-up 9%Debenture of the face value of ₹ 150 each by utilizing its accumulated profits, for every one fully paid-up equity share of face value of ₹ 10 each held by total 1,25,000 members as on the record date. The 9%Debentures shall be redeemed after ten years from the date of allotment. As regards payment of interest on debentures, the same shall be paid at intervals of twelve months from the date of allotment.

Pursuant to the order, dated 14th July, 2021, passed by the Hon'ble National Company Law Tribunal (NCLT), a meeting of the equity shareholders of SportsPoint Manufacturers and Traders Limited was convened at the registered office of the company at Meerut, on Monday, August 23, 2021, at 1:00 P.M.

In accordance with the provisions of Sections 230 to 232 of the Companies Act, 2013, the scheme was agreed to by a requisite majority of shareholders who had required value of shareholding. The equity shareholders either voted themselves or through proxies or by postal ballot or through electronic means.

MULTIPLE CHOICE QUESTIONS

1. What is the amount, which SportsPoint Manufacturers and Traders Limited intends to utilise out of accumulated profits for issue of bonus debentures?

   (a) SportsPoint Manufacturers and Traders Limited intends to utilise accumulated profits to the extent of ₹ 150 crores for issue of bonus debentures.

   (b) SportsPoint Manufacturers and Traders Limited intends to utilise accumulated profits to the extent of ₹ 200 crores for issue of bonus debentures.

   (c) SportsPoint Manufacturers and Traders Limited intends to utilise accumulated profits to the extent of ₹ 375 crores for issue of bonus debentures.

   (d) SportsPoint Manufacturers and Traders Limited intends to utilise accumulated profits to the extent of ₹ 250 crores for issue of bonus debentures.

2. The case scenario states that the scheme of arrangement envisaging issue of bonus debentures in a particular ratio was agreed to by a requisite majority of shareholders who had required shareholding in value. Which kind of majority is required for approving the scheme of arrangement as presented by SportsPoint Manufacturers and Traders Limited in the meeting of the shareholders?

(a) The shareholders of SportsPoint Manufacturers and Traders Limited must have approved the scheme of arrangement envisaging issue of bonus debentures in a particular ratio by passing an ordinary resolution.

(b) The shareholders of SportsPoint Manufacturers and Traders Limited must have approved the scheme of arrangement envisaging issue of bonus debentures in a particular ratio by passing a special resolution.

(c) The shareholders of SportsPoint Manufacturers and Traders Limited must have approved the scheme of arrangement envisaging issue of bonus debentures in a particular ratio by simple majority of members who had minimum shareholding of three-fourths in value.

(d) The shareholders of SportsPoint Manufacturers and Traders Limited must have approved the scheme of arrangement envisaging issue of bonus debentures in a particular ratio by simple majority of members who had minimum shareholding of two-third in value.

3. Minimum how many equity shares are required to be held by the shareholders of SportsPoint Manufacturers and Traders Limited voting in favour of the scheme of arrangement envisaging issue of bonus debentures in a particular ratio for its approval?

(a) Minimum 1.275 crore equity shares are required to be held by the shareholders of SportsPoint Manufacturers and Traders Limited to consider the scheme of arrangement as approved.

(b) Minimum 1.50 crore equity shares are required to be held by the shareholders of SportsPoint Manufacturers and Traders Limited to consider the scheme of arrangement as approved.

(c) Minimum 1.75 crore equity shares are required to be held by the shareholders of SportsPoint Manufacturers and Traders Limited to consider the scheme of arrangement as approved.

(d) Minimum 1.875 crore equity shares are required to be held by the shareholders of SportsPoint Manufacturers and Traders Limited to consider the scheme of arrangement as approved.

4. Minimum how many members of SportsPoint Manufacturers and Traders Limited must have agreed to the scheme of arrangement envisaging issue of bonus debentures in a particular ratio, if 40% of the total members had attended and 30% of the total members had voted at the meeting?

   (a) Minimum 18,751 members of SportsPoint Manufacturers and Traders Limited must have agreed to the scheme of arrangement.

   (b) Minimum 22,500 members of SportsPoint Manufacturers and Traders Limited must have agreed to the scheme of arrangement.

   (c) Minimum 20,625 members of SportsPoint Manufacturers and Traders Limited must have agreed to the scheme of arrangement.

   (d) Minimum 24,375 members of SportsPoint Manufacturers and Traders Limited must have agreed to the scheme of arrangement.

5. Assuming that 40% of the total members of SportsPoint Manufacturers and Traders Limited had attended the meeting to consider the scheme of arrangement envisaging issue of bonus debentures in a particular ratio and 30% of the total members had voted at the meeting, then minimum how much shareholding in value was held by the minimum members who voted in favour of the scheme in order that the scheme was considered as approved:

   (a) Minimum shareholding in value that was held by the minimum members who voted in favour of the scheme in order that the scheme was considered as approved must have been ₹ 4.5 crores.

   (b) Minimum shareholding in value that was held by the minimum members who voted in favour of the scheme in order that the scheme was considered as approved must have been ₹ 6.0 crores.

   (c) Minimum shareholding in value that was held by the minimum members who voted in favour of the scheme in order that the scheme was considered as approved must have been ₹ 5.25 crores.

   (d) Minimum shareholding in value that was held by the minimum members who voted in favour of the scheme in order that the scheme was considered as approved must have been ₹ 5.625 crores.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (c)** SportsPoint Manufacturers and Traders Limited intends to utilise accumulated profits to the extent of ₹ 375 crores for issue of bonus debentures.

Reason

Face value of Debenture is ₹ 150, since fully paid up debenture to be issued as bonus for each share held and there are 2.5 crores outstanding shares; therefore accumulated profits to the extent of ₹ 375 crores (2.5 crores debentures i.e. 1 for each share * ₹ 150 paid-up face value) per will be utilised for issue of bonus debentures

2. **Option (c)** The shareholders of SportsPoint Manufacturers and Traders Limited must have approved the scheme of arrangement envisaging issue of bonus debentures in a particular ratio by simple majority of members who had minimum shareholding of three-fourths in value.

Reason

Section 230(6)

Where, at a meeting held, majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be.

3. **Option (d)** Minimum 1.875 crore equity shares are required to be held by the shareholders of SportsPoint Manufacturers and Traders Limited to consider the scheme of arrangement as approved.

Reason

Section 230(6)

Where, at a meeting held, majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal

ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be.

The total outstanding shares are 2.5 crores, therefore 3/4th of 2.50 crores outstanding equity shares come to 1.875 crores equity shares.

Presuming all attended the meeting and voted thereat.

4. **Option (a)** Minimum 18,751 members of SportsPoint Manufacturers and Traders Limited must have agreed to the scheme of arrangement.

Reason

Section 230(6)

Where, at a meeting held, majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be.

Note – majority of those who attended meeting and voted shall be considered

Since only 40% attended the meeting and only 30% voted thereat hence majority shall reckoned against 37,500 members (i.e. 125000*30%) that comes out to 18,751.

5. **Option (d)** Minimum shareholding in value that was held by the minimum members who voted in favour of the scheme in order that the scheme was considered as approved must have been ₹ 5.625 crores.

Reason

Section 230(6)

Where, at a meeting held, majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal

ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be.

Note – Majority or 3/4th value of holding shall be of those who attended the meeting and voted thereat.

Since only 40% attended the meeting and only 30% voted thereat hence condition of 3/4th value holding shall reckoned against ₹ 7.5 crores (i.e. 2.5 crores * 30%) that comes out to ₹ 5.625 crores.

CASE SCENARIO 18

Pure Pharma Limited, incorporated under the Companies Act, 1956, is a pharmaceutical company located at Hyderabad, Andhra Pradesh. Founded by Annand Reddy and his family in the year 1971, it manufactures and markets a wide range of pharmaceuticals in India. The company has over 100 medications, above 30 active pharmaceutical ingredients for drug manufacture, various diagnostic kits and bio-technology products.

The issued, subscribed and paid-up equity share capital of Pure Pharma Limited as on 31st March, 2021, is ₹ 30 crore consisting of 30 crore equity shares of ₹ 1 each, which are listed on BSE Limited and National Stock Exchange of India Limited. Earlier, there were 3 crore equity shares of the face value of ₹ 10 each but after the stock split, the face value was reduced to Re. 1 per share, thus increasing the number of shares to 30 crores *i.e.* 10 times in the hands of shareholders.

In order to optimally utilise surplus reserves, Pure Pharma Limited intended to issue bonus debentures to its equity shareholders by restructuring the general reserves. These bonus debentures, when listed, would have the dual benefit of avoiding, on the one hand, an upfront cash outflow for the company while offering, on the other, the option of immediate liquidity for the shareholders.

Accordingly, Pure Pharma Limited formulated a scheme of arrangement for issue and allotment by way of bonus, one fully paid-up 8%Debenture of the face value of ₹ 20 each, by utilizing its free reserves, for every one fully paid-up equity share of face value of ₹ 1 each held by total 50,000 members as on the record date.

So far as the issue of bonus debentures out of free reserves was concerned, there was no arrangement with the creditors of Pure Pharma Limited. Consequently, no compromise was offered under the scheme of arrangement to any of the creditors of the company. The liability of the creditors under the scheme, was neither being reduced nor being extinguished.

In pursuance of the so formulated scheme of arrangement, Pure Pharma Limited filed the said scheme with the National Company Law Tribunal (NCLT) for issue of secured non-convertible redeemable fully paid-up 8%Debentures

by way of bonus to its members as on the record date out of the free reserves lying to the credit of General Reserve Account under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013.

Pursuant to the Order passed by the Hon'ble National Company Law Tribunal (NCLT), a meeting of the equity shareholders of the company was convened at the registered office of the company. In accordance with the provisions of Sections 230 to 232 of the Companies Act, 2013, the scheme was agreed to by the requisite members.

The Order, dated 2nd August 2021, passed by the Hon'ble National Company Law Tribunal (NCLT) approving the scheme of arrangement was received by Pure Pharma Limited on 6th August 2021 and thereafter, the same was filed with the jurisdictional Registrar of Companies.

MULTIPLE CHOICE QUESTIONS

1. How many 8%Debentures are required to be issued by Pure Pharma Limited in pursuance of the scheme of arrangement as approved by the NCLT?

   (a) 25 crores 8%Debentures

   (b) 30 crores 8%Debentures

   (c) 50 crores 8%Debentures

   (d) 50,000 8%Debentures

2. What is the amount that Pure Pharma Limited intends to utilise out of accumulated profits for issue of bonus debentures as per the scheme of arrangement?

   (a) ₹ 30 crores

   (b) ₹ 50 crores

   (c) ₹ 25 crores

   (d) ₹ 600 crores

3. What is the last date for filing the Order of NCLT which approved the scheme of arrangement with the Registrar of Companies?

   (a) 1st September, 2021

   (b) 5th September, 2021

   (c) 21st August, 2021

   (d) 17th August, 2021

4. Minimum how much equity shareholding in value is required to be held by the specified majority of members voting in favour of the scheme for approving the said scheme of arrangement, if all the members attend and vote at the meeting?

   (a) Minimum shareholding of ₹ 16.5 crores.

   (b) Minimum shareholding of ₹ 18.0 crores.

   (c) Minimum shareholding of ₹ 21.0 crores.

   (d) Minimum shareholding of ₹ 22.50 crores.

5. Minimum how many members of Pure Pharma Limited must agree to the scheme of arrangement, if 50% of total members of the company attend and 40% of the total members vote at the meeting?

   (a) Minimum 10,001 members.

   (b) Minimum 37,500 members.

   (c) Minimum 25,001 members.

   (d) Minimum 37,501 members.

ANSWER TO MULTIPLE CHOICE QUESTION

1. Option (b) 30 crores 8%Debentures

Reason

There are 30 crores outstanding share, and it is provided for each one share held a bonus debenture to be issued; therefore 30 crore debentures to be issued.

2. Option (d) ₹ 600 crores

Reason

Since the face value of each debenture is ₹ 20 to be issued as fully paid bonus debenture hence ₹ 600 crores (i.e. 30 crores debenture * ₹ 20 per debenture) shall be utilized out of free reserve.

3. Option (b) 5th September, 2021

Reason

Section 230(8)

The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order.

4. Option (d) Minimum shareholding of ₹ 22.50 crores.

Reason

Section 230(6)

Where, at a meeting held, majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be.

The total paid up share capital is INRs ₹ 30 crores, therefore 3/4th of ₹ 30 crores that come to ₹ 22.5 crores shall be minimum shareholding that should assent (vote in favour) to scheme.

5. Option (a) Minimum 10,001 members.

Reason

Section 230(6)

Where, at a meeting held, majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise

or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be.

Note – majority of those who attended meeting and voted shall be considered.

Since only 50% attended the meeting and only 40% voted thereat hence majority shall reckoned against 40% i.e. 20,000 members (i.e. 50,000*40%) that comes out to 10,001.

CASE SCENARIO 19

Healthy Bakeries Limited, founded by Avdhesh Sinha and his six cousins in the year 1980 under the Companies Act, 1956 and having its Registered Office at Lucknow, is one of India's leading food company. Over the years, it has become one of the most trusted food brands which includes a variety of biscuits, breads, cakes and dairy products in its product portfolio. Its products are available across the country in close to 25,00,000 retail outlets and reach over 40% of Indian homes.

The issued, subscribed and paid-up equity share capital of Healthy Bakeries Limited as on 31 March, 2021 is ₹ 50 crores consisting of 50 crore equity shares of ₹ 1 each, which are listed on BSE Limited and National Stock Exchange of India Limited. Some years back, Healthy Bakeries Limited had resorted to stock split and changed the face value of each share from ₹ 10 to Re. 1, which increased the total number of shares ten times. Accordingly, the number of shares increased to 50 crores from the earlier 5 crores.

The Board of Directors of Healthy Bakeries Limited was keen to reward its shareholders for their support and belief in the company. In pursuance to this objective, a scheme of arrangement was designed for issue and allotment by way of bonus, one fully paid-up 8.5%Debenture of the face value of ₹ 10 each, by utilizing its accumulated profits, for every one fully paid-up equity share of face value of ₹ 1 each held by total 60,000 members as on the record date.

After formulating the scheme of arrangement, Healthy Bakeries Limited filed the same with the jurisdictional National Company Law Tribunal (NCLT) for issue of secured, non-convertible, redeemable, fully paid-up 8.5%Debentures by way of bonus to its members as on record date out of the accumulated profits lying to the credit of Profit & Loss Account, under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013.

Pursuant to the Order passed by the National Company Law Tribunal (NCLT), a meeting of the equity shareholders of Healthy Bakeries Limited was convened at its Registered Office. In accordance with the provisions of Sections 230 to 232 of the Companies Act, 2013, the scheme was agreed to by the requisite members.

It is worth noting that the Certificate furnished by BLR & Co., LLP, Statutory Auditors, as regards the accounting treatment proposed in the scheme of arrangement, was in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013. The said Certificate was filed with the National Company Law Tribunal (NCLT) and was kept open for inspection by the equity shareholders of the company at its Registered Office between 10.00 A.M. to 2.00 P.M. on all days (except Saturdays, Sundays and public holidays) up to the date of the meeting.

MULTIPLE CHOICE QUESTIONS

1. How many 8.5%Debentures shall be issued by Healthy Bakeries Limited in pursuance of the scheme of arrangement?

   (a) In pursuance of the scheme of arrangement, Healthy Bakeries Limited shall issue 50 crores 8.5% Debentures.

   (b) In pursuance of the scheme of arrangement, Healthy Bakeries Limited shall issue 30 crores 8.5% Debentures.

   (c) In pursuance of the scheme of arrangement, Healthy Bakeries Limited shall issue 5 crores 8.5% Debentures.

   (d) In pursuance of the scheme of arrangement, Healthy Bakeries Limited shall issue 60,000 8.5% Debentures.

2. Select the correct option from those given below that indicates the amount which Healthy Bakeries Limited shall utilize out of accumulated profits for issue of bonus debentures?

   (a) ₹ 50 crores of accumulated profits.

   (b) ₹ 500 crores of accumulated profits.

   (c) ₹ 25 crores of accumulated profits.

   (d) ₹ 600 crores of accumulated profits.

3. Is it incumbent upon Healthy Bakeries Limited to obtain and file with NCLT, the Certificate as regards to the conformity of accounting treatment with the Accounting Standards prescribed under Section 133 of the Act, proposed in the scheme from statutory auditors?

(a) It is not incumbent upon Healthy Bakeries Limited to file the said Certificate.

(b) From the point of view of good corporate governance, Healthy Bakeries Limited may file the said Certificate.

(c) Healthy Bakeries Limited may obtain the said Certificate from any practicing Chartered Accountant and not necessarily from statutory auditors, since it is just a formality to file it.

(d) Healthy Bakeries Limited is required to obtain the said Certificate only from the statutory auditors for filing it with the NCLT.

4. Minimum how much equity shareholding in value is required to be held by the specified majority of members voting in favour of the scheme of arrangement for approving it, if all the members attend and vote at the meeting?

(a) In the above situation, minimum ₹ 30.0 crores of shareholding is required to be held by the specified majority of members voting in favour of the scheme of arrangement for approving it.

(b) In the above situation, minimum ₹ 32.50 crores of shareholding is required to be held by the specified majority of members voting in favour of the scheme of arrangement for approving it.

(c) In the above situation, minimum ₹ 35.0 crores of shareholding is required to be held by the specified majority of members voting in favour of the scheme of arrangement for approving it.

(d) In the above situation, minimum ₹ 37.50 crores of shareholding is required to be held by the specified majority of members voting in favour of the scheme of arrangement for approving it.

5. Minimum how many members of Healthy Bakeries Limited must have agreed to the scheme of arrangement, if 30% of total members of the company had attended the meeting and 20% of the total members had voted at the meeting?

(a) Minimum 6,001 members.

(b) Minimum 9,001 members.

(c) Minimum 45,000 members.

(d) Minimum 30,001 members.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (a)** In pursuance of the scheme of arrangement, Healthy Bakeries Limited shall issue 50 crores 8.5% Debentures.

Reason

After the stock split there are 50 crores shares, and one fully paid 8.5% debenture to be issued in form of bonus against each share held; hence 50 crores 8.5% Debentures to be issued.

2. **Option (b)** ₹ 500 crores of accumulated profits.

Reason

Since 50 crores fully paid 8.5% debenture to be issued in form of bonus and face value of each debenture is 10; therefore amount which Healthy Bakeries Limited shall utilize out of accumulated profits for issue of bonus debentures is ₹ 500 crores (i.e. 50 crores*10)

3. **Option (d)** Healthy Bakeries Limited is required to obtain the said Certificate only from the statutory auditors for filing it with the NCLT.

Reason

Proviso to section 230(7)

No compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

4. Option (d) In the above situation, minimum ₹ 37.50 crores of shareholding is required to be held by the specified majority of members voting in favour of the scheme of arrangement for approving it.

Reason

Section 230(6)

Where, at a meeting held, majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be.

The total outstanding shares are 50 crores (₹ 50 crores), and 3/4th of such come to 37.50 crores equity shares (i.e. ₹ 37.50 crores)

5. Option (a) Minimum 6,001 members.

Reason

Section 230(6)

Where, at a meeting held, majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be.

Note – majority of those who attended meeting and voted shall be considered.

Since only 30% attended the meeting and only 20% voted thereat hence majority shall reckoned against 20% i.e. 12,000 members (i.e. 60,000*20%) that comes out to 6,001.

CASE SCENARIO 20

Oriental Bakers Private Limited, having its Registered Office at Connaught Place, New Delhi, was incorporated on 25.04.2003 under the Companies Act, 1956. It is a Wholly-owned Subsidiary (WoS) of JKL Industries Limited and is currently engaged in the business of manufacturing, retailing and institutional sales of regular breads as well as a wide range of premium gourmet bakery products.

As against the Authorised Capital of ₹ 11.00 crores divided into 1.10 crore equity shares of ₹ 10 each, the issued, subscribed and paid-up capital of Oriental Bakers Private Limited is ₹ 10 crores divided into one crore equity shares of ₹ 10 each as at 31.03.2021.

JKL Industries Limited, having its Registered Office at Bhikaji Cama Place, New Delhi, was incorporated on 25.04.2000 under the provisions of the Companies Act, 1956 and is a leading food company in India. Its Authorised Capital is ₹ 50 crores divided into 5 crore equity shares of ₹ 10 each. As at 31.03.2021, the authorised share capital is fully issued and subscribed by the shareholders.

As regards demerger of some of the divisions of Oriental Bakers Private Limited into JKL Industries Limited, negotiations were going on for quite some time. The end result was that a scheme of arrangement was finally agreed upon between both the companies. Accordingly, a scheme of arrangement was presented to the jurisdictional National Company Law Tribunal (NCLT) pursuant to Sections 230 to 232 and other applicable provisions of the Companies Act, 2013, for demerger of the Manufacturing Business division and Retail Sales Business division of Oriental Bakers Private Limited into JKL Industries Limited.

The Institutional Sales business shall, as hitherto, continue to belong to and be vested in and be continued to be owned and managed by Oriental Bakers Private Limited.

The appointed date of the scheme as set out in its present form with any modification or modifications and as approved or imposed or directed by National Company Law Tribunal (NCLT) shall be 01.04.2021.

Pursuant to the Order passed by the National Company Law Tribunal (NCLT), meetings of the equity shareholders of the both companies were called and

held at their respective Registered Offices and the requisite members agreed to the scheme of arrangement on 30.04.2021.

National Company Law Tribunal (NCLT) passed the Order approving the scheme of arrangement between Oriental Bakers Private Limited and JKL Industries Limited on 05.07.2021, and the copy of the order was filed with the jurisdictional Registrar of Companies on 11.07.2021. This is the date on which the presently approved scheme of arrangement shall come into effect.

MULTIPLE CHOICE QUESTIONS

1. In accordance with the scheme of arrangement agreed upon between Oriental Bakers Private Limited and JKL Industries Limited, which type of company Oriental Bakers Private Limited shall be:
   (a) A transferee company.
   (b) A transferor company.
   (c) Neither transferee nor transferor company.
   (d) Both transferee and transferor company.
2. In accordance with the scheme of arrangement agreed upon between Oriental Bakers Private Limited and JKL Industries Limited, which type of company JKL Industries Limited shall be:
   (a) A transferee company.
   (b) A transferor company.
   (c) Neither transferee nor transferor company.
   (d) Both transferee and transferor company.
3. Taking cue from the above case scenario, how shall the consideration be payable by JKL Industries Limited to Oriental Bakers Private Limited for transfer of latter company's Manufacturing Business division and Retail Sales Business division?
   (a) The consideration shall be payable by JKL Industries Limited through issue of adequate number of shares to cover the value of net assets transferred.

(b) The consideration shall be payable by JKL Industries Limited in cash or its equivalent to be calculated in accordance with the value of net assets transferred.

(c) The consideration shall be payable by JKL Industries Limited through issue of adequate number of shares to cover the value of gross assets transferred.

(d) No consideration shall be payable by JKL Industries Limited since Oriental Bakers Private Limited is its Wholly- owned Subsidiary.

4. Out of the following options, choose the correct date from which the scheme of arrangement agreed upon between Oriental Bakers Private Limited and JKL Industries Limited shall be effective:

(a) 30.04.2021

(b) 01.04.2021

(c) 05.07.2021

(d) 11.07.2021

5. Choose the correct alternative from those stated below as to whether Oriental Bakers Private Limited shall be dissolved without winding up by virtue of approval of scheme of arrangement by National Company law Tribunal (NCLT):

(a) Since Oriental Bakers Private Limited is getting demerged into JKL Industries Limited, it shall be dissolved without winding up.

(b) Since Institutional Sales business of Oriental Bakers Private Limited is going to be owned and continued by itself, it shall not be dissolved.

(c) Since Manufacturing Business division and Retail Sales Business division of Oriental Bakers Private Limited are going to be transferred it shall be dissolved without winding up.

(d) Since Oriental Bakers Private Limited is a Wholly-owned Subsidiary of JKL Industries Limited, it shall be dissolved without winding up.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (b)** A transferor company.

Reason

Section 232 (1)(b)

Under the scheme of a compromise or an arrangement (merger and amalgamation as well as demerger), the whole or any part of the undertaking, property or liabilities of any company (shall referred to as the transferor company) is required to be transferred to another company (shall referred to as the transferee company).

2. **Option (a)** A transferee company.

Reason

Section 232 (1)(b)

Under the scheme of a compromise or an arrangement (merger and amalgamation as well as demerger), the whole or any part of the undertaking, property or liabilities of any company (shall referred to as the transferor company) is required to be transferred to another company (shall referred to as the transferee company).

3. **Option (d)** No consideration shall be payable by JKL Industries Limited since Oriental Bakers Private Limited is its Wholly-owned Subsidiary.

Reason

As the Transferor Companies are wholly-owned subsidiaries of the Transferee Company and the entire share capital of the Transferor Companies are held by the Transferee Company, no consideration shall be payable and the shares held by the Transferee Company in the Transferor Companies shall stand cancelled without any further act, application or deed.

Section 233 deals with arrangement between Holding and WOS companies.

It worth noting that Companies Act 2013 otherwise also prohibits a subsidiary company by itself or through its nominee cannot hold shares in a holding company.

To ensure students must understand practical application, I am mentioning one scheme and one order

1. Scheme – Accenture – Refer Para 9
2. Order from Mumbai NCLT – Nirlep into Bajaj Electronic – Refer Para 7 & Arrina into Upgrade – Refer Para 6

4. Option (b) 01.04.2021.

Reason

Section 232(5)

The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.

In given case, it is 1st of April 2021.

5. Option (b) Since Institutional Sales business of Oriental Bakers Private Limited is going to be owned and continued by itself, it shall not be dissolved.

Reason

Since operations are continued

Tribunal while approving the scheme has to ensure the need of making provision for the dissolution, without winding-up, of any transferor company. Since Institutional Sales business of Oriental Bakers Private Limited is going to be owned and continued by itself, it shall not be dissolved.

Students need to cautious - Plain reading of the sub-section 8 to section 233 which read as the registration of the scheme under sub-section (3) or sub-section (7) shall be deemed to have the effect of dissolution of the transferor company without process of winding-up may be misleading.

CASE SCENARIO 21

Arihant Furniture Private Limited, having its Registered Office at Janakpuri, New Delhi and incorporated in the year 2011 under the provisions of the Companies Act, 1956, is a top player in the category of office furniture. The company, a Wholly-owned Subsidiary of Banka Industries Limited, manufactures all kinds of high-quality office steel furniture like cabin-desks, work-stations, almirahs, lockers, etc. In addition to manufacturing, it is also engaged in retailing and institutional sale of its products.

On the other hand, Banka Industries Limited, having its Registered Office in Dwarka, New Delhi was incorporated in the year 2009 under the provisions of the Companies Act, 1956. Being a leading furniture company in India, it manufactures luxury furniture that matches the comfort and increases the beauty of the houses of the high-class buyers. It makes trendy furniture that fit for modern life at homes. The equity shares of Banka Industries Limited are listed on BSE Limited and National Stock Exchange of India Limited.

Demerger of business of Arihant Furniture Private Limited often engaged the attention of both the companies. A time came when a Scheme of Arrangement was formulated pursuant to Sections 230 to 232 and other applicable provisions of the Companies Act, 2013, for demerger of the Manufacturing Business division and Retail Sales Business division of Arihant Furniture Private Limited into Banka Industries Limited.

The Institutional Sales business shall continue to belong to and be vested in and be continued to be owned and carried on by Arihant Furniture Private Limited as going concern.

The Scheme of Arrangement as formulated between Arihant Furniture Private Limited and Banka Industries Limited was presented before the jurisdictional National Company Law Tribunal (NCLT) which directed both the companies to hold the meetings of their equity shareholders respectively.

The notices of the meetings along with required documents, *inter-alia*, were also sent to the Income Tax Department on 05-06-2021, requiring their representation, if any, on the scheme of arrangement, which was received by the Department on 09-06-2021.

Accordingly, as per the orders of NCLT, the respective meetings of both the companies were called and held on 30-07-2021 at their respective Registered Offices and the requisite number of members agreed to the scheme of arrangement.

The appointed date of the scheme set out in its present form with any modification or modifications approved or imposed or directed by the National Company Law Tribunal (NCLT) was fixed as 01-09-2021 whereas it approved the said scheme of arrangement between the companies by order dated 03-09-2021. The copy of the order was filed with the jurisdictional Registrar of Companies on 10-09-2021 which shall be the date on which the scheme of arrangement comes into effect.

MULTIPLE CHOICE QUESTIONS

1. In accordance with the scheme of arrangement agreed upon between Arihant Furniture Private Limited and Banka Industries Limited, in which category, Arihant Furniture Private Limited shall fall:
   (a) Arihant Furniture Private Limited shall fall within the category of a transferor company.
   (b) Arihant Furniture Private Limited shall fall within the category of a transferee company.
   (c) Arihant Furniture Private Limited shall fall within the category of both transferor and transferee companies.
   (d) Arihant Furniture Private Limited shall fall within the category of neither transferor nor transferee company.
2. In accordance with the scheme of arrangement agreed upon between Arihant Furniture Private Limited and Banka Industries Limited, in which category, the latter company Banka Industries Limited shall fall:
   (a) Banka Industries Limited shall fall within the category of a transferee company.
   (b) Banka Industries Limited shall fall within the category of a transferor company.

(c) Banka Industries Limited shall fall within the category of neither transferee nor transferor company.

(d) Banka Industries Limited shall fall within the category of a both transferee and transferor company.

3. Considering the above case scenario, how shall the consideration be payable by Banka Industries Limited to Arihant Furniture Private Limited for transfer of latter company's Manufacturing Business division and Retail Sales Business division in pursuance of scheme of arrangement as approved by NCLT?

(a) The consideration shall be payable by Banka Industries Limited through issue of sufficient number of shares to cover the value of net assets transferred.

(b) The consideration shall be payable by Banka Industries Limited in cash or its equivalent to cover the value of net assets transferred.

(c) The consideration shall be payable by Banka Industries Limited through issue of sufficient number of shares to cover the value of gross assets transferred.

(d) No consideration shall be payable by Banka Industries Limited since Arihant Furniture Private Limited is Wholly-owned Subsidiary of Banka Industries Limited.

4. Which option do you think is correct as regards the date from which the scheme of arrangement agreed upon between Arihant Furniture Private Limited and Banka Industries Limited shall be effective?

(a) 30-07-2021

(b) 01-09-2021

(c) 03-09-2021

(d) 10-09-2021

5. Select the correct option from those given below as to the time period within which the Income Tax Department is required to make representation on the scheme of arrangement sent by Arihant Furniture Private Limited and Banka Industries Limited?

(a) Income Tax Department is permitted to make its representation within 30 days from the date of notice sent by Arihant Furniture Private Limited and Banka Industries Limited.

(b) Income Tax Department is permitted to make its representation within 30 days from the date of receipt of notice sent by Arihant Furniture Private Limited and Banka Industries Limited.

(c) Income Tax Department is permitted to make its representation within 45 days from the date of notice sent by Arihant Furniture Private Limited and Banka Industries Limited.

(d) Income Tax Department is permitted to make its representation within 45 days from the date of receipt of notice sent by Arihant Furniture Private Limited and Banka Industries Limited.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (a)** Arihant Furniture Private Limited shall fall within the category of a transferor company.

Reason

Section 232 (1)(b)

Under the scheme of a compromise or an arrangement (merger and amalgamation as well as demerger), the whole or any part of the undertaking, property or liabilities of any company (shall referred to as the transferor company) is required to be transferred to another company (shall referred to as the transferee company).

2. **Option (a)** Banka Industries Limited shall fall within the category of a transferee company.

Reason

Section 232 (1)(b)

Under the scheme of a compromise or an arrangement (merger and amalgamation as well as demerger), the whole or any part of the undertaking, property or liabilities of any company (shall referred to as

the transferor company) is required to be transferred to another company (shall referred to as the transferee company).

3. Option (d) No consideration shall be payable by Banka Industries Limited since Arihant Furniture Private Limited is Wholly-owned Subsidiary of Banka Industries Limited.

Reason

As the Transferor Companies are wholly-owned subsidiaries of the Transferee Company and the entire share capital of the Transferor Companies are held by the Transferee Company, no consideration shall be payable and the shares held by the Transferee Company in the Transferor Companies shall stand cancelled without any further act, application or deed.

It worth noting that Companies Act 2013 otherwise also prohibits a subsidiary company by itself or through its nominee cannot hold shares in a holding company.

To ensure students must understand practical application, I am mentioning one scheme and one order

1. Scheme – Accenture – Refer Para 9
2. Order from Mumbai NCLT – Nirlep into Bajaj Electronic – Refer Para 7 & Arrina into Upgrade – Refer Para 6

4. Option (b) 01-09-2021.

Reason

Section 232(6)

The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.

In given case such date is 1st September 2021.

5. **Option (b)** Income Tax Department is permitted to make its representation within 30 days from the date of receipt of notice sent by Arihant Furniture Private Limited and Banka Industries Limited.

Reason

Section 230 (5)

A notice (of meeting that is proposed to be called in pursuance of an order of the Tribunal) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, RBI, SEBI, CCI (if required), the Registrar, the respective stock exchanges, the Official Liquidator, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

In given case the notices of the meetings along with required documents, inter-alia, were also sent to the Income Tax Department on 5th June 2021, requiring their representation, if any, on the scheme of arrangement, which was received by the Department on 9th June 2021. Hence have time to make representation till 8th July 2021.

CASE SCENARIO 22

OakTree Software Limited, incorporated in Singapore, deals in development and distribution of software and related services. On establishing a place of business in India at Chennai, Tamil Nadu, the company prepared the following documents for submission to the Registrar having appropriate jurisdiction:

1 A certified true copy of the company's constitution originally framed in English.

2. Full address of the registered office of the company.

3. A list of the Directors and Secretary of the company containing the prescribed particulars.

4. The names and addresses of three persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company.

5. Full address of the office of the company in Chennai, Tamil Nadu. This office is deemed to be its principal place of business in India.

6. A signed declaration that none of the Directors of the company had ever been convicted or debarred from formation of companies and management in India or abroad.

7. A declaration that OakTree Software Limited was establishing a place of business in India for the first time and therefore, no particulars were available as regards opening and closing of a place of business in India on earlier occasions.

Following are the names of Directors and Company Secretary:

Directors	Company Secretary
1. Mr. Bob	Mr. Vipul Shah
2. Mr. Thomas	
3. Mr. Sumedh Soni	
4. Mr. Anuj Subhash	
5. Mrs. Alka Rege	

6.	Mrs. Vandana Vinit	
7.	Mr. Anvay Harshe	
8.	Mr. Ashok Tripathi	
9.	Mr. Ashish Tyagi	

Mr. Bob is non-resident and 49 years of age. Mr. Thomas is also non-resident and only 20 years of age.

Mr. Sumedh Soni had business interests in London. He left India for London on 1st September, 2020 for the purpose of looking after his business. He came back to India on 2nd December, 2020 to spend some time with his parents and left India on 5th February, 2021 and went back to London for carrying on his business on a large scale. He again visited India on 5th March, 2021 for attending certain meetings relating to his business and exploring other business opportunities which would enhance his marketing business in London and stayed in India till 15thNovember, 2021.

In fact, Mr. Sumedh Soni was not at all interested in the software business of OakTree Software Limited and due to his non-availability he had serious management disputes. Accordingly, he was prevailed upon by the other Directors to resign from his Directorship in OakTree and in his place Mr. Somnath was appointed as Director, who just returned to India from state after serving a reputed MNC there for 15 years. Mr. Somnath returned to India with intent to do occupation and finally settle in India only.

Later on, Mr. Somnath was designated as Managing Director of OakTree. Accordingly, the documents sent earlier to the office of the Registrar of Companies were altered.

Mr. Somnath is responsible for gathering business opportunities so that software business of OakTree gets flourished. He often travels abroad for business purpose.

The entire team of OakTree is putting its best efforts to scale up the business operations in Singapore, India and other prominent countries.

MULTIPLE CHOICE QUESTIONS

1. Which one of the following options specifies the applicable Form and time period within which the OakTree Software Limited is required to submit the prescribed documents to the Jurisdictional Registrar of Companies on establishment of its place of business in Chennai, Tamil Nadu:

   (a) OakTree Software Limited is required to submit Form GNL-1 within 30 days of establishment of its place of business in Chennai, Tamil Nadu to the ROC having jurisdiction over Kolkata.

   (b) OakTree Software Limited is required to submit Form FC-1 within 30 days of establishment of its place of business in Chennai, Tamil Nadu to the ROC having jurisdiction over New Delhi.

   (c) OakTree Software Limited is required to submit Form FC- 2 within 60 days of establishment of its place of business in Chennai, Tamil Nadu to ROC having jurisdiction over Mumbai.

   (d) OakTree Software Limited is required to submit Form FC-1 within 30 days of establishment of its place of business in Chennai, Tamil Nadu to ROC having jurisdiction over Chennai.

2. Suppose OakTree Software Limited after establishment of a place of business in Chennai, Tamil Nadu fails to deliver the required documents to the jurisdictional Registrar of Companies within the prescribed time. From the following options, choose the one which is applicable in the given situation:

   (a) OakTree Software Limited shall be punishable with minimum fine of ₹ 3,00,000 and maximum of ₹ 5,00,000 and in case of continuing offence with an additional fine up to ₹ 50,000 for every day after the first during which the contravention continues and every officer of this foreign company who is in default shall be punishable with minimum fine of ₹ 50,000 and maximum of ₹ five lakhs.

   (b) OakTree Software Limited shall be punishable with minimum fine of ₹ 50,000 and maximum of ₹ 5,00,000 and in case of continuing offence with an additional fine up to ₹ 25,000 for every day after the first during which the contravention continues and every

officer of this foreign company who is in default shall be punishable with minimum fine of ₹ 25,000 and maximum of ₹ 3,00,000.

(c) OakTree Software Limited shall be punishable with minimum fine of ₹ 2,00,000 and maximum of ₹ 5,00,000 and in case of continuing offence with an additional fine up to ₹ 50,000 for every day after the first during which the contravention continues and every officer of this foreign company who is in default shall be punishable with minimum fine of ₹ 1,00,000 and maximum of ₹ 3,00,000.

(d) OakTree Software Limited shall be punishable with minimum fine of ₹ 1,00,000 and maximum of ₹ 3,00,000 and in case of continuing offence with an additional fine up to ₹ 50,000 for every day after the first during which the contravention continues and every officer of this foreign company who is in default shall be punishable with minimum fine of ₹ 25,000 and maximum of ₹ 5,00,000.

3. The case scenario states that there was change in Directorship with the appointment of Mr. Somnath in place of Mr. Sumedh Soni. Which one of the following options correctly specifies the Form and time period within which OakTree Software Limited is required to intimate the jurisdictional Registrar in respect of such alteration in the documents filed earlier?

(a) OakTree Software Limited is required to intimate in respect of alteration in the documents filed earlier in Form FC-2 within 30 days of alteration.

(b) OakTree Software Limited is required to intimate in respect of alteration in the documents filed earlier in Form FC-2 within 60 days of alteration.

(c) OakTree Software Limited is required to intimate in respect of such alteration in the documents filed earlier in Form FC-3 within 30 days of alteration.

(d) OakTree Software Limited is required to intimate in respect of alteration in the documents filed earlier in Form FC-3 within 60 days of alteration.

4. Regarding the documents to be submitted by OakTree Software Limited for registration, choose the correct statement out of followings:

   (a) All the documents required to be filed with the Registrar by the foreign companies can be any language.

   (b) All the documents required to be filed with the Registrar by the foreign companies shall be in language of territory to which such foreign company belongs to.

   (c) All the documents required to be filed with the Registrar by the foreign companies shall be in English language and where any such document is not in English language, there shall be attached a translation thereof in English language duly certified to be correct.

   (d) All the documents required to be filed with the Registrar by the foreign companies shall be in language of territory to which such foreign company belongs to and where any such document is not in said language, there shall be attached a translation thereof in said language duly certified to be correct.

5. Regarding the appointment of MD by OakTree Software Limited, which of the following statements is correct?

   (a) Any person whether resident in India or non-resident, who completed 21 year of age can be appointed as MD by OakTree Software Limited; hence Mr. Bob can be MD; but Mr. Thomas can't.

   (b) Since OakTree Software Limited is foreign company hence only non-resident can be appointed as MD. Only Mr. Bob can be appointed as MD.

   (c) Any director other than Mr. Bob, Mr. Thomas, and Mr. Somnath can be appointed as MD.

   (d) Mr. Somnath can be appointed as MD.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (b)** OakTree Software Limited is required to submit Form FC-1 within 30 days of establishment of its place of business in Chennai, Tamil Nadu to the ROC having jurisdiction over New Delhi.

Reason

Section 380(1) read with rule 3 and 8 of Companies (Registration of Foreign Companies) Rules,2014

Every foreign company shall, within thirty days of the establishment of its place of business in India, deliver Form FC-1 with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and with the documents required to be delivered for registration to the Registrar (Registrar having jurisdiction over New Delhi).

Note – Form FC-1 Substituted vide MCA Notification G.S.R.36(E) dated 20.01.2023.

2. **Option (d)** OakTree Software Limited shall be punishable with minimum fine of ₹ 1,00,000 and maximum of ₹ 3,00,000 and in case of continuing offence with an additional fine up to ₹ 50,000 for every day after the first during which the contravention continues and every officer of this foreign company who is in default shall be punishable with minimum fine of ₹ 25,000 and maximum of ₹ 5,00,000.

Reason

Section 292

Note - Since non submission of document is default of continuing nature hence penalty will between one lac to three lacs in addition to fifty thousand for each day till the documents actually submitted by OakTree Software Limited.

3. **Option (a)** OakTree Software Limited is required to intimate in respect of alteration in the documents filed earlier in Form FC-2 within 30 days of alteration

Reason

Section 380(3) read with rule 4 of Companies (Registration of Foreign Companies) Rules,2014

Where any alteration is made or occurs in the document delivered to the Registrar for registration under sub-section (1) of section 380, the foreign company shall file with the Registrar, a return in Form FC-2 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 containing the particulars of the alteration, within a period of thirty days from the date on which the alteration was made or occurred.

Note – Form FC-2 Substituted vide MCA Notification G.S.R.36(E) dated 20.01.2023.

4. Option (c) All the documents required to be filed with the Registrar by the foreign companies shall be in English language and where any such document is not in English language, there shall be attached a translation thereof in English language duly certified to be correct.

Reason

Rule 10 of the Companies (Registration of Foreign Companies) Rules,2014

All the documents required to be filed with the Registrar by the foreign companies shall be in English language and where any such document is not in English language, there shall be attached a translation thereof in English language duly certified to be correct in the manner given in these rules.

5. Option (d) Mr. Somnath can be appointed as MD.

Reason

Part I of Schedule V

The person to be appointed as MD shall be the resident of India.

Explanation I.—For the purpose of this Schedule, resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India,

(i) for taking up employment in India; or

(ii) for carrying on a business or vacation in India.

CASE SCENARIO 23

Mr. Shyam, Managing Director (Whole-time Key Managerial Personnel) of Aloevera Products Ltd., was removed by the Board of Directors of the company with the agreement that he shall be compensated for his early vacation of his office. Mr. Shyam vacated the office of Managing Director on 31.05.2021 though his original tenure of appointment with Aloevera Products Ltd. was to continue upto 31.12.2023.

The remuneration drawn by Mr. Shyam since the date of his joining the office is as follows:

Financial Year	**Remuneration (₹ in lakhs)**
2019-20	55
2020-21	62
2021-22 (upto 31-05-2021)	13

The data collected from the Balance Sheet of Aloevera Products Ltd. as on 31.03.2021 is as follows:

Particulars	**(₹ in lakhs)**
Paid-up Share Capital	1000
Share Application Money	200
General Reserve	500
Revaluation Reserve	250
Securities Premium	300
Long term loans	400
Funded Interest Term Loan (Payable after 1 year)	100
Working capital loan	200
Mutual Fund Investments	350
Miscellaneous Expenditure not written off	50

Mr. Tushar was appointed as the new Managing Director of Aloevera Products Ltd. on 31.07.2021 in place of Mr. Shyam. The company decided to pay remuneration to Mr. Tushar as per Section 197 (4) of the Companies Act, 2013.

Mr. Jay, one of the members of Aloevera Products Ltd., wanted to inspect contract of service entered into by Aloevera Products Ltd. with Mr. Tushar for assigning him the office of Managing Director but he was denied to have such inspection on the grounds that the contract with Mr. Tushar was not in writing.

MULTIPLE CHOICE QUESTIONS

1. The maximum amount of compensation to which Mr. Shyam is entitled for premature termination of his office as Managing Director shall be -

   (a) ₹ 1.1194 crores

   (b) ₹ 1.51125 crores

   (c) ₹ 1.80 crores

   (d) ₹ 1.55 crores

2. Choose from the following options, 'effective capital' of Aloevera Products Ltd. as on 31.03.2021:

   (a) ₹ 18 crores

   (b) ₹ 21 crores

   (c) ₹ 19 crores

   (d) ₹ 16 crores

3. Regarding the request of Mr. Jay to inspect the contract of service entered by company with Mr. Tushar, MD, identify the incorrect statement out of followings;

   i. Member can inspect the contract of service with MD or WTD only if authorised by Article.

   ii. Member may inspect the contract of service only after payment of prescribed fee.

   iii. Such contract of service shall kept at registered office of the company.

   (a) i, ii, and iii

   (b) i and ii

(c) i and iii

(d) ii and iii

4. What was the last date till which Mr. Tushar should have been appointed, in case he was not appointed on 31.07.2021?

(a) 31.08.2021

(b) 30.11.2021

(c) 30.11.2021

(d) 31.08.2021

5. Whether contention of Aloevera Products Ltd. for denying inspection to Mr. Jay was correct and if not, what are the consequences of the same?

(a) Not correct, as contract of service with a Managing Director should have been made in writing and kept at registered office of the company. Aloevera Products Ltd. is liable to pay ₹ 25,000 and every officer in default is liable to pay ₹ 5,000 for each default, as a penalty.

(b) Partially correct, the member has no right to inspect copy of contract of service entered into with Managing Director but Aloevera Products Ltd. has defaulted in not making the contract in writing and accordingly is liable to pay ₹ 25,000 and every officer in default is liable to pay ₹ 5,000 for each default, as a penalty.

(c) Not correct, if contract of service is not in writing then a written memorandum should have been prepared by Aloevera Products Ltd. depicting the terms of contract of service with Mr. Tushar and kept at Registered Office of the company. Aloevera Products Ltd. is liable to pay ₹ 25,000 and every officer in default is liable to pay ₹ 5,000 for each default, as a penalty.

(d) Correct, if contract is not in writing then member cannot ask for inspection of the same and accordingly there are no consequences on Aloevera Products Ltd. for such denial.

ANSWER TO MULTIPLE CHOICE QUESTION

1. Option (d) ₹ 1.55 crore

Reason

Sub-section 1 and 3 of section 202

Sub-section 1 allows a company to make payment to a MD or WTD or manager by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.

Further sub-section3 Any payment made to a managing or whole-time director or manager in pursuance of sub-section (1) shall not exceed the remuneration which he would have earned if he had been in office for the remainder of his term or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold office, or where he held the office for a lesser period than three years, during such period.

The average monthly compensation is INRs 5 lacs i.e. (55+62+13 lacs) / 26 months (from 1st Jan 2019 till 31st May 2021).

Compensation shall be paid for 31 months (from 1st June 2021 till 31st December 2023) at average rate of INRs 5 lacs per month that comes out to INRs 1.55 crores.

2. Option (c) ₹ 19 crore

Reason

Section II read with explanation I and II of section IV of schedule V of Act 2013

Effective capital means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long term loans and deposits repayable after one year (excluding working capital loans, over drafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any

investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.

Note - Effective capital shall be calculated as on the last date of the financial year preceding the financial year in which the appointment of the managerial person is made.

Hence effective capital as on 31.03.2021 is INRs 19 crores i.e. 1000+500+300+400+100-350-50

3. Option (b) i and ii

Reason

Sub-section 1 and 2 of Section 190

Every company shall keep at its registered office, a contract of service entered with a managing or whole-time director is in writing, a copy of the contract; or where such a contract is not in writing, a written memorandum setting out its terms.

The copies of the contract or the memorandum shall be open to inspection by any member of the company without payment of fee.

4. Option (b) Board Resolution and 30.11.2021 respectively

Reason

Section 203(4)

If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

Mind it, MD is whole-time key managerial personnel as per 203(1)(a)

5. Option (c) Not correct, if contract of service is not in writing then a written memorandum should have been prepared by Aloevera Products Ltd. depicting the terms of contract of service with Mr. Tushar and kept at Registered Office of the company. Aloevera Products Ltd. is liable to pay ₹ 25,000 and every officer in default is liable to pay ₹ 5,000 for each default, as a penalty.

Reason

Section 190

Every company shall keep at its registered office, a contract of service entered with a managing or whole-time director is in writing, a copy of the contract; or where such a contract is not in writing, a written memorandum setting out its terms.

The copies of the contract or the memorandum shall be open to inspection by any member of the company without payment of fee.

Further sub-section 3 provided that, if any default is made in complying with the provisions of sub-section (1) or sub-section (2), the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each default.

CASE SCENARIO 24

Energy Food and Beverages Limited (EFBL), having its Registered Office at Bhikaji Cama Place, New Delhi, is a reputed manufacturer and exporter of different kinds of energy food, drinks and beverages. The market base of its products in India is much wider in comparison to so many other competitors. It is exploring more and more export markets all over the world.

The Board of Directors of EFBL comprises following Directors:

Functional Directors	Independent Directors
Mr. Praveen Kumar, Managing Director	Mrs. Hruta Varad
Ms. Ananya Vibor	Mrs. Vartika Soni
Mr. Jay Doshi	Mr. Shashi Vidur
Ms. Geetika Devi	Mr. Aniruddha
Mr. Amol Udit	
Mr. Abhimanyu	
Mr. Fernandis	
Mr. Robert	

Mr. Anil Kumar, well versed in legal and regulatory matters, is the Company Secretary of the company.

The information relating to foreign exchange earnings of EFBL in the previous four financial years is as under are:

Financial Year	Foreign Exchange Earnings (in USD)
2017-18	2,400,000
2018-19	2,500,000
2019-20	3,600,000
2020-21	4,000,000

With a view to enhance the production of beverages, EFBL imported a machinery costing ₹ 60,00,000 from a reputed manufacturer of Singapore. In accordance with the terms of payment, EFBL was required to repay the cost of machinery in five equal monthly installments which the company did

satisfactorily. The machinery was delivered and thereafter, installed at the new factory site at Noida, UP.

The company is proposing to incur an amount of USD 7,500 on advertisement in foreign print media for the purpose of promotion of its beverages business globally. The company is also planning to donate USD 200,000 to a technical institution established in Chicago at USA for conducting advanced research in the field of beverages.

Mr. Jay Doshi along with his family had gone to Bhutan on a private visit. While returning to India, he is desirous of bringing with him Reserve Bank of India notes amounting to ₹ 75,000 in denomination of ₹ 100.

Ms. Geetika Devi often visits her son Swapnil who is settled in Michigan, USA. She came back to India from Michigan on July 02, 2019, spent some time with her younger son Kartik and her mother in New Delhi and left India again on September 05, 2019. She came back to India on November 30, 2019 but left for Michigan with her mother on December, 04, 2019 to get her medically treated. After her mother recovered from the ailment she was suffering, Ms. Geetika Devi came back to India on August 30, 2020 and remained with her family in New Delhi till date.

MULTIPLE CHOICE QUESTIONS

1. From the case scenario, it is evident that EFBL imported a machinery costing ₹ 60,00,000 from a reputed manufacturer of Singapore and repaid the cost of imported machinery in five equal monthly installments. From the following options, choose the one which will apply in the given circumstances:

   (a) Import of machinery is a 'Capital Account Transaction' since the imported machinery is a fixed asset and shall be used for a long period by EFBL.

   (b) Import of machinery is a 'Current Account Transaction' since machinery shall be used in the production of saleable items like beverages, etc. by EFBL.

(c) Import of machinery is a 'Current Account Transaction' since a short-term credit facility in the ordinary course of business was availed by EFBL.

(d) Import of machinery is a 'Capital Account Transaction' since a long-term credit facility was availed by EFBL and the payment was made in more than three months.

2. According to the case scenario, Mr. Jay Doshi, while returning to India, is desirous of bringing with him Reserve Bank of India notes amounting to ₹ 75,000 in denomination of ₹ 100. Out of the following four options, which one is applicable in the given circumstances?

(a) Mr. Jay Doshi is permitted to bring into India from Bhutan, Reserve Bank of India notes amounting to ₹ 75,000 in denomination of ₹ 100.

(b) Mr. Jay Doshi is not permitted to bring into India from Bhutan, Reserve Bank of India notes exceeding ₹ 25,000 in denomination of ₹ 100.

(c) Mr. Jay Doshi is permitted to bring into India from Bhutan, Reserve Bank of India notes of any amount without limit but only in denomination of ₹ 500.

(d) Mr. Jay Doshi is not permitted to bring into India from Bhutan, Reserve Bank of India notes exceeding ₹ 10,000 in denomination of ₹ 100.

3. It is noticed from the case scenario that Ms. Geetika Devi, one of the Directors of EFBL, remained in India and also outside India on various dates. Which of the following options correctly determines her residential status in terms of the relevant provisions of the Foreign Exchange Management Act, 1999:

(a) Ms. Geetika Devi is a person resident outside India for FY 2020-21 and a person resident in India for the FY 2021-22.

(b) Ms. Geetika Devi is a person resident outside India for the FY 2020-21 and also for the FY 2021-22.

(c) Ms. Geetika Devi is a person resident in India for the FY 2020-21 and also for the FY 2021-22.

(d) Ms. Geetika Devi is a person resident in India for FY 2020-21 and a person resident outside India for the FY 2021-22.

4. Suppose EFBL is a Public Sector Undertaking and it desires to spend USD 7,500 for advertisement in foreign print media so that it may promote its beverages business globally. Out of the following four options, which one is applicable in the above-mentioned situation?

(a) EFBL is permitted to spend USD 7,500 for advertisement in foreign print media relating to the stated purpose but only with the prior approval of the Reserve Bank of India.

(b) EFBL is permitted to spend USD 7,500 for advertisement in foreign print media relating to the stated purpose without seeking any approval.

(c) EFBL is permitted to spend USD 7,500 for advertisement in foreign print media relating to the stated purpose with the prior approval of the Ministry of Finance, Department of Economic Affairs.

(d) EFBL is permitted to spend USD 7,500 for advertisement in foreign print media relating to the stated purpose with the prior approval of the Central Government through Regional Director.

5. From the case scenario, it is evident that EFBL is planning to donate USD 200,000 to a technical institution established in Chicago at USA for conducting advanced research in the field of beverages. From the following options, choose the one which is applicable in the given situation:

(a) EFBL, not being a Government Company, is not permitted to donate any amount outside India.

(b) EFBL is not permitted to donate more than USD 50,000 in a financial year even after seeking approval of the Reserve Bank of India.

(c) EFBL is permitted to donate USD 200,000 but only with the prior approval of the Reserve Bank of India.

(d) EFBL is not permitted to donate more than USD 75,000 in a financial year even after seeking approval of the Reserve Bank of India.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (c)** Import of machinery is a 'Current Account Transaction' since a short-term credit facility in the ordinary course of business was availed by EFBL.

Reason

Section 2 (j) of FEMA 1999

Current account transaction means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business.

2. **Option (a)** Mr. Jay Doshi is permitted to bring into India from Bhutan, Reserve Bank of India notes amounting to ₹ 75,000 in denomination of ₹ 100

Reason

RBI/2018-19/144 i.e. A.P. (DIR Series) Circular No. 24

There is no any limit on amount, if denomination of such Indian currency note is upto INRs 100/-

Note - Limit of INRs 25000/- is applicable but only in case of INRs 200/- & 500/- denomination Indian currency notes; while INRs 2000/- Indian currency note is not allowed to be imported or exported (and even circulation in Bhutan) to Bhutan

3. **Option (a)** Ms. Geetika Devi is a person resident outside India for FY 2020-21 and a person resident in India for the FY 2021-22.

Reason

Section 2(v) of FEMA 1999

She stays in India for 71 days in 2019-20 person resident outside India for FY 2020-21, while during 2020-21 she stays 214 days in India (which is beyond the threshold of 182 days), hence resident in India for the FY 2021-22.

4. **Option (b)** EFBL is permitted to spend USD 7,500 for advertisement in foreign print media relating to the stated purpose without seeking any approval.

   Reason

   Foreign Exchange Management (Current Account Transactions) Rules

5. **Option (c)** EFBL is permitted to donate USD 200,000 but only with the prior approval of the Reserve Bank of India

CASE SCENARIO 25

Simran Software Solutions Ltd., a listed company, is subsidiary of Hardik Tech Ltd which is an unlisted company. As on 31st March, 2021, Simran Software Solutions Ltd. had paid-up share capital of ₹ 100 crores while Hardik Tech Ltd. had a paid-up share capital of ₹ 150 crores.

Recently, it emerged that Hardik Tech Ltd was interested in amalgamating Simran Software Solutions Ltd. in itself. After various rounds of negotiations, it was decided between both the companies to go for this kind of restructuring.

An application was made to the jurisdictional National Company Law Tribunal (NCLT) for the amalgamation of Simran Software Solutions Ltd. with Hardik Tech Ltd. The scheme of arrangement as enunciated in the application proposed such amalgamation.

Application to the National Company Law Tribunal (NCLT) for amalgamation was submitted in Form No. NCLT-1 along with the following documents:

(a) A notice of admission in Form No. NCLT-2.

(b) An affidavit in Form No. NCLT-6.

(c) A copy of Scheme of Merger and Amalgamation.

(d) A disclosure of all the material facts relating to the company.

Note: It was also disclosed in the application filed with the National Company Law Tribunal (NCLT) that each class of members or creditors had been identified for the purposes of approval of the scheme.

Consequently, a meeting was called in pursuance of the Order of the National Company Law Tribunal (NCLT). The notice of such meeting was sent to all the creditors including debenture holders and to all the members of the company, individually, at the addresses registered with the company accompanied by a statement disclosing the details of the scheme of amalgamation, a copy of valuation report and explaining the effect of such arrangement on creditors including debenture holders, Key Managerial Personnel, promoters and Directors.

It is worth noting that Mr. Manjit, who was appointed as Managing Director (MD) of Simran Software Solutions Ltd. on 1st January, 2020, for a period of five

years was going to lose his office due to the amalgamation of Simran Software Solutions Limited with Hardik Tech Ltd.

Similarly, Mr. Rhitam was appointed as a Whole-time Director (WTD) of Simran Software Solutions Ltd. on 1st April, 2020 for a period of five years. In lieu of his current assignment as Whole-time Director of Simran Software Solutions Ltd., he was offered to be appointed as Manager in Hardik Tech Ltd., to which he sought some time to ponder over the whole issue. After discussing matter with his family, he decided to join Hardik Tech Ltd. as Manager after the completion of amalgamation.

Since both Mr. Manjit and Mr. Rhitam were to lose their assignments before completion of their terms, the company decided to compensate them. At the meeting, it was decided to pay both of them the average compensation for the remaining unexpired term based on the remuneration received by them till the effective date of amalgamation between both the companies.

Some of the shareholders of Simran Software Solutions Ltd. equalling 5% of total members were not satisfied with the scheme of amalgamation as finalised between their company and Hardik Tech Ltd. and accordingly, they decided to opt out of their company. Consequently, NCLT ordered to pay such dissenting shareholders the value of shares held by them and the valuation of such shares was to be arrived at as per the pre-determined price formula.

Simran Software Solutions Ltd. had submitted to the NCLT, full details about a pending legal case against Mr. Mohan, one of the directors of the company, who was removed as director and was sued for having caused a loss of over ₹ 20 lakh to the company through various bogus transactions. Mr. Mohan was being prosecuted under Sections 447 and 452 of the Companies Act, 2013. These facts were also in the knowledge of Hardik Tech Ltd.

The NCLT, after satisfying itself that the procedures specified in the Companies Act, 2013, were duly followed, sanctioned the scheme of amalgamation. It was decided that 14th January, 2022, shall be the effective date for amalgamation. The NCLT ordered Simran Software Solutions Ltd. to transfer the whole of the undertaking, property and its liabilities to Hardik Tech Ltd. as per the terms of the amalgamation.

It was also held by the NCLT that after dissolution of Simran Software Solutions Ltd., the fees, if any, paid by it on its authorised capital shall be set-off against any fees payable by Hardik Tech Ltd. on its authorised capital, subsequent to the amalgamation. Both the companies, in relation to such order were required to submit a certified copy of the order as prescribed, to the Registrar of Companies for registration within thirty days of the receipt of a copy thereof.

MULTIPLE CHOICE QUESTIONS

1. The National Company Law Tribunal (NCLT) ordered that Simran Software Solutions Ltd. would pay its 5% dissenting shareholders the value of shares held by them and the valuation of such shares was to be arrived at as per the pre-determined price formula. According to the provisions of the Companies Act, 2013, what is the basic criteria which should be considered while deciding the valuation of shares?

   (a) The valuation of the shares should not be less than the value calculated by a practicing Chartered Accountant having minimum fifteen years of experience.

   (b) The valuation of the shares should not be less than what has been specified by the Securities and Exchange Board of India.

   (c) The valuation of the shares should not be less than that of the value of shares of Hardik Tech Ltd calculated by a practicing Chartered Accountant having minimum fifteen years of experience.

   (d) The valuation of the shares should not be less than the market price prevailing on the date when the amalgamation process will commence.

2. As regards listing, what will be the consequences of amalgamation of Simran Software Solutions Ltd., a listed company with Hardik Tech Ltd. that is an unlisted company? Choose the correct answer from those stated below:

   (a) Amalgamation of Simran Software Solutions Ltd., a listed company, with Hardik Tech Ltd., an unlisted company, would by itself convert Hardik Tech Ltd. into a listed company.

(b) Amalgamation of Simran Software Solutions Ltd., a listed company, with Hardik Tech Ltd., an unlisted company, would not by itself convert Hardik Tech Ltd. into a listed company.

(c) Amalgamation of Simran Software Solutions Ltd., a listed company, with Hardik Tech Ltd., an unlisted company, would convert Hardik Tech Ltd. into a listed company but only after the expiry of 15 days from the date of completion of amalgamation.

(d) Amalgamation of Simran Software Solutions Ltd., a listed company, with Hardik Tech Ltd., an unlisted company, would convert Hardik Tech Ltd. into a listed company but only after the expiry of 30 days from the date of completion of amalgamation.

3. According to the provisions of this Companies Act, 2013, what is the legal obligation imposed on the company which it is required to fulfill until the completion of the scheme of amalgamation?

(a) To file a prescribed statement within the prescribed time with the Registrar of Companies, certified by auditors of the companies, that the scheme of amalgamation is complied with as per the directions of the National Company Law Tribunal (NCLT).

(b) To file a prescribed statement within the prescribed time with the Registrar of Companies, certified by a Chartered Accountant or Cost Accountant or Company Secretary in practice, that the scheme of amalgamation is complied with as per the directions of the National Company Law Tribunal (NCLT).

(c) To file the quarterly audited annual financial statements along with a prescribed statement within the prescribed time with the Registrar of Companies, certified by a Chartered Accountant or Cost Accountant or Company Secretary in practice that the scheme of amalgamation is complied with as per the directions of the National Company Law Tribunal (NCLT).

(d) To file a prescribed statement within the prescribed time with the Registrar of Companies, certified by an Advocate who is practicing in the High Court that the scheme of amalgamation is complied with as per the directions of the National Company Law Tribunal (NCLT).

4. According to the provisions of the Companies Act, 2013, whether both Mr. Manjit and Mr. Rhitam are eligible for receiving the compensation for the loss of their respective offices as Managing Director and Whole-time Director? Select the correct statement from the following four options:

   (a) Only Mr. Rhitam is eligible for receiving the compensation for the loss of his office as Whole-time Director of Simran Software Solutions Ltd.

   (b) Only Mr. Manjit is eligible for receiving the compensation for the loss of his office as Managing Director of Simran Software Solutions Ltd.

   (c) Both Mr. Manjit and Mr. Rhitam are eligible for receiving the compensation for the loss of their respective offices as Managing Director and Whole-time Director of Simran Software Solutions Ltd.

   (d) Neither Mr. Manjit nor Mr. Rhitam are eligible for receiving the compensation for the loss of their respective offices as Managing Director and Whole-time Director of Simran Software Solutions Ltd.

5. Mr. Mohan was removed as a Director of Simran Software Solution Ltd. for the alleged fraud committed while being holding the office of Director. How would the ongoing amalgamation process of the companies impact the pending legal proceedings against Mr. Mohan?

   I. The pending legal case will be continued as before between Mr. Mohan and Simran Software Solutions Limited.

   II. The pending legal case will be continued as before against Mr. Mohan though not with Simran Software Solutions Limited but with Hardik Tech Ltd. after amalgamation.

   III. Mr. Mohan was holding the office of Director in Simran Software Solutions Limited, the transferor company and therefore, till the time the pending legal case is not finally decided, the process of amalgamation cannot be completed between Simran Software Solutions Limited and Hardik Tech Ltd.

IV. The ongoing legal case against Mr. Mohan would not affect the amalgamation of Simran Software Solutions Limited with Hardik Tech Ltd.

(a) I & III.

(b) II & III.

(c) II & IV.

(d) I & IV.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (b)** The valuation of the shares should not be less than what has been specified by the Securities and Exchange Board of India.

Reason

Proviso to Section 232(3)(h)

Where the transferor company is a listed company and the transferee company is an unlisted company, the transferee company shall remain an unlisted company until it becomes a listed company.

If shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal.

Provided that the amount of payment or valuation under this clause for any share shall not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it.

Since Simran Software Solution Limited being transferor company is listed one, while Hardik Tech Ltd. Being transferee company is unlisted; hence above provision will be applicable.

2. **Option (b)** Amalgamation of Simran Software Solutions Ltd., a listed company, with Hardik Tech Ltd., an unlisted company, would not by itself convert Hardik Tech Ltd. into a listed company.

Reason

Section 232(3)(h)

Where the transferor company is a listed company and the transferee company is an unlisted company, the transferee company shall remain an unlisted company until it becomes a listed company.

Since Simran Software Solution Limited being transferor company is listed one, while Hardik Tech Ltd. being transferee company is unlisted; hence above provision will be applicable.

3. Option (b) To file a prescribed statement within the prescribed time with the Registrar of Companies, certified by a Chartered Accountant or Cost Accountant or Company Secretary in practice, that the scheme of amalgamation is complied with as per the directions of the National Company Law Tribunal (NCLT).

Reason

Section 232(7)

Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed in Rule 21 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with the Registrar every year duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.

4. Option (b) Only Mr. Manjit is eligible for receiving the compensation for the loss of his office as Managing Director of Simran Software Solutions Ltd.

Reason

Sub-section 1 and 2 of section 202

Sub-section 1 provides a company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.

While sub-section put restriction and exclude certain cases.

It provides that no payment shall be made under sub-section (1) in the certain case which also includes where the director resigns from his office as a result of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation.

Hence Mr. Ritham is not eligible for compensation, while Mr. Manjit is eligible.

5. Option (c) II & IV.

Reason

Section 240

Notwithstanding anything in any other law for the time being in force, the liability in respect of offences committed under this Act by the officers in default, of the transferor company prior to its merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.

CASE SCENARIO 26

Minerva Fabrics Limited, incorporated by Padam Kishore in the year 1985 in Bombay (now Mumbai), Maharashtra, under the Companies Act, 1956, has over 60% market share in suiting and shirting in India. It is also one of the biggest woolen fabric maker having a distribution network of more than 2,000 outlets. Interested in increasing the growth rate of the company and to diversify into new product line, Yuvraj Kishore, dynamic son of Padam Kishore, currently designated as Chief Executive Officer (CEO), planned to takeover Swati Garments Limited. This company, having its Registered Office in Gandhi Nagar, Gujarat, was run by Patel family since 2015 whose 'He' - a premium casual wear brand - brought customers a range of semi-formal and casual clothes for men.

Initiating the move of taking over, the shareholders of Swati Garments Limited were given an offer by Minerva Fabrics Limited to acquire their shares in exchange for issue of shares as well as cash.

The purchase offer was approved by the shareholders holding ninety one percent in value of the shares. After approval, the said offer was remained open for a period of four months and was availed by the shareholders who approved it. Thereafter, a notice for acquisition of the shares of dissenting shareholders of Swati Garments Limited was issued to them by Minerva Fabrics Limited.

The dissenting shareholders within one month from the date on which the notice was served on them, made an application to the National Company Law Tribunal (NCLT) against the acquisition of their shares by Minerva Fabrics Limited. After considering the application, the NCLT disposed of the said application giving order in favour of Minerva Fabrics Limited. As per the order, the shares of the dissenting shareholders were to be transferred to Minerva Fabrics Limited.

Minerva Fabrics Limited, thereupon, sent a copy of the notice to the Swati Garments Limited together with an instrument of transfer, to be executed on behalf of the dissenting shareholders by a person appointed by Swati Garments Limited. Minerva Fabrics Limited paid to Swati Garments Limited, the consideration representing the price payable by it, for the shares of the dissenting shareholders which it was entitled to acquire.

On receipt of notice together with an instrument of transfer, Swati Garments Limited registered the name of Minerva Fabrics Limited as the holder of those shares in its Register of Members and informed the dissenting shareholders about such registration and of the receipt of the amount of consideration representing the price payable to them by Minerva Fabrics Limited.

The amount of consideration so received by Swati Garments Limited from Minerva Fabrics Limited was parked in a separate bank account and the said consideration was held by Swati Garments Limited as a trustee for the dissenting shareholders and was disbursed to them within the prescribed time limit.

Mr. Manoj was holding the office of Managing Director in Swati Garments Limited after being appointed on 15th April, 2016. Due to expertise in finance and better track records, the company had re-appointed Mr. Manoj on 1st April, 2021, for the next five years with an understanding that he will be compensated due to early vacation of office as Managing Director in case of merger or amalgamation or takeover. Because of such developments relating to takeover, Mr. Manoj lost his office as Managing Director and therefore, Swati Garments Limited wanted to compensate him as per the agreement.

Mr. Manoj had received following remuneration during the last five financial years.

Financial Years	**Amount of Remuneration (in ₹)**
2016-17	20,00,000
2017-18	25,00,000
2018-19	30,00,000
2019-20	35,00,000
2020-21	40,00,000

Mr. Rishabh, close friend of Mr. Manoj, is one of the Directors in TopGears Limited, an Indian automotive company that manufactures motorcycles, scooters and three-wheelers. The company is headquartered in Chennai, Tamil Nadu and owned by Ramachandran Swami. It is one of the leading motorcycle companies in India.

The retirement of Mr. Pranav, the current Managing Director of TopGears Limited, is on the cards and he will get superannuated after two months. Since Mr. Manoj was no more holding the office of Managing Director in Swati Garments Limited, Mr. Rishabh with the consent of his friend, discussed the matter of appointment of Mr. Manoj as Managing Director with the Board of Directors of TopGears Limited. The terms and conditions as well as the remuneration payable with respect to Mr. Manoj's appointment were got approved by the Board subject to the approval of shareholders of TopGears Limited at its next General Meeting. Mr. Manoj was finally appointed as the Managing Director since shareholders of TopGears Limited approved his appointment by passing a resolution at the General Meeting of the company.

With the inclusion Mr. Manoj, the total strength of Directors of TopGears Limited has reached 14 including two independent Directors. After some time, TopGears Limited felt the need to raise funds from the market. Accordingly, it floated its 'share issue' through issuing a prospectus and was able to raise funds to the tune of ₹ 300 crores from the public at large. Its equity shares got listed on BSE Limited and National Stock Exchange of India Ltd.

MULTIPLE CHOICE QUESTIONS

1. According to the case scenario, the offer of acquisition of shares of Swati Garments Limited was approved by 91% shareholders and the offer remained open for four months but the dissenting shareholders did not avail the said offer. As per the provisions of the Companies Act, 2013, maximum within how much time, Minerva Fabrics Limited is required to send a notice to the dissenting shareholders indicating its intention to acquire their shares? Select the correct answer from the following options:

   (a) Maximum within one month after the expiry of first four months during which the offer of acquisition of shares was open, Minerva Fabrics Limited is required to give notice to the dissenting shareholders signifying its desire to acquire their shares.

   (b) Maximum within two months after the expiry of first four months during which the offer of acquisition of shares was open, Minerva

Fabrics Limited is required to give notice to the dissenting shareholders signifying its desire to acquire their shares.

(c) Maximum within three months after the expiry of first four months during which the offer of acquisition of shares was open, Minerva Fabrics Limited is required to give notice to the dissenting shareholders signifying its desire to acquire their shares.

(d) Maximum within five months after the expiry of first four months during which the offer of acquisition of shares was open, Minerva Fabrics Limited is required to give notice to the dissenting shareholders signifying its desire to acquire their shares.

2. Swati Garments Limited needs to park the funds received from Minerva Fabrics Limited on behalf of the dissenting shareholders in a separate bank account. According to the provisions of the Companies Act, 2013, within how many days, the said funds shall be disbursed to the dissenting shareholders?

(a) 30 days

(b) 40 days

(c) 60 days

(d) 90 days

3. Due to the takeover of Swati Garments Limited by Minerva Fabrics Limited, Mr. Manoj lost his office as Managing Director in Swati Garments Limited. Since Swati Garments Limited wants to compensate him, how much compensation becomes payable to him:

(a) ₹ 75 lakhs.

(b) ₹ 105 lakhs.

(c) ₹ 120 lakhs.

(d) ₹ 130 lakhs.

4. According to the case scenario, appointment of Mr. Manoj as Managing Director of TopGears Limited was approved by the shareholders by passing a resolution at the General Meeting of the company. In such a situation, as per the provisions of the Companies Act, 2013, maximum

within how much time the prescribed return in MR-1 is required to be filed with the Registrar of Companies? Choose the correct answer from the following options:

(a) Maximum within 30 days.

(b) Maximum within 45 days.

(c) Maximum within 60 days.

(d) Maximum within 90 days.

5. TopGears Limited got its shares listed on BSE Ltd. and National Stock Exchange of India Ltd. After becoming a listed company what changes, if any, are required to be made by TopGears Limited so far as the strength of its Board of Directors is concerned? Select the correct alternative from those given below:

(a) After getting listed with BSE Ltd. and National Stock Exchange of India Ltd., TopGears Limited is required to appoint one more Independent Director.

(b) After getting listed with BSE Ltd. and National Stock Exchange of India Ltd., TopGears Limited is required to appoint two more Independent Directors.

(c) After getting listed with BSE Ltd. and National Stock Exchange of India Ltd., TopGears Limited is required to appoint three more Independent Directors.

(d) There is need to appoint any new Independent Director since TopGears Limited already has two independent Directors.

ANSWER TO MULTIPLE CHOICE QUESTION

1. Option (b) Maximum within two months after the expiry of first four months during which the offer of acquisition of shares was open, Minerva Fabrics Limited is required to give notice to the dissenting shareholders signifying its desire to acquire their shares.

Reason

Section 235(1)

Where a scheme or contract involving the transfer of shares or any class of shares in a company (the transferor company) to another company (the transferee company) has, within four months after making of an offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved, other than shares already held at the date of the offer by, or by a nominee of the transferee company or its subsidiary companies , the transferee company may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.

2. Option (c) 60 days

Reason

Section 236(4)

The majority shareholders shall deposit an amount equal to the value of shares to be acquired by them under sub-section (2) or sub-section (3), as the case may be, in a separate bank account to be operated by the company whose shares are being transferred for at least one year for payment to the minority shareholders and such amount shall be disbursed to the entitled shareholders within sixty days.

It worth noting that such disbursement shall continue to be made to the entitled shareholders for a period of one year, who for any reason had not been made disbursement within the said period of sixty days or if the disbursement have been made within the aforesaid period of sixty days, fail to receive or claim payment arising out of such disbursement.

3. Option (b) ₹ 105 lakhs.

Reason

Section 209(3)

Any payment made to a managing or whole-time director or manager in pursuance of loss of office shall not exceed the remuneration which he

would have earned if he had been in office for the remainder of his term or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold office, or where he held the office for a lesser period than three years, during such period.

Note - Presuming removal took place on 1st April 2021 itself i.e. date of reappointment.

The average remuneration for last three years is INRs 35 lacs i.e. (30+35+40)/3

Therefore compensation shall be lower of the INRs 175 lacs (balance term) or INRs 105 lacs (for three years) i.e. INRs 105 lacs.

4. **Option (c)** Maximum within 60 days.

Reason

Second Proviso to section 196(4)

A return in the Form No. MR-1 as per Rule 3 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 shall be filed within sixty days of such appointment with the Registrar.

5. **Option (c)** After getting listed with BSE Ltd. and National Stock Exchange of India Ltd., TopGears Limited is required to appoint three more Independent Directors.

Reason

Section 149(4)

Every listed public company shall have at least one-third of the total number of directors as independent directors. Note - For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one.

1/3 of 14 comes to 4.33 which shall be round-up to 5, since two independent directors are already on the board hence another 3 directors need to be appointed.

Since TopGears Limited is listed company, hence it is equally worth noting that as per Regulation 17 of LODR 2015 where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors. Even where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.

CASE SCENARIO 27

GenTech Engineering and Consultancy Limited (GECL), having its Registered Office in Kolkata, West Bengal, was incorporated way back in January, 2011. The Central Government holds 21% of its paid-up share capital while the State Government of Gujarat and Navyug Engineering Limited, a government company, hold 23% and 10% respectively.

As GECL was interested in ascertaining the market value of its assets, it invited tenders and after thorough scrutiny it shortlisted the following Registered Valuers:

(1) **Mr. Anant:** He has set up his valuation practice in London for the last 5 years. He came to visit India on December 24, 2021, for a short span of around one month during which, in terms of the tender submitted by him, he was proposed by GECL to undertake the assignment relating to valuation of its assets.

(2) **Mr. Aloknath:** He is a valuer member of a registered valuers' organisation and is one of the partners of M/s ALP & Associates, a Kolkata based valuation firm. Mr. Aloknath was given second preference by GECL if Mr. Anant refused the assignment relating to the valuation of assets.

(3) **M/s MNC Valuers & Associates, LLP:** It is a Limited Liability Partnership, based at Kolkata, and all the partners of the firm are valuer members of a registered valuers' organisation. It was given third preference by GECL for undertaking the valuation of its assets.

GECL holds 15% paid-up share capital of Prayas Marketing Limited (PML). However, the jurisdictional Registrar of Companies (RoC), having reasonable cause to believe that the PML was not carrying on any business or operations, ordered a physical verification of the Registered Office of PML.

After physical verification of the Registered Office of PML, the Registrar formed an opinion that the company, in actuality, was not carrying on any business or operations and therefore, he issued a notice to the company and all of its Directors indicating his intention to remove the name of the company from the Register of Companies, if no explanation along with copies of relevant documents were filed within a period of 30 days from the date of the notice. Since no cause to the contrary was shown by the company and its Directors, the Registrar, after following the requisite procedure, removed the name of the PML

from the Register of Companies and a notice dated 30.10.2021 to this effect was published in the Official Gazette. On publication of this notice in the Official Gazette and also its placement on the official website of the Ministry of Corporate affairs, PML was dissolved.

After dissolution as above of the PML effective from 30.10.2021 under Section 248 of the Companies Act, 2013, it ceased to operate as a company and Certificate of Incorporation was deemed to have been cancelled from such date.

MULTIPLE CHOICE QUESTIONS

1. From the case scenario, it is observed that the share of the Central Government in the paid-up share capital of GECL is 21% while the State Government of Gujarat and Navyug Engineering Limited, a government company, respectively hold 23% and 10% of its paid-up capital. Which one of the following options is applicable in such a situation:

   (a) GECL is a Government Company since both the Central Government and the State Government of Gujarat hold more than 25% of its paid-up share capital.

   (b) GECL is not a Government Company since the Central Government, the State Government of Gujarat and Navyug Engineering Limited, a Government Company, hold only 54% of its paid-up share capital which is less than the threshold limit of 55%.

   (c) GECL is a Government Company since the Central Government, the State Government of Gujarat and Navyug Engineering Limited, a Government Company, hold 54% of its paid-up share capital which is more than the threshold limit of 51%.

   (d) GECL is not a Government Company since the Central Government and the State Government of Gujarat together hold 44% of its paid-up share capital which is less than the threshold limit of 51%.

2. Which one of the following options is applicable in case Mr. Anant was preferred to be given the valuation assignment of valuing the assets of GECL.

   (a) Mr. Anant cannot act as a valuer being a person not resident in India.

(b) Mr. Anant cannot act as a valuer since process of valuation of goodwill is a tedious and time-consuming task.

(c) Mr. Anant can act as a valuer being a valuer member of a registered valuers' organisation in London and is more knowledgeable than others.

(d) Mr. Anant can act as a valuer being a valuer member of a registered valuers' organisation in London and is out of India for less than seven years.

3. In case PML is aggrieved by the order dated 30-10-2021 of the Registrar of Companies that led to the removal of its name from the Register of Companies and its dissolution and therefore, it desires to file an appeal to the National Company Law Tribunal (NCLT), which one of the following options shall be applicable in such a situation:

(a) PML is permitted to file an appeal to the National Company Law Tribunal (NCLT) within a period of one year from the date of the order of the Registrar of Companies.

(b) PML is permitted to file an appeal to the National Company Law Tribunal (NCLT) within a period of two years from the date of the order of the Registrar of Companies.

(c) PML is permitted to file an appeal to the National Company Law Tribunal (NCLT) within a period of three years from the date of the order of the Registrar of Companies.

(d) PML is permitted to file an appeal to the National Company Law Tribunal (NCLT) within a period of five years from the date of the order of the Registrar of Companies.

4. Which one of the following options is applicable in case PML denies to discharge its liabilities and other obligations contending that after dissolution it has ceased to operate?

(a) The contention of the PML is valid since after dissolution it cannot enter into any contract.

(b) The contention of the PML is valid since once the company stands dissolved, the shareholders of the company are liable to discharge all its liabilities and obligations.

(c) The contention of the PML is invalid since the dissolution shall not affect the realisation of amount due to it and for the discharge of its liabilities or obligations.

(d) The contention of the PML is valid because once the company stands dissolved, it is not liable to discharge any of its liabilities and obligations because the shareholders of the company are to be given back the money invested by them as shareholders.

5. Suppose PML, on its own, decides to file an application to the Registrar of Companies for removal of its name from the Register of Companies. From the given options, choose the one which shall be applicable in such a situation:

(a) PML is not permitted to file an application to the Registrar of Companies for removal of its name from the Register of Companies.

(b) All the Directors of PML at the Board Meeting can pass a resolution to file an application to the Registrar of Companies for removal of name of PML from the Register of Companies but only after extinguishing all the liabilities of PML.

(c) PML after extinguishing all its liabilities and by passing an ordinary resolution or by obtaining consent of 51% of its members in terms of paid-up share capital may file an application to the Registrar of Companies for removal of its name from the Register of Companies.

(d) PML after extinguishing all its liabilities and by passing a special resolution or by obtaining consent of 75% of its members in terms of paid-up share capital may file an application to the Registrar of Companies for removal of its name from the Register of Companies.

ANSWER TO MULTIPLE CHOICE QUESTION

1. Option (d) GECL is not a Government Company since the Central Government and the State Government of Gujarat together hold 44% of its paid-up share capital which is less than the threshold limit of 51%.

Reason

Section 2(45) of the Companies Act, 2013

Government company means any company in which not less than fifty-one percent of the paid-up share capital is held by the

Central Government, or

Any State Government or Governments, or

Partly by the Central Government and partly by one or more State Governments,

and

Includes a company which is a subsidiary company of such a Government company.

Since Union Government (21%) and Government of Gujarat (23%) together hold only 44% of paid-up share capital, which less than 51%; hence not a government company.

2. **Option (a)** Mr. Anant cannot act as a valuer being a person not resident in India.

Reason

Rule 3(1)(h) of Companies (Registered Valuers and Valuation) Rules, 2017

A person shall be eligible to be a registered valuer if he is a person resident in India.

It is worth noting that for the purposes of these rules 'person resident in India' shall have the same meaning as defined in clause (v) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999) as far as it is applicable to an individual;

3. **Option (c)** PML is permitted to file an appeal to the National Company Law Tribunal (NCLT) within a period of three years from the date of the order of the Registrar of Companies.

Reason

Section 252(1)

Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar.

4. Option (c) The contention of the PML is invalid since the dissolution shall not affect the realisation of amount due to it and for the discharge of its liabilities or obligations.

Reason

Section 250

Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realizing the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

5. Option (d) PML after extinguishing all its liabilities and by passing a special resolution or by obtaining consent of 75% of its members in terms of paid-up share capital may file an application to the Registrar of Companies for removal of its name from the Register of Companies.

Reason

Section 248(2)

A company may, after extinguishing all its liabilities, by a special resolution or consent of seventy-five percent members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner.

It is worth noting that in the case of a company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.

CASE SCENARIO 28

The Board of Directors of Binjoy Textiles Limited, incorporated in the year 2010 under the Companies Act, 1956, comprises of six Directors including Mr. Raman Singh functioning as Managing Director. Based in Maharashtra, the company was in full swing with its different kinds of fabrics like cotton, polyester, nylon, etc., and was reaching the farthest corners of the country.

The Authorised Capital of Binjoy Textiles Limited was ₹ 5,00,00,000 divided into 50,00,000 equity shares of ₹ 10 each. The issued and subscribed capital as at 31-03-2021 was ₹ 4,00,00,000 of which paid-up capital was ₹ 3,40,00,000. In fact, 500 shareholders out of total 1000 shareholders, had not paid the last call of ₹ 3 per share. It is noteworthy that these 500 shareholders were holding 20,00,000 equity shares.

Not known to others, two directors of Binjoy Textiles Limited, Mr. Manav and Mr. Kundan, were involved in mismanagement of the company bringing its downfall day-by-day. They were clandestinely withdrawing huge sums of money on regular basis on one pretext or the other for their personal use. The company started incurring losses year-after-year. There was unrest among the stakeholders. Mr. Raman, Managing Director, was also a silent party to such fraud since he did not try to put a brake on the fraudulent deeds of Mr. Manav and Mr. Kundan, thus showing his gross negligence that led the company to head sharply southwards.

In order to get rid of mismanagement, the contributories presented a petition for winding up to the National Company Law Tribunal (NCLT) on the grounds of mismanagement and fraud committed by these two directors of the company.

The long list of contributories also contained the names of Mr. Rohan and Mr. Sharad who inherited 2,000 partly paid-up shares whose paid-up value was ₹ 14,000 (Face Value ₹ 20,000) after the untimely death of their father Mr. Mool Chand just three months ago. Mr. Mool Chand had held these shares for the past two years. After inheriting 1000 shares each from their deceased father, Mr. Rohan and Mr. Sharad became the shareholders of Binjoy Textiles Limited and therefore, they also signed the petition for winding up of the company.

On being satisfied, the National Company Law Tribunal (NCLT) passed an Order for winding up of Binjoy Textiles Limited.

Due to the impending winding up, Binjoy Textiles Limited was contemplating on the notion to compensate Mr. Raman Singh for the loss of his office as Managing Director. Had there been no winding up as ordered by the National Company Law Tribunal (NCLT), Mr. Raman Singh would have retired in the year 2023. As per his retirement date, Mr. Raman Singh was supposed to receive minimum one year's remuneration, which he would have earned if he had been in the office for the remainder of his term. Accordingly, Mr. Raman Singh was looking forward to receive his dues at the time of winding up.

For the purposes of winding up of Binjoy Textiles Limited, the National Company Law Tribunal (NCLT) appointed a Company Liquidator, Mr. Dilip, on 21st December, 2021. However, Mr. Dilip had conflict of interest with the company. Therefore, as per the relevant provisions of the Companies Act, 2013, on appointment as Company Liquidator, he filed a declaration in the prescribed form with the National Company Law Tribunal (NCLT), effective from the date of his appointment, disclosing the conflict of his interest with the company. To take the matter ahead, following the provisions of the Companies Act, 2013, the National Company Law Tribunal (NCLT) duly sent an intimation of winding up to Mr. Dilip and the Registrar of Companies.

As per Section 281 of the Companies Act, 2013, the Liquidator of the company Mr. Dilip submitted to the National Company Law Tribunal (NCLT), a report containing chiefly the following particulars:

- The nature and details of the assets of the company including their location and value, stating separately the cash balance in hand and in the bank and the negotiable securities held by the company. A report on the valuation of the assets was obtained from the registered valuer, Mrs. Sapna Singh.
- Details of amount of share capital issued, subscribed and paid-up.
- The existing and contingent liabilities of the company including names, addresses and occupations of its creditors, stating separately the amount of secured and unsecured debts.

- All the details of secured debts including their value and the dates on which they were given.
- The debts due to any company or persons from whom they were due and the amount likely to be realised on account thereof.
- Guarantees extended by the company.
- List of contributories and dues payable by them and details of the unpaid calls.
- Details of subsisting contracts.
- Details of legal cases filed by or against the company.

The National Company Law Tribunal (NCLT), then settled the list of contributories and caused rectification of Register of Members in all cases where rectification was required. The NCLT reviewed all the assets of the company to be applied for the discharge of the winding up liability.

While settling the list of contributories, the NCLT included every person, who was or had been a member and who would be liable to contribute to the assets of the company an amount sufficient for payment of the debts and liabilities and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

As noticed earlier, there were total 1000 members of which 500 members had paid 70% of the amount due on their shares. A final call of ₹ 3 per was still due from them. It was estimated that the company could clear its entire debt, if the unpaid amount was received from these 500 members. However, out of the 500 members who held partly paid-up shares, 350 members paid their unpaid contributions but remaining 150 shareholders were yet to pay the amount due from them.

MULTIPLE CHOICE QUESTIONS

1. From the case scenario, it is evident that Mr. Rohan and Mr. Sharad inherited 2,000 shares after the death of their father Mr. Mool Chand and irrespective of their eligibility, both had signed the winding up petition as the contributories of Binjoy Textiles Limited. According to the

provisions of the Companies Act, 2013, whether they were eligible to sign the petition?

(a) Mr. Rohan and Mr. Sharad, after becoming contributories due to inheriting of 2,000 shares from their father Mr. Mool Chand, were legally eligible to sign the winding up petition, only if the shares held by them were fully paid-up and not otherwise.

(b) Mr. Rohan and Mr. Sharad were eligible to sign the winding up petition only if they had held the shares in their names for at least six months after inheriting them from their deceased father, Mr. Mool Chand.

(c) Mr. Rohan and Mr. Sharad were eligible to sign the winding up petition only if they had held the shares in their names for at least nine months after inheriting them from their deceased father, Mr. Mool Chand.

(d) Mr. Rohan and Mr. Sharad were eligible to sign the winding up petition as the shares due to which they were contributories had devolved upon them on the death of their father, Mr. Mool Chand, a former holder.

2. From the case scenario it is noticed that out of the 500 members who held partly paid-up shares, only 350 members paid their unpaid contributions and remaining 150 shareholders were yet to pay the amount due from them. Select the correct option from those given below as to whether payment made by 350 members would absolve the remaining 150 members from their liabilities:

(a) In case the amount required to settle the debts of Binjoy Textiles Limited is collected from 350 members, then the remaining 150 members are not required to pay their dues.

(b) All the shareholders holding partly paid-up shares of Binjoy Textiles Limited are required to respond individually to the demand notice whether they wish to pay the unpaid amount due from them or not.

(c) It is within the discretion of National Company Law Tribunal to require the remaining 150 shareholders of Binjoy Textiles Limited whether to pay or not to pay the unpaid amount due from them.

(d) Every unpaid shareholder of Binjoy Textiles Limited, being a contributory, is liable to pay to the extent of unpaid amount on his shares, irrespective of his shareholding.

3. Binjoy Textiles Limited wanted to compensate Mr. Raman Singh since he had to lose office of Managing Director before the completion of his term. Is it justified for the company to pay compensation to Mr. Raman Singh?

(a) Binjoy Textiles Limited is permitted to compensate its Managing Director Mr. Raman Singh for the loss of office before the completion of his term.

(b) Binjoy Textiles Limited is not permitted to compensate its Managing Director Mr. Raman Singh for the loss of office before the completion of his term since the company is being wound up by the National Company Law Tribunal and the negligence of Mr. Raman Singh was involved.

(c) Binjoy Textiles Limited is permitted to compensate its Managing Director Mr. Raman Singh for the loss of office before the completion of his term after the shareholders passed an ordinary resolution.

(d) Binjoy Textiles Limited is permitted to compensate its Managing Director Mr. Raman Singh for the loss of office before the completion of his term after the shareholders passed a special resolution.

4. The Company Liquidator Mr. Dilip, appointed by the National Company Law Tribunal, had some conflict of interest with Binjoy Textiles Limited. Choose the correct date from the following options, by which Mr. Dilip was required to file declaration with NCLT:

(a) 28th December, 2021.

(b) 31st December, 2021.

(c) 5th January, 2022.

(d) 10th January, 2022.

5. Out of the following four options, select the one which correctly indicates the role of Registrar of Companies on receipt of intimation of order from the National Company Law Tribunal for winding up of Binjoy Textiles Limited:

   (a) The Registrar of Companies will keep a vigilance over the winding up process initiated against Binjoy Textiles Limited.

   (b) The Registrar of Companies will assist the Company Liquidator Mr. Dilip in the winding up process initiated against Binjoy Textiles Limited.

   (c) The Registrar of Companies shall make an endorsement to that effect in his records relating to Binjoy Textiles Limited and notify it in the Official Gazette.

   (d) The Registrar of Companies will strike off the name of Binjoy Textiles Limited from the Register of Companies.

ANSWER TO MULTIPLE CHOICE QUESTION

1. Option (d) Mr. Rohan and Mr. Sharad were eligible to sign the winding up petition as the shares due to which they were contributories had devolved upon them on the death of their father, Mr. Mool Chand, a former holder.

Reason

Section 272(2)

A contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares , or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.

2. **Option (d)** Every unpaid shareholder of Binjoy Textiles Limited, being a contributory, is liable to pay to the extent of unpaid amount on his shares, irrespective of his shareholding.

Reason

Section 295, mind it; section 296 further empowers the tribunal to make calls

3. **Option (b)** Binjoy Textiles Limited is not permitted to compensate its Managing Director Mr. Raman Singh for the loss of office before the completion of his term since the company is being wound up by the National Company Law Tribunal and the negligence of Mr. Raman Singh was involved.

Reason

Section 202 (2)(d)

No payment (by way of compensation for loss of office) shall be made where the company is being wound up, whether by an order of the Tribunal or voluntarily, provided the winding up was due to the negligence or default of the director.

In present case the company is being wound up by the National Company Law Tribunal and the negligence of Mr. Raman Singh was involved.

4. **Option (a)** 28th December, 2021.

Reason

Rule 14(5) Companies (Winding Up) Rules, 2020

The provisional liquidator or the Company Liquidator, as the case may be appointed by the Tribunal shall file a declaration in Form WIN 10 disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal within seven days from the date of appointment.

5. **Option (c)** The Registrar of Companies shall make an endorsement to that effect in his records relating to Binjoy Textiles Limited and notify it in the Official Gazette.

Reason

Section 277(2)

On receipt of the copy of order of appointment of provisional liquidator or winding up order, the Registrar shall make an endorsement to that effect in his records relating to the company and notify in the Official Gazette that such an order has been made.

It is further worth noting that, in the case of a listed company, the Registrar shall intimate about such appointment or order, as the case may be, to the stock exchange or exchanges where the securities of the company are listed.

CASE SCENARIO 29

Three close friends, Mr. Singh, Mr. Khurana and Mr. Dhillon, all residents of Delhi, wanted to start their own venture and accordingly in the year 2014, after leaving their respective concerns, incorporated a company by the name New Age Automobiles Private Limited. Prior to this venture, Mr. Singh worked in National Commercial Bank Limited as Chief Manager and had gained rich experience of over twenty-two years dealing with different tough situations and also with seasoned businessmen as well as customers coming from all walks of life. In the year 2014, he took voluntary retirement under the 'Voluntary Retirement Scheme' announced by National Commercial Bank Limited which was applicable to the officers who had to their credit twenty years of service or more as on 31st December, 2013. Mr. Khurana is an experienced finance professional [MBA (Finance) from Faculty of Management Studies, University of Delhi] and in the last fifteen years he has served a number of finance companies gaining extensive knowledge of finance. Mr. Dhillon, an engineer, worked in a reputed auto company for the last fourteen years.

After two years of the formation of New Age Automobiles Private Limited, Mr. Rawat, one of the esteemed customers of National Commercial Bank Limited, who had an 'Overdraft Account' in the branch in which Mr. Singh worked as Chief Manager, wanted to have some stake in the company. Accordingly, he purchased 6% equity shares of New Age Automobiles Private Limited. After transferring 6% equity shares to Mr. Rawat, the original promoters held remaining 94% of equity shares.

Thereafter, in the year 2019, Jagat Electricals Limited having its Registered Office at Rajendra Place, New Delhi and having reputable presence pan-India for manufacturing quality products, acquired 60% stake in New Age Automobiles Private Limited by way of shareholders' agreement. As per the agreement, the remaining 34% shares were to be held by Mr. Khurana, Mr. Singh, and Mr. Dhillon in the ratio in which they were held by them when the company was incorporated in 2014 and other 6% by Mr. Rawat.

Mr. Rawat was a diabetic patient for the last seven years or so which had an adverse impact on both of his kidneys. As his kidney problem became serious by and by leading to dialysis on weekly basis, his nephrologist advised him for

kidney transplant. In order to get kidney transplant done at a specialised hospital, Mr. Rawat decided to go to Seattle, USA, where his son Saaransh Rawat, holder of Green Card, was serving a Multi-National Company (MNC) at a senior position. Before going to Seattle, Mr. Rawat sold his 6% stake in New Age Automobiles Private Limited to Jagat Electricals Limited which increased the aggregate shareholding of Jagat Electricals Limited to 66%.

Over a period of time, Jagat Electricals Limited gradually started increasing its stake in New Age Automobiles Private Limited and ultimately it reached to a level of 92%. The stake of 92% was achieved by way of various agreements made with Mr. Singh, Mr. Khurana and Mr. Dhillon and by now, these three friends were left with only 8% shareholding in New Age Automobiles Private Limited. Being the owner of 92% equity shares of New Age Automobiles Private Limited, Jagat Electricals Limited was running the affairs of the company in the manner that suited it; and Mr. Singh, Mr. Khurana and Mr. Dhillon, though minority shareholders, could not digest this phenomenon.

As a consequence of 'thought-to-be' mismanagement in New Age Automobiles Private Limited, Mr. Khurana, Mr. Singh and Mr. Dhillon decided to file an application with the jurisdictional National Company Law Tribunal (NCLT) against oppression and mismanagement in the company.

Later on, Jagat Electricals Limited wanted to execute an agreement with Mr. Khurana, Mr. Singh and Mr. Dhillon for purchasing their remaining shareholding of 8%. Pursuant to this, Jagat Electricals Limited had sent a notice to Mr. Khurana, Mr. Singh and Mr. Dhillon to sell their shares based on a particular 'sale consideration' rather than on the basis of an agreed price. As there was no response, Jagat Electricals Limited sent another notice to these friends invoking the previous notice, offering them to sell their shareholdings at an agreed price which was to be decided in accordance with the valuation done by a Practicing Chartered Accountant.

Thereafter, Jagat Electricals Limited issued a notice to New Age Automobiles Private Limited for purchasing the minority shareholding as per Section 236 of the Companies Act, 2013. Accordingly, New Age Automobiles Private Limited issued a notice to Mr. Khurana, Mr. Singh and Mr. Dhillon asking them to deliver their shares. However, Mr. Khurana, Mr. Singh and Mr. Dhillon refused to transfer their shares.

Mrs. Usha Singh, wife of Mr. Singh, owns a finance company by the name Singh Finance Company Private Limited whose turnover is ₹ 5 crore. In addition to Mrs. Usha Singh, Mr. Singh is also a Director in Singh Finance Company Private Limited. The sole purpose of the company is to give loans to other companies and corporate houses for business purposes.

Some three years before, Charan Singh Auto Parts Pvt. Limited took ₹ 10 lakhs as loan from Singh Finance Company Private Limited of which ₹ 6 lakhs along with interest has been repaid. As on date, the outstanding dues of Charan Singh Auto Parts Pvt. Limited towards Singh Finance Company Private Limited are ₹ 4 lakhs.

An investigation was conducted into the affairs of Charan Singh Auto Parts Pvt. Limited, for it came to the knowledge of Central Government that the business of this company was being done in an unfair and fraudulent manner. Singh Finance Company Private Limited and one other company called Arpita Traders Private Limited decided to file an application with the jurisdictional National Company Law Tribunal (NCLT) to impose restrictions on Charan Singh Auto Parts Pvt. Limited since it was likely to transfer its assets in a manner that would prejudicially affect their interests. It is noteworthy that Singh Finance Company Private Limited is a secured creditor whereas Arpita Traders is an unsecured creditor. Charan Singh Auto Parts Pvt. Limited is required to repay ₹ 75,000 to Arpita Traders Private Limited.

Mr. Hritik, son of Mr. Khurana, is working as Chief Financial Officer (CFO) in Yatin Mechanical Apparatus Private Limited for the last two years. The Central Government has appointed inspectors to investigate into the affairs of Yatin Mechanical Apparatus Private Limited, after receiving an intimation through special resolution passed by the company that the affairs of Yatin Mechanical Apparatus Private Limited ought to be investigated under Section 210 of the Companies Act, 2013. The main aim of the investigation is to obtain any evidence or facts regarding any malpractice in the course of conducting of business and also to identify its profits and losses correctly. During the ongoing investigation, Yatin Mechanical Apparatus Private Limited desired to discharge Mr. Hritik from his job as Chief Financial Officer (CFO).

MULTIPLE CHOICE QUESTIONS

1. Mr. Khurana, Mr. Singh and Mr. Dhillon had filed an application with the National Company Law Tribunal against oppression and mismanagement prevailing in New Age Automobiles Private Limited in which Jagat Electric Limited is the majority shareholder. Choose the correct option as to whether the said application is maintainable with NCLT:

   (a) Application filed with NCLT against oppression and mismanagement prevailing in New Age Automobiles Private Limited cannot be maintained, as Mr. Khurana, Mr. Singh and Mr. Dhillon together hold less than 10% shares.

   (b) The application filed with NCLT by Mr. Khurana, Mr. Singh and Mr. Dhillon against oppression and mismanagement prevailing in New Age Automobiles Private Limited is maintainable.

   (c) It is within the discretion of NCLT whether to entertain the application or not.

   (d) Application filed with NCLT against oppression and mismanagement prevailing in New Age Automobiles Private Limited cannot be maintained, as Mr. Khurana, Mr. Singh and Mr. Dhillon together hold less than 9% shares.

2. Jagat Electricals Limited sent again a notice after invoking the previous notice to Mr. Khurana, Mr. Singh and Mr. Dhillon, respectively, offering them to sell their shares at an agreed price to be decided by a Practicing Chartered Accountant. Do you think the minority shareholders are liable to sell their shares to the majority shareholders in such a situation?

   (a) Since price is based on the valuation done by a Practicing Chartered Accountant who has both legal as well as financial knowledge, minority shareholders are liable to sell their shares to the majority shareholders.

   (b) It is optional for the minority shareholders to sell their shares to the majority shareholders but the price needs to be determined on the basis of valuation carried out by a Registered Valuer.

(c) It is optional for the minority shareholders to sell their shares to the majority shareholders but the price needs to be determined on the basis of valuation carried out by a Practicing Company Secretary.

(d) In the given situation, the minority shareholders have no option but to sell their shares to the majority shareholders irrespective of which professional carries out the valuation of shares.

3. From the case scenario it is evident that Mr. Singh, Mr. Khurana and Mr. Dhillon being minority shareholders refused to sell their shareholdings of 8% to Jagat Electricals Limited. In case the trio agrees to the proposal, then maximum within how much time the amount of consideration shall be disbursed to them after it is deposited by Jagat Electricals Limited in a separate bank account to be operated by New Age Automobiles Private Limited.

(a) Maximum within 15 days, the amount of consideration shall be disbursed to Mr. Singh, Mr. Khurana and Mr. Dhillon by New Age Automobiles Private Limited for selling their shareholdings of 8% to Jagat Electricals Limited.

(b) Maximum within 30 days, the amount of consideration shall be disbursed to Mr. Singh, Mr. Khurana and Mr. Dhillon by New Age Automobiles Private Limited for selling their shareholdings of 8% to Jagat Electricals Limited.

(c) Maximum within 60 days, the amount of consideration shall be disbursed to Mr. Singh, Mr. Khurana and Mr. Dhillon by New Age Automobiles Private Limited for selling their shareholdings of 8% to Jagat Electricals Limited.

(d) Maximum within 90 days, the amount of consideration shall be disbursed to Mr. Singh, Mr. Khurana and Mr. Dhillon by New Age Automobiles Private Limited for selling their shareholdings of 8% to Jagat Electricals Limited.

4. Singh Finance Company Private Limited and Arpita Traders Private Limited were of the view that Charan Singh Auto Parts Pvt. Limited is likely to transfer its assets in a manner that will prejudicially affect their interests.

In the capacity as creditors of Charan Singh Auto Parts Pvt. Limited, whether they are eligible to file such an application with the NCLT:

(a) Both Singh Finance Company Private Limited and Arpita Traders Private Limited in their individual capacity as creditors are eligible to file the application with NCLT against Charan Singh Auto Parts Pvt. Limited.

(b) Only Singh Finance Company Private Limited in its capacity as creditor is eligible to file the application with NCLT against Charan Singh Auto Parts Pvt. Limited.

(c) Only Arpita Traders Private Limited in its capacity as creditor is eligible to file the application with NCLT against Charan Singh Auto Parts Pvt. Limited.

(d) Since Singh Finance Company Private Limited is a secured creditor and Arpita Traders Private Limited is not a secured creditor, hence only Singh Finance Company Private Limited is eligible to file the application with NCLT against Charan Singh Auto Parts Pvt. Limited.

5. The investigation being pending, Yatin Mechanical Apparatus Private Limited is desirous of discharging Mr. Hritik from his from his job as Chief Financial Officer (CFO). Select the correct option from those given below whether Yatin Mechanical Apparatus Private Limited can so discharge Mr. Hritik:

(a) Yatin Mechanical Apparatus Private Limited cannot discharge Mr. Hritik from his job as Chief Financial Officer (CFO) till the expiry of 15 days from the completion of ongoing investigation because he falls in the category of Key Managerial Personnel.

(b) Yatin Mechanical Apparatus Private Limited is required to seek approval of the NCLT before discharging Mr. Hritik from his job as Chief Financial Officer (CFO).

(c) Yatin Mechanical Apparatus Private Limited is required to seek approval of the inspectors conducting investigation before discharging Mr. Hritik from his job as Chief Financial Officer (CFO).

(d) Yatin Mechanical Apparatus Private Limited cannot discharge Mr. Hritik from his job as Chief Financial Officer (CFO) till the expiry of thirty days from the completion of ongoing investigation because he falls in the category of Key Managerial Personnel.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (b)** The application filed with NCLT by Mr. Khurana, Mr. Singh and Mr. Dhillon against oppression and mismanagement prevailing in New Age Automobiles Private Limited is maintainable.

Reason

244(1)(a)

In the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one tenth 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.

There are only 4 members, out of which 3 (much more than 1/10th) who are advancing the application u/s 241 hence application is maintainable.

Presuming all the call and other if any duly paid.

2. **Option (b)** It is optional for the minority shareholders to sell their shares to the majority shareholders but the price needs to be determined on the basis of valuation carried out by a Registered Valuer.

Reason

Sub-section 2 and 3 of Section 236

The acquirer or the person acting in concert with such acquirer, becoming registered holder of ninety percent or more of the issued equity share capital shall offer to the minority shareholders of the company for buying the equity shares held by such shareholders at a price determined on the basis of valuation by a registered valuer in accordance with such rules as may be prescribed.

Without prejudice to the provisions of sub-sections (1) and (2) of section 236, the minority shareholders of the company may offer to the majority shareholders to purchase the minority equity shareholding of the company at the price determined in accordance with such rules as may be prescribed under sub-section (2).

3. **Option (c)** Maximum within 60 days, the amount of consideration shall be disbursed to Mr. Singh, Mr. Khurana and Mr. Dhillon by New Age Automobiles Private Limited for selling their shareholdings of 8% to Jagat Electricals Limited.

Reason

Section 236(4)

The majority shareholders shall deposit an amount equal to the value of shares to be acquired by them in a separate bank account to be operated by the company whose shares are being transferred for at least one year for payment to the minority shareholders and such amount shall be disbursed to the entitled shareholders within sixty days.

4. **Option (b)** Only Singh Finance Company Private Limited in its capacity as creditor is eligible to file the application with NCLT against Charan Singh Auto Parts Pvt. Limited.

Reason

Section 221(1)

Where it appears to the Tribunal, on a reference made to it by the Central Government or in connection with any inquiry or investigation into the affairs of a company under this Chapter or on any complaint made by such number of members as specified under sub-section (1) of section 244 or a creditor having one lakh amount outstanding against the company or any other person having a reasonable ground to believe that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of the company or its shareholders or creditors or in public interest, it may by order direct that such transfer, removal or disposal shall not take place during such period not exceeding three years as may be

specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit.

Since amount due towards Arpita Traders Private Limited is only INRs 75000 i.e. less than one lakh; hence Arpita Traders Private Limited is not allowed to make application to NCLT u/s 221.

5. **Option (b)** Yatin Mechanical Apparatus Private Limited is required to seek approval of the NCLT before discharging Mr. Hritik from his job as Chief Financial Officer (CFO).

Reason

Section 218(1)(b)

During the pendency of any proceeding against any person concerned in the conduct and management of the affairs of a company, such company, if proposes

(i) to discharge or suspend any employee; or

(ii) to punish him, whether by dismissal, removal, reduction in rank or otherwise; or

(iii) to change the terms of employment to his disadvantage,

shall obtain approval of the Tribunal of the action proposed against the employee.

Note - if the Tribunal has any objection to the action proposed, it shall send by post notice thereof in writing to the company, other body corporate or person concerned.

CASE SCENARIO 30

Mumbai based Vishakha Tours and Travels Limited (VTTL) is a part of a new generation of tour operators which specialises in unique, instant and exceptional tours in Maharashtra. The mission of the Directors Vallabh, Vibhor and Sapna is to provide a hassle-free experience to their customers. There are four more Directors (closely related to the first three Directors) who look after internal departments of the company.

The first three Directors i.e. Vallabh, Vibhor and Sapna had twelve years of experience and during this period they arranged various categories of tours like sightseeing tours, luxury tours, walking tours, sports and games, rock climbing, horse riding and the like. To name a few, the places often visited included Pawna Lake Camping, Alibaugh, Bhandardara, Lohagad Valley, camping and rafting at Koland, etc. They had provided the touring services to approximately 3.5 lacs persons on annual basis. While travelling with them, the tourists would enjoy in-depth experience, wisest guides, the closest wilderness encounters to ensure best moments of their lives. The USP of the company is "Best Price Guaranteed".

According to the audited financial statements, the paid-up share capital of VTTL as on 31st March, 2021 was ₹ 6.00 crore (60,00,000 equity shares of ₹ 10 each) and the reserves and surplus amounted to ₹ 2.50 crore. The turnover of the company for the Financial Year 2020-21 was ₹ 55.00 crore.

As the company had surplus funds, Vallabh thought of investing ₹ 50.00 lacs in equity shares of reputed companies as a part of investment plan. A Board Meeting was called which was attended by five Directors. However, only three Directors out of five agreed to the investment plan.

Vallabh and Vibhor were keen to diversify the activities of the company into certain other areas as well. They were of the opinion to buy a big plot of land in Lonavala and construct a theme park for fun and frolic on weekend getaways. It was supposed to provide all amenities and comforts including 5 acres of Water Park, 2 roller coasters and 50 other attractions. Their aim was to ensure that their guests enjoy exclusive privileges, novel experience with most competitive prices. To deliberate on the issue, VTTL called a Board Meeting on 10th September, 2021 at 3:00 p.m. at its Registered Office at Worli, Mumbai.

However, no business could be undertaken for want of quorum and the meeting was adjourned.

MULTIPLE CHOICE QUESTIONS

1. In the above case scenario, one of the Directors Vallabh wanted to invest surplus funds of VTTL amounting to ₹ 50.00 lakhs in equity shares of reputed companies as a part of investment plan. It is noticed that five Directors out of total seven Directors attended the Board Meeting in which this proposal was discussed and only three Directors consented to the proposal. Which one of the following options is applicable in the given situation?

   (a) VTTL can go ahead with such investment plan since majority of the Directors present at the Board Meeting agreed to the proposal of investing funds amounting to ₹ 50.00 lakhs in equity shares of reputed companies.

   (b) VTTL cannot invest funds amounting to ₹ 50.00 lakhs in equity shares of reputed companies since all the five Directors present at the meeting did not agree to such investment plan.

   (c) VTTL cannot invest funds amounting to ₹ 50.00 lakhs in equity shares of reputed companies since the total strength of seven Directors must attend the Board Meeting and all must consent to such investment plan.

   (d) VTTL cannot invest funds amounting to ₹ 50.00 lakhs in equity shares of reputed companies since the investment plan did not receive the consent of 3/4th majority of the Directors present (i.e. four out of five present).

2. From the case scenario, it is evident that VTTL called a Board Meeting on 10th September, 2021, at 3:00 p.m. at its Registered Office at Worli, Mumbai to deliberate on the issue of expanding its activities into certain other areas as well. However, no business could be undertaken for want of quorum and the meeting was adjourned. From the following options, choose the one which indicates the correct date, time and place for

holding such adjourned meeting if no contrary provisions are contained in the Articles of Association of VTTL.

(a) The adjourned Board Meeting needs to be held on 13th September, 2021, at 3:00 p.m. at the Registered Office of VTTL at Worli, Mumbai.

(b) The adjourned Board Meeting needs to be held on 15th September, 2021, at 3:00 p.m. at the Registered Office of VTTL at Worli, Mumbai.

(c) The adjourned Board Meeting needs to be held on 17th September, 2021, at 3:00 p.m. at the Registered Office of VTTL at Worli, Mumbai.

(d) The adjourned Board Meeting needs to be held on 20th September, 2021, at 3:00 p.m. at the Registered Office of VTTL at Worli, Mumbai.

3. The case scenario does not speak about the appointment of any Independent Director. From the following four options choose the one, which indicates the number of Independent Directors that VTTL is required to appoint based on the financial results as on 31-03-2021:

(a) VTTL is required to appoint minimum one Independent Director.

(b) VTTL is required to appoint minimum two Independent Directors.

(c) VTTL is not required to appoint an Independent Director.

(d) VTTL is required to appoint minimum three Independent Directors.

4. From the options given below, choose the one which indicates the maximum amount which VTTL can invest for acquiring by way of purchase the securities of any other body corporate without passing a special resolution in a General Meeting:

(a) VTTL can invest maximum up to ₹ 6.00 crore for acquiring by way of purchase the securities of any other body corporate.

(b) VTTL can invest maximum up to ₹ 5.95 crore for acquiring by way of purchase the securities of any other body corporate.

(c) VTTL can invest maximum up to ₹ 3.60 crore for acquiring by way of purchase the securities of any other body corporate.

(d) VTTL can invest maximum up to ₹ 5.10 crore for acquiring by way of purchase the securities of any other body corporate.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (b)** VTTL cannot invest funds amounting to ₹ 50.00 lakhs in equity shares of reputed companies since all the five Directors present at the meeting did not agree to such investment plan.

Reason

section 186(5)

No investment shall be made by the company unless the resolution sanctioning it is passed at a meeting of the board with the consent of all the directors present at meeting.

It is worth noting, where any term loan is subsisting the prior approval of concerned public financial institution is required to be obtained.

2. **Option (c)** The adjourned Board Meeting needs to be held on 17th September, 2021 at 3:00 p.m. at the Registered Office of VTTL at Worli, Mumbai.

Reason

Section 174(4)

Where a meeting of the Board could not be held for want of quorum, then, unless the articles of the company otherwise provide, the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.

3. **Option (c)** VTTL is not required to appoint an Independent Director.

Reason

Section 149(4) read with Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

4. **Option (d)** VTTL can invest maximum up to ₹ 5.10 crore for acquiring by way of purchase the securities of any other body corporate.

Reason

Section 186(2)

No company shall directly or indirectly acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding sixty percent of its paid-up share capital, free reserves and securities premium account or one hundred percent of its free reserves and securities premium account, whichever is more.

Higher of 60% of 8.5 (6+2.5) i.e. 5.1 or 100% of 2.5 i.e. 2.5 is INRs 5.1 crores

CASE SCENARIO 31

Having keen interest in watching planets and stars, Ebhanan, Ilesh, Ina and Idhan thought of manufacturing optical instruments like telescopes and binoculars and to achieve their objects, they formed Iris Engineering Limited (IEL) way back in the year 1992 with some of their close relatives. Based in Mumbai, the products manufactured by IEL allow the observers to delve deeper into the beauty of space with full range of comfortable view. In particular, telescopes made by the company are light-weight, portable as well as elegant and are used by private observatories, educational institutions, Government organisations, etc., both in India and abroad.

The products of IEL carry a pre-eminent reputation for crystal clear optics for every outdoor activity. They are extremely popular for bird-watching, hiking, star-gazing, marine observation, astronomy and the like. The company has made a good place for itself in the market giving a tough competition to its rivals.

From time to time, Ebhanan, Ilesh, Ina and Idhan have inducted certain other eminent persons as directors who have in-depth knowledge and relevant experience in the field in which the company is engaged. Further, Ina was given the responsibility to search talent from outside India also. Accordingly, she established contacts with two USA based physicists Isa and Ivaan who had specialised knowledge in the field of optics and optic materials. To extract as much of their expertise, she proposed to rope them in as directors in the company to which other directors agreed without any resistance and thus, Isa and Ivaan were appointed as directors taking the count of directors to fifteen which is the maximum strength as per the Articles of the company. However, there occurred four vacancies in the office of directorship in May, 2021 because of covid related deaths of four directors and such vacancies are yet to be filled.

To make matter easier for Isa and Ivaan, an option was provided to all the directors to attend Board Meetings through Video Conferencing. Further, the company started sending the notice of Board Meeting by e-mail though no such provision was included in the Articles of Association.

The net profits/loss of the company for the last few financial years are as under:

	FY 2017-18 (₹)	FY 2018-19 (₹)	FY 2019-20 (₹)	FY 2020-21 (₹)
Net Profit/(Loss)	1,92,00,000	2,55,00,000	2,85,00,000	(36,00,000)
Note: During the FY 2020-21, loss was incurred because of disturbance in operation due to continuing pandemic.				

The company was considering to import Optical Tube Assemblies (OTA), Mirrors and Lenses of fine quality for improving the production capacity. In order to purchase these items, Isa started negotiations with one of the reputed suppliers M/s John Optical Tubes & Glass Company, Inc., based at New York, USA and the deal was finalised for US$ 200,000. Isa further negotiated with M/s John Optical Tubes & Glass Company, Inc., to supply these items for a credit period of four months to which the exporter agreed.

MULTIPLE CHOICE QUESTIONS

1. The case scenario states that IEL started sending the notice of Board Meeting by e-mail though no such provision was included in the Articles of Association. Whether action of IEL to opt for sending of the said Notice by e-mail is valid?

   (a) Action of IEL to opt for sending the notice of the Board Meeting by e-mail is not valid since its Articles of Association do not contain such provision.

   (b) Action of IEL to opt for sending the notice of the Board Meeting by e-mail is not valid since such notice is permitted to be sent by post only.

   (c) Action of IEL to opt for sending the notice of the Board Meeting by e-mail is not valid since such notice is permitted to be sent by post or conveyed through telephonic call.

   (d) Action of IEL to opt for sending the notice of the Board Meeting by e-mail is valid since such notice is permitted to be sent by hand delivery or by post or by electronic means.

2. What shall be the quorum for the meeting of the Board of Directors if the directors of IEL including Isa and Ivaan who are citizens of USA are given the option to attend the meeting through video conferencing:

   (a) Quorum for the Board Meeting shall be five directors.

   (b) Quorum for the Board Meeting shall be four directors.

   (c) Quorum for the Board Meeting shall be nine directors.

   (d) Quorum for the Board Meeting shall be two directors.

3. What shall be the maximum amount of contribution if IEL decides to contribute certain sum of money to a *bona-fide* charitable trust with the approval of the Board during the FY 2021-22:

   (a) IEL can contribute maximum ₹ 8,70,000 to a *bona-fide* charitable trust with the approval of the Board.

   (b) IEL can contribute maximum ₹ 8,40,000 to a *bona-fide* charitable trust with the approval of the Board.

   (c) IEL can contribute maximum ₹ 6,22,500 to a *bona-fide* charitable trust with the approval of the Board.

   (d) IEL cannot contribute any amount to a *bona-fide* charitable trust with the approval of the Board since it has incurred loss in the immediately preceding Financial Year.

4. Regarding filling the casual vacancies vacate on account if death of 4 directors due to COVID, find the correct combination of statements;

   i. Casual Vacancy can be filled by board but only through resolution at board meeting not be circulations.

   ii. Director appointed against casual vacancy shall hold office till next AGM only.

   iii. Board can fill only those casual vacancies wherein original directors in such place was appointed at AGM.

   (a) Only i and ii are correct

   (b) Only ii and iii are correct

   (c) Only i and iii are correct

(d) All of I, ii, iii are correct

ANSWER TO MULTIPLE CHOICE QUESTION

1. Option (d) Action of IEL to opt for sending the notice of the Board Meeting by e-mail is valid since such notice is permitted to be sent by hand delivery or by post or by electronic means.

Reason

Section 173(3)

A meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

2. Option (b) Quorum for the Board Meeting shall be four directors.

Reason

Section 174(1)

The quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.

1/3rd of 11 amounts to 3.66 that shall be round up to 4 director which more than 2, hence quorum shall be of 4 directors.

3. Option (b) IEL can contribute maximum ₹ 8,40,000 to a bona-fide charitable trust with the approval of the Board.

Reason

Section 181

The Board of Directors of a company may contribute to bona fide charitable and other funds, provided that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year , exceed five percent

of its average net profits for the three immediately preceding financial years.

5% of [(255 lacs + 285 lacs - 36 lacs)/3] comes to INRs 8.4 lacs

4. **Option (c)** Only i and iii are correct

Reason

Section 161 (4)

If the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board which shall be subsequently approved by members in the immediate next general meeting.

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

CASE SCENARIO 32

Malhotra Ispat Limited (MIL), founded in 1984, had a significant presence in the steel manufacturing sector. Led by Abhay Malhotra, the company's success story was scripted essentially by its resolve to innovate, set new standards, enhance capabilities, and enrich lives to ensure that it stayed true to its cherished value system. Over the years, under his outstanding leadership, MIL had grown into a large and profitable enterprise and also aspired for global presence. The company was continuously scaling its capacity utilisation and efficiencies to capture suitable and timely opportunities.

As on March 31, 2017, the company had a paid-up capital of ₹ 20 crores with 1150 shareholders and after-tax net profit to the tune of ₹ 10.25 crores. However, a shocking event took place in May 2017 which led to the downfall of the company. It so happened that due to severe neuro problem, Abhay Malhotra was unable to manage the rising business and consequently, the reins of the business slipped into the hands of his two young but inexperienced sons Virat and Sambhav.

In an attempt to raise the company to further heights, the Gen-Next management took a heavy loan of ₹ 70 crores from Prabhat Development Bank Limited. The funds so borrowed were not properly utilised due to the weak managerial skills of the new leadership and for want of guidance from Abhay Malhotra; and it caused the company to nosedive to such an extent that in just four years after Abhay Malhotra's illness it was felt expedient to go for some kind of compromise or arrangement if the company had to survive in the near future.

After lengthy discussions at the top management level, the company decided to provide for the following scheme of arrangement:

"Sale of a part of plant and machinery and also a vacant plot for appropriating the proceeds so received for repayment of 70% of the outstanding term loan availed from Prabhat Development Bank Limited. The remaining 30% of loan shall be rescheduled for repayment in installments spread over next five years."

It is noteworthy that Prabhat Development Bank Limited had given in-principle approval to the above repayment plan, if sanctioned.

Accordingly, MIL made an application in the specified Format along with requisite documents to the jurisdictional National Company Law Tribunal (NCLT).

The Tribunal ordered for a meeting of the shareholders to be held on 10 October, 2021 at 11.00 A.M. at the registered office of the company situated at Connaught Place, New Delhi and the company was directed to issue a suitable notice for conducting the meeting of the shareholders. Some of the shareholders raised objections against the said arrangement.

MULTIPLE CHOICE QUESTIONS

1. The Case Scenario states that some of the shareholders raised objections against the said arrangement. Since the compromise or arrangement is to be agreed by some kind of majority of persons (without considering the value) who attend and vote at the meeting through specified modes, then which kind of majority is required for approval:
   (a) Simple majority where votes cast in favour of compromise or arrangement exceed the votes cast against it.
   (b) Sixty percent or more majority where votes cast in favour of compromise or arrangement are 60% or more.
   (c) Seventy five percent or more majority where votes cast in favour of compromise or arrangement are 75% or more.
   (d) Full majority where all the votes are cast in favour of compromise or arrangement.
2. It is observed from the above Case Scenario that the Tribunal has ordered for a meeting of the shareholders to consider the scheme of arrangement. The notice of such meeting shall provide that the persons to whom the notice is sent may vote on the scheme of compromise or arrangement:
   (a) Only by themselves keeping in view the importance of meeting.
   (b) By themselves or through proxies appointed by them.
   (c) By themselves or through proxies appointed by them but any such appointed proxy must hold minimum one share in the company.

(d) By themselves or through proxies appointed by them or by postal ballot.

3. According to the Case Scenario some of the shareholders raised objections against the said arrangement. Since the compromise or arrangement is to be agreed by specified majority of persons (considering the value they hold) who attend and vote at the meeting through specified modes, then which kind of majority in value is required for approval of the scheme:

(a) Specified majority of persons who cast votes in favour of compromise or arrangement must hold fifty one percent or more in value.

(b) Specified majority of persons who cast votes in favour of compromise or arrangement must hold sixty percent or more in value.

(c) Specified majority of persons who cast votes in favour of compromise or arrangement must hold seventy five percent or more in value.

(d) Specified majority of persons who cast votes in favour of compromise or arrangement must hold ninty percent or more in value.

4. A reading of the above Case Scenario reveals that some of the shareholders raised objections against the said arrangement. From the legal point of view who is eligible to raise an objection to the scheme of compromise or arrangement if he is a shareholder of the company:

(a) Persons holding not less than 10% of the shareholding as per the latest audited financial statement.

(b) Persons holding not less than 5% of the shareholding as per the latest audited financial statement.

(c) Persons holding not less than 7.5% of the shareholding as per the latest audited financial statement.

(d) Persons holding not less than 15% of the shareholding as per the latest audited financial statement.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (a)** Simple majority where votes cast in favour of compromise or arrangement exceed the votes cast against it.

Reason

Section 230(6)

Where, at a meeting held, majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement.

2. **Option (d)** By themselves or through proxies appointed by them or by postal ballot.

Reason

Section 230(6)

Where, at a meeting held, majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement.

3. **Option (c)** Specified majority of persons who cast votes in favour of compromise or arrangement must hold seventy five percent or more in value.

Reason

Section 230(6)

Where, at a meeting held, majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement.

4. **Option (a)** Persons holding not less than 10% of the shareholding as per the latest audited financial statement.

Reason

Proviso to Section 230(4)

Any objection to the compromise or arrangement shall be made only by persons holding not less than ten percent of the shareholding or having outstanding debt amounting to not less than five percent of the total outstanding debt as per the latest audited financial statement.

CASE SCENARIO 33

Roopak Leathers Limited offers quality leather products in the latest styles, catering to the choice of present generation. Their portfolio includes leather shoes, leather bags, wallets, belts and accessories. Incorporated in the year 2002 at Naubasta, Kanpur, the company with over 1000 showrooms in northern India, has maintained a stable position catering to all kinds of income groups. It is a profit-making company and has paid-up share capital of ₹ 70 crores (70,00,000 equity shares of ₹ 100 each)

Ambuj, CMD and also one of the four promoters of Roopak Leathers Limited and his team of directors, is interested in having their presence felt in Maharashtra and Gujarat as well. To accomplish their objective, they are thinking of raising funds through public issue of its securities by issuing a prospectus. The equity shares are proposed to be listed on the BSE Limited and National Stock Exchange of India Limited (popularly called NSE).

For the purpose of valuation of its equity shares, the name of Perfect Valuation Services, LLP, was suggested by one of the directors Manu Kulkarni. In fact, Manu knew CA Promila, one of the partners in Perfect Valuation Services, LLP through his cousin Tanishk who was her class-fellow in school. Ambuj liked the idea and accordingly, Perfect Valuation Services, LLP was duly appointed by the Audit Committee of Roopak Leathers Limited.

IBBI registered Perfect Valuation Services, LLP, started by twins CA Promila and CA Prachi in the year 2019 and supported by qualified and experienced staff, takes up valuation of 'Securities and Financial Assets' which includes submission of valuation reports for issue of shares and securities, valuation of intangibles, related party transactions, ESOP valuation, etc. The services provided by this firm help in determining the fair value of clients' business through application of complex and in-depth models enabling them to maximise their economic potential and helps them in making informed decision-makers.

Within the assigned time, Perfect Valuation Services, LLP, valued the equity shares of Roopak Leathers Limited and submitted the valuation report to the company and charged pre-decided fees.

Based on the valuation report and other legal formalities, Roopak Leathers Limited floated the public issue which was oversubscribed five times within three hours of opening. Thereafter, the company got its shares successfully listed on BSE Limited and National Stock Exchange of India Limited.

MULTIPLE CHOICE QUESTIONS

1. While making an application to the Insolvency and Bankruptcy Board of India (IBBI) for registration as a registered valuer in the year 2019, how much non-refundable application fee Perfect Valuation Services, LLP must have paid? Choose the correct alternative from the following options:

   (a) Perfect Valuation Services, LLP must have paid ₹ five thousand as non-refundable application fee while making application for registration as a registered valuer.

   (b) Perfect Valuation Services, LLP must have paid ₹ ten thousand as non-refundable application fee while making application for registration as a registered valuer.

   (c) Perfect Valuation Services, LLP must have paid ₹ fifteen thousand as non-refundable application fee while making application for registration as a registered valuer.

   (d) Perfect Valuation Services, LLP must have paid ₹ twenty thousand as non-refundable application fee while making application for registration as a registered valuer.

2. After considering the application, had IBBI been of the *prima facie* opinion that the registration ought not to be granted to Perfect Valuation Services, LLP, and the reasons for forming such an opinion were communicated to the LLP, then after the receipt of such communication, maximum how much time would have been allowed to Perfect Valuation Services, LLP for submission of an explanation as to why its application should be accepted:

   (a) In such a situation, Perfect Valuation Services, LLP would have been allowed maximum five days for submission of an explanation as to why its application should be accepted.

(b) In such a situation, Perfect Valuation Services, LLP would have been allowed maximum fifteen days for submission of an explanation as to why its application should be accepted.

(c) In such a situation, Perfect Valuation Services, LLP would have been allowed maximum twenty-one days for submission of an explanation as to why its application should be accepted.

(d) In such a situation, Perfect Valuation Services, LLP would have been allowed maximum thirty days for submission of an explanation as to why its application should be accepted.

3. The case scenario states that the Audit Committee of Roopak Leathers Limited appointed Perfect Valuation Services, LLP, to value its equity shares. Had there been no Audit Committee constituted by Roopak Leathers Limited, which other authority in the company would have appointed Perfect Valuation Services, LLP? Choose the correct answer from the following options:

(a) In the absence of Audit Committee, Ambuj, the Managing Director of Roopak Leathers Limited would have appointed Perfect Valuation Services, LLP.

(b) In the absence of Audit Committee, the promoters of Roopak Leathers Limited would have appointed Perfect Valuation Services, LLP.

(c) In the absence of Audit Committee, the Board of Directors of Roopak Leathers Limited would have appointed Perfect Valuation Services, LLP.

(d) In the absence of Audit Committee, the shareholders of Roopak Leathers Limited would have appointed Perfect Valuation Services, LLP by passing a resolution in the General Meeting.

4. Suppose CA Promila, before becoming partner of Perfect Valuation Services, LLP, was levied a penalty under Section 271J of Income-tax Act, 1961 and such penalty had been confirmed by the Income-tax Appellate Tribunal, then in such a situation when would she become eligible to be a registered valuer:

(a) Two years must be elapsed after levy of penalty under Section 271J of Income-tax Act, 1961, before CA Promila becomes eligible to be a registered valuer.

(b) Three years must be elapsed after levy of penalty under Section 271J of Income-tax Act, 1961, before CA Promila becomes eligible to be a registered valuer.

(c) Five years must be elapsed after levy of penalty under Section 271J of Income-tax Act, 1961, before CA Promila becomes eligible to be a registered valuer.

(d) Seven years must be elapsed after levy of penalty under Section 271J of Income-tax Act, 1961, before CA Promila becomes eligible to be a registered valuer.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (b)** Perfect Valuation Services, LLP must have paid ₹ ten thousand as non-refundable application fee while making application for registration as a registered valuer.

Reason

Rule 6(2) of the Companies (Registered Valuers and Valuation) Rules, 2017

A partnership entity or company eligible for registration as a registered valuer under rule 3 may make an application to the authority in Form-B of Annexure-II along with a nonrefundable application fee of ten thousand rupees in favour of the authority.

2. **Option (b)** In such a situation, Perfect Valuation Services, LLP would have been allowed maximum fifteen days for submission of an explanation as to why its application should be accepted.

Reason

Rule 6(8) of the Companies (Registered Valuers and Valuation) Rules, 2017

The applicant shall submit an explanation as to why his/its application should be accepted within fifteen days of the receipt of the communication under sub- rule (7), to enable the authority to form a final opinion.

3. **Option (c)** In the absence of Audit Committee, the Board of Directors of Roopak Leathers Limited would have appointed Perfect Valuation Services, LLP.

Reason

Section 247(1)

Where a valuation is required to be made in respect of any property, stocks, shares , debenture , securities or goodwill or any other assets or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience, registered as a valuer and being a member of an organisation recognised, in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.

4. **Option (c)** Five years must be elapsed after levy of penalty under Section 271J of Income-tax Act, 1961, before CA Promila becomes eligible to be a registered valuer.

Reason

Rule 3(1)(j) of the Companies (Registered Valuers and Valuation) Rules, 2017

A person shall not be eligible to be a registered valuer if;

1. A penalty under section 271J of Income-tax Act, 1961 has been levied

   and

2A. time limit for filing appeal before Commissioner of Income-tax (Appeals) or Income-tax Appellate Tribunal, as the case may be has expired

   or

2B. Such penalty has been confirmed by Income-tax Appellate Tribunal

   and

3. Five years have not elapsed after levy of such penalty.

CASE SCENARIO 34

Having met each other while working for an IT organisation during 2014, Adarsh and Aadhav teamed up to enter online grocery and vegetable delivery space and founded Harekrishna Daily Needs Limited with the Head Office in Gurgaon (currently called Gurugram) in the beginning of the year 2016. Initially the company had ten subscribers who were related to both Adarsh and Aadhav. They launched 'Groceve - a Mobile App portmanteau of groceries and vegetables' through which the consumers could order their daily requirements against online payments and get quick doorstep deliveries of various daily need items. By and by, the company started catering to the northern India. As on 31st March, 2021, it had paid-up share capital of ₹ 200 lacs (20 lacs equity shares of ₹ 10 each) held by 500 shareholders.

As Harekrishna Daily Needs Limited was in need of a Managing Director, it appointed Gyanendra Singh as its MD in April 2019. Earlier, Gyanendra Singh worked as General Manager of Vyom Financial Services Limited, a non-banking financial company (NBFC). Habitual of working according to his own whims and caprices, he acted the same way in this company also. He, in his own style, started ordering the employees to supply groceries to the retailers as well as wholesalers at concessional rates which, in fact, was against the policy of the company, for the policy was to supply goods directly to consumers after obtaining online payments. In addition, he offered two months' and three months' debt collection period to the retailers and wholesalers respectively after receiving kickbacks from them. Further, no cash security was deposited by the retailers and wholesalers to cover late payments. Most of the retailers and also wholesalers did not clear their outstanding dues resulting in bad debts. At the end of the financial year 2021-21, the company suffered heavy bad debts which had to be written off at the time of finanalising the annual accounts.

Aggrieved by these wrongful and undesirable acts, 10 members of Harekrishna Daily Needs Limited made an application before the jurisdictional National Company Law Tribunal (NCLT) praying that the affairs of the company were being conducted in a manner prejudicial to the interests of the members as well as the company and requested NCLT for termination of the service agreement of the Managing Director, Mr. Gyanendra Singh.

The National Company Law Tribunal (NCLT), however, did not entertain the application filed by 10 members stating that the members making the application were not eligible to apply.

When Dharmesh, one of the shareholders, came to know about rejection of the application by National Company Law Tribunal (NCLT), he, on his own, filed the application afresh with the NCLT on the similar grounds of mismanagement and making the company and Managing Director Gyanendra Singh as respondents. In fact, Dharmesh through his representative also brought to the knowledge of NCLT that Gyanendra Singh, during his earlier assignment as General Manager with Vyom Financial Services Limited, was involved in sanctioning big loans without insisting on adequate security to dubious borrowers and therefore, many such loan accounts turned non-performing assets (NPA) and irrecoverable.

It is to be noted that the National Company Law Tribunal (NCLT) after accepting the application filed by Dharmesh and after hearing both the parties, observed that Gyanendra Singh, the Managing Director of Harekrishna Daily Needs Limited was involved in malpractices and mismanagement, on the basis of his past track record and the current handling of affairs of Harekrishna Daily Needs Limited. The NCLT, therefore, ordered termination of the service agreement by which he was appointed as Managing Director. Gyanendra Singh demanded compensation from the company for the remaining period of his service since his term as Managing Director was yet to expire.

MULTIPLE CHOICE QUESTIONS

1. In the above case scenario, an application was filed by 10 members of Harekrishna Daily Needs Limited citing the prevalence of mismanagement in the company but it was rejected by the National Company Law Tribunal (NCLT) stating that 10 shareholders were ineligible to apply. In the given situation, how many members irrespective of their shareholdings need to apply to the NCLT?

   (a) Minimum 100 members of Harekrishna Daily Needs Limited, irrespective of their shareholdings, are required to file an application with NCLT against mismanagement in the company.

(b) Minimum 75 members of Harekrishna Daily Needs Limited, irrespective of their shareholdings, are required to file an application with NCLT against mismanagement in the company.

(c) Minimum 50 members of Harekrishna Daily Needs Limited, irrespective of their shareholdings, are required to file an application with NCLT against mismanagement in the company.

(d) Minimum 25 members of Harekrishna Daily Needs Limited, irrespective of their shareholdings, are required to file an application with NCLT against mismanagement in the company.

2. After rejection of application filed by 10 members of Harekrishna Daily Needs Limited, Dharmesh, one of the shareholders of the company, filed the application afresh on the similar grounds of mismanagement which was accepted by the National Company Law Tribunal (NCLT). If conditions for making application u/s 241 not waived/relaxed by NCTL then what could be the reason because of which application filed by Dharmesh was accepted by the NCLT?

(a) Application filed by Dharmesh was accepted by the NCLT because he must be the holder of minimum 1,00,000 shares of the face value of ₹ 10 each amounting to ₹ 10 lacs.

(b) Application filed by Dharmesh was accepted by the NCLT because he must be the holder of minimum 2,00,000 shares of the face value of ₹ 10 each amounting to ₹ 20 lacs.

(c) Application filed by Dharmesh was accepted by the NCLT because he must be the holder of minimum 2,50,000 shares of the face value of ₹ 10 each amounting to ₹ 25 lacs.

(d) Application filed by Dharmesh was accepted by the NCLT because he must be the holder of minimum 3,00,000 shares of the face value of ₹ 10 each amounting to ₹ 30 lacs.

3. According to the case scenario, Gyanendra Singh demanded compensation from Harekrishna Daily Needs Limited for the remaining period of his service since his term as Managing Director was yet to expire. Whether the company is liable to pay him compensation in view of the

fact that his service agreement was terminated by National Company Law Tribunal (NCLT)?

(a) Harekrishna Daily Needs Limited, irrespective of termination of his service agreement by the NCLT, is required to compensate Gyanendra Singh by paying him remuneration equal to the remaining period of his service but such compensation must not exceed three years of remuneration.

(b) Harekrishna Daily Needs Limited, irrespective of termination of his service agreement by the NCLT, is required to compensate Gyanendra Singh by paying him remuneration equal to the remaining period of his service but such compensation must not exceed two years of remuneration.

(c) Harekrishna Daily Needs Limited, irrespective of termination of his service agreement by the NCLT, is required to compensate Gyanendra Singh by paying him remuneration equal to the remaining period of his service but such compensation must not exceed fifteen months of remuneration.

(d) Harekrishna Daily Needs Limited is not required to compensate Gyanendra Singh, for his service agreement was terminated by the NCLT.

4. The case scenario mentions that National Company Law Tribunal (NCLT) ordered termination of the service agreement by which he was appointed as Managing Director of Harekrishna Daily Needs Limited. Whether Gyanendra Singh, after being terminated, can be offered the office of Managing Director or director or manager by the company?

(a) Gyanendra Singh, after termination of the service agreement as Managing Director by NCLT, cannot be offered the office of Managing Director or director or manager by the company for a period of one year from the date of the order of NCLT without the leave of NCLT.

(b) Gyanendra Singh, after termination of the service agreement as Managing Director by NCLT, cannot be offered the office of Managing Director or director or manager by the company for a

period of three years from the date of the order of NCLT without the leave of NCLT.

(c) Gyanendra Singh, after termination of the service agreement as Managing Director by NCLT, cannot be offered the office of Managing Director or director or manager by the company for a period of five years from the date of the order of NCLT without the leave of NCLT.

(d) Gyanendra Singh, after termination of the service agreement as Managing Director by NCLT, cannot be offered the office of Managing Director or director or manager by the company for a period of seven years from the date of the order of NCLT without the leave of NCLT.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (c)** Minimum 50 members of Harekrishna Daily Needs Limited, irrespective of their shareholdings, are required to file an application with NCLT against mismanagement in the company.

Reason

Section 244(1)(a)

In the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one tenth 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.

Since there are 5000 members of Harekrishna Daily Needs Limited hence 10% of same amounts to 50 which is less than 100 therefore at-least 50 members together allowed to advance application u/s 241 against mismanagement to NCLT.

It worth noting that tribunal may, on an application made to it in this behalf, waive such requirement so as to enable the members to apply under section 241.

Further Students are advised to take note that where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

2. **Option (b)** Application filed by Dharmesh was accepted by the NCLT because he must be the holder of minimum 2,00,000 shares of the face value of ₹ 10 each amounting to ₹ 20 lacs.

Reason

Section 244(1)(a)

In the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one tenth 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.

10% of the paid –up share capital i.e. INRs 200 lacs of Harekrishna Daily Needs Limited amounts to INRs 20 lacs.

3. **Option (d)** Harekrishna Daily Needs Limited is not required to compensate Gyanendra Singh, for his service agreement was terminated by the NCLT

Reason

Section 202(2)(c) read with Section 167(1)(e)

As per section 167(1)(e), director shall vacate office if he becomes disqualified by an order of a court or the Tribunal; further section 202(2)(c) provides that No compensation shall be made to any MD/WTD/Manager, where the office of the director is vacated under sub-section (1) of section 167.

4. **Option (c)** Gyanendra Singh, after termination of the service agreement as Managing Director by NCLT, cannot be offered the office of Managing Director or director or manager by the company for a period of five years from the date of the order of NCLT without the leave of NCLT.

Reason

Section 243(1)(b)

No managing director or other director or manager whose agreement is so terminated or set aside shall, for a period of five years from the date of the order terminating or setting aside the agreement, without the leave of the Tribunal, be appointed, or act, as the managing director or other director or manager of the company.

Students are advised to note that the Tribunal shall not grant leave under this clause unless notice of the intention to apply for leave has been served on the Central Government and that Government has been given a reasonable opportunity of being heard in the matter.

Students are also advised to note that Section 164(1)(e) A person shall not be eligible for appointment as a director of a company, if an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force.

CASE SCENARIO 35

Belonging to the non-banking finance category, Purvi Savings and Investments Nidhi Ltd. was incorporated as a Nidhi for the purpose of inculcating thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit. It educates its members to use money in a wise manner and insists upon that the money saved today will help them in facing adverse days, if any, tomorrow.

With its Registered Office situated at Mathura, Uttar Pradesh, it was incorporated on 6th April, 2021 by Krishna Bihari, Brij Mohan, Ram Lal, Sunder, Sriniwas, Laxmi and Purab who were all residents of Mathura and also held the directorships in the company. Being the senior most member, Krishna Bihari was appointed as Managing Director for a period of five years. At the time of incorporation, the Authorised Share Capital of Purvi Savings and Investments Nidhi Ltd. was ₹ 30 lacs divided into 3,00,000 equity shares of ₹ 10 each. Initially, it issued 1,30,000 shares and therefore, its paid-up share capital was ₹ 13,00,000.

The Term Deposits Plans of Purvi Savings and Investments Nidhi Ltd. include Dhanlaxmi Fixed Deposit Scheme where the enrolled members will get attractive and assured returns with impeccable services. In fact, the deposit amount (minimum ₹ 1,000 and further in multiples of ₹ 100) will fetch maximum rate of interest @ 6.5% p.a. if the tenure of deposit exceeds thirty-six months. The company also issues Kisan Nidhi Bonds of 12 months where the rate of interest payable is 5% p.a.

Catering to the financial needs of its members, Purvi Savings and Investments Nidhi Ltd. extends loans as per the norms prescribed by Nidhi Rules, 2014. The lending is in the form of Purvi Nidhi Gold Loan, Purvi Nidhi Silver Loan, Purvi Nidhi Mortgage Loan, Purvi Jewellery Loan and Purvi Kisan Crop Loan. Depending upon the tenure and amount of the loan advanced to its members, Purvi Savings and Investments Nidhi Ltd. charges applicable rate of interest. The members are also fully aware about the fact that the repayment of loans must be made as per the repayment schedule agreed at the time of sanctioning of loan because this is the only way by which the company will flourish and prosper in future.

After nine months from the date of its incorporation, Purvi Savings and Investments Nidhi Ltd. had 150 members.

MULTIPLE CHOICE QUESTIONS

1. The case scenario states that after nine months from the date of incorporation, Purvi Savings and Investments Nidhi Ltd. had 150 members. How many more members should be added by it so as to reach the required limit of minimum members within a period of one year from the date of its incorporation? Select the correct alternative from the following options:

   (a) Purvi Savings and Investments Nidhi Ltd. must add minimum 50 members more so as to reach the required limit of minimum members within a period of one year from the date of its incorporation.

   (b) Purvi Savings and Investments Nidhi Ltd. must add minimum 150 members more so as to reach the required limit of minimum members within a period of one year from the date of its incorporation.

   (c) Purvi Savings and Investments Nidhi Ltd. must add minimum 250 members more so as to reach the required limit of minimum members within a period of one year from the date of its incorporation.

   (d) Purvi Savings and Investments Nidhi Ltd. must add minimum 350 members more so as to reach the required limit of minimum members within a period of one year from the date of its incorporation.

2. Suppose after nine months from the date of incorporation, Purvi Savings and Investments Nidhi Ltd. had Net Owned Funds (NOF) of ₹ 15 lacs and at the same time deposits mobilised from members were to the tune of ₹ 375 lacs, which gave ratio of NOF to deposits as 1:25, then in order to reach the prescribed minimum ratio of NOF to deposits within a period of one year from the date of its incorporation, how much more amount is

required to be added by the Nidhi to the current figure of NOF of ₹ 15 lacs, assuming that deposits would remain stagnant at ₹ 375 lacs:

(a) In the given situation, Purvi Savings and Investments Nidhi Ltd. is required to add ₹ 12.50 lacs to the current figure of NOF of ₹ 15 lacs so as to reach the prescribed minimum ratio of NOF to deposits within a period of one year from the date of its incorporation.

(b) In the given situation, Purvi Savings and Investments Nidhi Ltd. is required to add ₹ 10 lacs to the current figure of NOF of ₹ 15 lacs so as to reach the prescribed minimum ratio of NOF to deposits within a period of one year from the date of its incorporation.

(c) In the given situation, Purvi Savings and Investments Nidhi Ltd. is required to add ₹ 3.75 lacs to the current figure of NOF of ₹ 15 lacs so as to reach the prescribed minimum ratio of NOF to deposits within a period of one year from the date of its incorporation.

(d) In the given situation, Purvi Savings and Investments Nidhi Ltd. is not required to add any amount to the current figure of NOF of ₹ 15 lacs because the ratio of 1:25 is the prescribed minimum ratio which needs to be reached within a period of one year from the date of its incorporation.

3. According to the case scenario, Purvi Savings and Investments Nidhi Ltd. has issued 1,30,000 shares and therefore, its paid-up share capital stood at ₹ 13,00,000. Minimum how many shares are required to be allotted to each deposit holder? Choose the correct option from those given below:

(a) Purvi Savings and Investments Nidhi Ltd. is required to allot minimum five equity shares to each deposit holder.

(b) Purvi Savings and Investments Nidhi Ltd. is required to allot minimum ten equity shares to each deposit holder.

(c) Purvi Savings and Investments Nidhi Ltd. is required to allot minimum twenty equity shares to each deposit holder.

(d) Purvi Savings and Investments Nidhi Ltd. is required to allot minimum twenty-five equity shares to each deposit holder.

4. The case scenario mentions that the rate of interest of 6.5% p.a. is the highest which is being offered by Purvi Savings and Investments Nidhi Ltd. on deposits of more than three years. What is the maximum rate of interest it can charge on any loan advanced by it to its members? Select the correct alternative from the given options:

   (a) Maximum rate of interest which Purvi Savings and Investments Nidhi Ltd. can charge on any loan advanced by it to its members shall not exceed 10.0% p.a.

   (b) Maximum rate of interest which Purvi Savings and Investments Nidhi Ltd. can charge on any loan advanced by it to its members shall not exceed 12.0% p.a.

   (c) Maximum rate of interest which Purvi Savings and Investments Nidhi Ltd. can charge on any loan advanced by it to its members shall not exceed 14.0% p.a.

   (d) Maximum rate of interest which Purvi Savings and Investments Nidhi Ltd. can charge on any loan advanced by it to its members shall not exceed 16.0% p.a.

ANSWER TO MULTIPLE CHOICE QUESTION

1. Option (a) Purvi Savings and Investments Nidhi Ltd. must add minimum 50 members more so as to reach the required limit of minimum members within a period of one year from the date of its incorporation.

Reason

Rule 5(1)(a) of the Nidhi Rules 2014

Every Nidhi shall, within a period of one year from the date of its incorporation, ensure that it has not less than two hundred members

In first 9 months 150 members added, further 50 members need to be added in 3 months to reach to 200 members limit in one year from date of incorporation.

2. **Option (c)** In the given situation, Purvi Savings and Investments Nidhi Ltd. is required to add ₹ 3.75 lacs to the current figure of NOF of ₹ 15 lacs so as to reach the prescribed minimum ratio of NOF to deposits within a period of one year from the date of its incorporation.

Reason

Rule 5(1)(d) of the Nidhi Rules 2014

Every Nidhi shall, within a period of one year from the date of its incorporation, ensure that ratio of Net Owned Funds to deposits of not more than 1:20.

If deposit stand at INRs 375 lacs then 5% of same (so that ratio of NOF to deposit shall be 1:20) comes to INRs 18.75 lacs. Since currently after the 9 month from incorporation the NOF is INRs 15 lacs, which further need to increase by INRs 3.75 lacs to reach a level of INRs 18.75 lacs.

3. **Option (b)** Purvi Savings and Investments Nidhi Ltd. is required to allot minimum ten equity shares to each deposit holder.

Reason

Rule 7(3) of the Nidhi Rules 2014

Every Nidhi shall allot to each deposit holder at least a minimum of ten equity shares or shares equivalent to one hundred rupees.

Students shall also note that a savings account holder and a recurring deposit account holder shall hold at least one equity share of rupees ten.

4. **Option (c)** Maximum rate of interest which Purvi Savings and Investments Nidhi Ltd. can charge on any loan advanced by it to its members shall not exceed 14.0% p.a.

Reason

Rule 16 of the Nidhi Rules 2014

The rate of interest to be charged on any loan given by a Nidhi shall not exceed seven and half per cent above the highest rate of interest offered on deposits by Nidhi and shall be calculated on reducing balance method.

Since highest rate interest offered is 6.5% therefore adding 7.5% to that comes to 14% p.a.

Students are also advised to take note that Nidhi shall charge the same rate of interest on the borrowers in respect of the same class of loans and the rates of interest of all classes of loans shall be prominently displayed on the notice board at the registered office and each branch office of Nidhi.

CASE SCENARIO 36

Krishna Toy Limited (KTL) is a manufacturer and trader of a wide variety of toys ranging from soft toys to wooden toys, from console or panel-based games to battery-operated games, and from mechanical toys to electronic toys including video games, etc. Currently, it caters to the needs of children or adolescents falling in the age group of 3 years or older to 15 years. KTL enjoys dominance over the toy market and is willing to maintain it.

The increasing trend of online gaming dents the dominance of KTL; therefore, to sustain its position as the market leader in the toy or gaming industry, the management of KTL decided at its board meeting to restructure its business and cater to the youngster age group between the ages of 15 and 20, and even above that.

KTL started exploring the opportunities for expansion and diversification through inorganic means. Mr. Gopal, who is Executive Director at KTL and aware of the expansion plan, started making the necessary arrangements for raising debt to finance the M&A. Mr. Gopal is willing to tell Mr. John and Mr. Jain about this plan. Mr. John holds a manager-level position at KTL and is responsible for managing logistics and supply chain, while Mr. Jain is an insider at KTL. Ms. Iqbal Kaur, who is responsible for availing a credit rating from a credit rating agency and preparing the documents for statutory filling, should seek clarification from Mr. Gopal on the purpose of seeking a fresh credit rating.

Mr. Vidyanath vacated the office of MD around three months ago because he assumed the office of WTD in Gamers Limited, which is expected to be in competition with KTL; hence, a conflict of interest may exist if he does not vacate the office at KTL.

Ms. Mahira is appointed as the new MD. She is unaware of the meeting of the board wherein the resolution regarding the preliminary decision on expansion was moved and the road map laid down. She asked Mr. Gopal to brief her on why he is engaged in arrangements for raising funds.

In the next board meeting the periodical (quarterly) financial statements need to be presented/adopted and the interim dividend is expected to be declared in addition to certain other agenda items including resolution on the mode of expansion as well as determining the criteria for selection of possible targets.

MULTIPLE CHOICE QUESTIONS

You are an expert on securities laws, who is being professionally engaged to answer the following questions (specified as MCQs) by identifying the most appropriate option based upon provisions contained in the Securities and Exchange Board of India Act, 1992 (SEBI Act, 1992) and the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 only.

1. Advice Mr. Gopal with whom (out of Ms. Mahira, Mr. John, Ms. Iqbal Kaur, and Mr. Jain) he can share the information pertaining to expansion plan of KTL which he possess;

   (a) With all or any of them.

   (b) With Mr. Jain as he is insider to KTL.

   (c) With Ms. Mahira only as she is MD.

   (d) With Ms. Mahira and Ms. Iqbal Kaur only.

2. In light of agenda established for next board meeting at KTL, out of following three set of informations, which are to be classified as price sensitive information?

   i. Quarterly Financial Results

   ii. Declaration of interim dividend

   iii. Proposed expansion of business

   (a) i and ii only.

   (b) ii and iii only.

   (c) i and iii only.

   (d) All of i, ii and iii.

3. In the case of KTL there are some who may access the unpublished price sensitive information through either Mr. Gopal or being in an influential position themselves and some others likewise Mr. Gopal already in possession of such information, according to you who shall be considered as Insider as per Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015;

   (a) Everyone who so ever is in possession or having access of the unpublished price sensitive information

(b) Everyone who so ever is in possession of the unpublished price sensitive information

(c) Everyone who so ever having access to the unpublished price sensitive information

(d) Everyone who is either on board or hold position of KMP

4. Which of following statements is true in regard to Mr. Vidyanath who vacated the office of MD at KTL;

(a) He is a connected person but not the insider

(b) He is an insider but not the connected person

(c) He is a connected person as well as an insider

(d) He is neither the connected person nor the insider

5. Assuming Mr. Gopal himself traded in shares of selected target company based upon the unpublished price sensitive information he possess in capacity of insider and made gain of INRs 6.25 crores, while value of total trade performed by him is 40 crores. What shall be the maximum penalty that can be imposed upon Mr. Gopal?

(a) 40.00 crores rupee

(b) 25.00 crores rupee

(c) 18.25 crores rupee

(d) 6.25 crores rupee

ANSWER TO MULTIPLE CHOICE QUESTION

1. Option (d) With Ms. Mahira and Ms. Iqbal Kaur only.

Reason

Regulation 3(1) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015

No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where

such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

Hence Mr. Gopal allowed to disclose the information pertaining to expansion plan i.e. unpublished price sensitive information under 2(1)(n) only to MD i.e. Ms. Mahira and Ms. Iqbal Kaur.

Students are advised to take note that this provision is intended to cast an obligation on all insiders who are essentially persons in possession of unpublished price sensitive information to handle such information with care and to deal with the information with them when transacting their business strictly on a need to know basis. It is also intended to lead to organisations developing practices based on need to know principles for treatment of information in their possession.

2. **Option (d)** All of i, ii and iii

Reason

Regulation 2(1)(n) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 "unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following;

financial results;

dividends;

change in capital structure;

mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;

changes in key managerial personnel

Students are advised to take note that, it is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types of matters that

would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information.

Note - Dividend includes interim dividend and Financial results includes periodical financial results presented through quarterly financial statements

3. **Option (a)** Everyone who so ever is in possession or having access of the unpublished price sensitive information

Reason

Regulation 2(1)(g) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015

"Insider" means any person who is;

a connected person; or

in possession of or having access to unpublished price sensitive information

Student must note with due care that it is intended that anyone in possession of or having access to unpublished price sensitive information should be considered an "insider" regardless of how one came in possession of or had access to such information.

Various circumstances are provided for such a person to demonstrate that he has not indulged in insider trading. Therefore, this definition is intended to bring within its reach any person who is in receipt of or has access to unpublished price sensitive information.

The onus of showing that a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person levelling the charge after which the person who has traded when in possession of or having access to unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances.

4. **Option (c)** He is a connected person as well as an insider

Reason

Regulation 2(1)(d) and 2(1)(g) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015

Connected person means,

any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.

Further Regulation 2(1)(g) states clearly that connected person shall be the insider.

5. **Option (b)** 25 crores rupee.

Reason

Section 15G read with Section 12A of SEBI Act 1992 and Regulation 3(1) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015

If any insider who

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or

(ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any other person to deal in any securities of anybody corporate on the basis of unpublished price-sensitive information,

Shall be liable to a penalty which shall **not be less than ten lakh rupees** but which **may extend to twenty-five crore rupees** or **three times the amount of profits made out of insider trading**, whichever is **higher.**

Minimum	Maximum
INRs 10 lac	**Higher** of INRs 25 crore; **Or** 3 times the amount of profit made out of insider trading

Three times of INRs 6.25 crores amounts to INRs 18.75 crores which less than INRs 25 crores, hence maximum penalty may limit upto INRs 25 crores.

CASE SCENARIO 37

Chiranjeev, equipped with MBA Finance, always dreamt of setting up a small finance business company with a vision to contribute to the Indian economy to the maximum possible extent by using his limited efforts. After discussing the matter with his relatives and friends he decided to start a Nidhi company as this was the most easy and affordable way to start a loan business in India which required only seven members with easy documentation. No approval, whatsoever, was also required from Reserve Bank of India as in the case of other finance companies. Further, the Nidhi Company would be able to accept deposits from members and lend to them as well besides earning periodical interests on loans while its main expenditure would be to pay interests on deposits and establishment charges, etc.

In order to fulfil his dream, Chiranjeev along with his six other trusted friends and relatives incorporated a Nidhi company under the name Shri Murugan Wealth Nidhi Limited, on 20th August, 2015 at Kanchipuram, Tamil Nadu, which was duly notified as Nidhi in the Official Gazette. It was mentioned in the Memorandum that as Nidhi, the company would cultivate the habit of thrift and savings amongst its members, receive deposits from and lend to, its members only, for their mutual benefit and it shall comply with Nidhi Rules, 2014. The authorised capital of the company was ₹ 1,00,00,000 divided into 10,00,000 equity shares of ₹ 10 each.

All the members of the Board of Shri Murugan Wealth Nidhi Limited possessed a very strong background in terms of financial stability as also expertise in business. Chiranjeev was throughout supported by the extraneous efforts of his younger brother, Chinnamani who was the executive president of Shri Murugan Wealth Nidhi Limited and possessed administrative talent to govern the organisation without compromising ethical practices.

With a dedicated team of staff, the company was on its growth path with utmost courteous services rendered with able management. The company encouraged rural savings habit and believed in rendering all financial assistance to its members by receiving both short-term and long-term deposits.

The deposits raised by Shri Murugan Wealth Nidhi Limited were in the form of fixed deposits, recurring deposits and savings deposits. While extending loans

to its members, the Nidhi provided Shri Murugan Jewel Loan against pledge of gold jewellery for productive and consumption purposes with minimum documentation and utmost safety of their gold. It also provided mortgage loans and loans against deposits. In addition, it provided locker facilities to its members.

As on 31st March 2023, the issued, subscribed and paid-up share capital of Shri Murugan Wealth Nidhi Limited was ₹ 95,00,000 (9,50,000 equity shares of ₹ 10 each). Its deposits were to the extent of ₹ 315 crores with 12,000 members. The loans aggregated to ₹ 275 crores. Keeping in view the sufficiency of profits, the company declared a dividend of Re. one per share.

In near future, Shri Murugan Wealth Nidhi Limited has plans to open more branches which proves the fact that they are securing trust of more and more members as the years go by.

MULTIPLE CHOICE QUESTIONS

1. It is evident from the case scenario that Shri Murugan Wealth Nidhi Limited started with paid-up share capital of ₹ 95,00,000. Keeping in view the minimum paid-up share capital with which a Nidhi can be started, how much is the excess paid-up share capital Shri Murugan Wealth Nidhi Limited had when it started its operations with effect from 20th August, 2015:

   (a) Shri Murugan Wealth Nidhi Limited had excess paid-up share capital of ₹ 75,00,000 when it started its operations with effect from 20th August, 2015.

   (b) Shri Murugan Wealth Nidhi Limited had excess paid-up share capital of ₹ 80,00,000 when it started its operations with effect from 20th August, 2015.

   (c) Shri Murugan Wealth Nidhi Limited had excess paid-up share capital of ₹ 90,00,000 when it started its operations with effect from 20th August, 2015.

(d) Shri Murugan Wealth Nidhi Limited had excess paid-up share capital of ₹ 93,00,000 when it started its operations with effect from 20th August, 2015.

2. For the Financial Year 2022-23, Shri Murugan Wealth Nidhi Limited declared a dividend of Re. one share. What is the maximum amount of dividend it is permitted to declare? Choose the correct option from those given below:

(a) Since Shri Murugan Wealth Nidhi Limited has declared maximum permitted dividend of Re. one per share, it cannot declare dividend in excess of Re. one per share.

(b) Shri Murugan Wealth Nidhi Limited can declare maximum permitted dividend of ₹ two per share.

(c) Shri Murugan Wealth Nidhi Limited can declare maximum permitted dividend of ₹ two and fifty paise per share.

(d) Shri Murugan Wealth Nidhi Limited can declare maximum permitted dividend of ₹ three per share.

3. The case scenario states that Shri Murugan Wealth Nidhi Limited also provided locker facilities to its members. What is the maximum rental income that the company can generate from locker facilities provided to its members.

(a) Shri Murugan Wealth Nidhi Limited can generate rental income from locker facilities provided to its members maximum upto ten per cent of its gross income at any point of time during a financial year.

(b) Shri Murugan Wealth Nidhi Limited can generate rental income from locker facilities provided to its members maximum upto twenty per cent of its gross income at any point of time during a financial year.

(c) Shri Murugan Wealth Nidhi Limited can generate rental income from locker facilities provided to its members maximum upto twenty-five per cent of its gross income at any point of time during a financial year.

(d) Shri Murugan Wealth Nidhi Limited can generate rental income from locker facilities provided to its members maximum upto thirty per cent of its gross income at any point of time during a financial year.

4. By declaring dividend of Re. one per share, Shri Murugan Wealth Nidhi Limited is required to pay ₹ 9,50,000 as dividend amount to its members. How much amount it is required to transfer to General Reserve when it declares dividend of ₹ 9,50,000? Select the correct alternative from the following options:

(a) Shri Murugan Wealth Nidhi Limited is not required to transfer any amount to General Reserve when it declares dividend of |₹ 9,50,000.

(b) Shri Murugan Wealth Nidhi Limited is required to transfer minimum ₹ 9,50,000 (i.e. 100% of ₹ 9,50,000) to General Reserve when it declares dividend of ₹ 9,50,000.

(c) Shri Murugan Wealth Nidhi Limited is required to transfer minimum ₹ 4,75,000 (i.e. 50% of ₹ 9,50,000) to General Reserve when it declares dividend of ₹ 9,50,000.

(d) Shri Murugan Wealth Nidhi Limited is required to transfer minimum ₹ 14,25,000 (i.e. 150% of ₹ 9,50,000) to General Reserve when it declares dividend of ₹ 9,50,000.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (c)** Shri Murugan Wealth Nidhi Limited had excess paid-up share capital of ₹ 90,00,000 when it started its operations with effect from 20th August, 2015.

Reason

Rule 4(1) of the Nidhi Rule 2014.

A Nidhi shall be a public company and shall have a minimum paid up equity share capital of five lakh rupees.

Note – But w.e.f 19.04.2022 through Nidhi Amendment Rules 2022, the threshold has been enhanced to ten lakh rupees.

Since in question it was asked excess capital 'when it started its operations' i.e. 20th August 2015; at then threshold was 5 lacs hence option (c) emerged as correct answer.

To avoid confusion among the 4 options none of the option contain 85 lacs as answer (which will correct answer if we solve this MCQ considering current threshold rather prevailing in 2015)

Students are advised to take note that every Nidhi existing as on the date of commencement (i.e. 19.04.2022) of the Nidhi Amendment Rules, 2022, shall comply with this requirement within a period of eighteen months from the date of such commencement.

2. **Option (c)** Shri Murugan Wealth Nidhi Limited can declare maximum permitted dividend of ₹ two and fifty paise per share.

Reason

Rule 18 of the Nidhi Rules 2014

A Nidhi shall not declare dividend exceeding twenty five per cent in a financial year. Since the Paid-up value of each share is INRs 10 (in case of 950000 shares), hence 25% of same comes out to be IRNs 2.50; therefore the maximum dividend per share can be INRs 2.5 per share.

3. **Option (b)** Shri Murugan Wealth Nidhi Limited can generate rental income from locker facilities provided to its members maximum upto twenty per cent of its gross income at any point of time during a financial year.

Reason

Proviso to Rule 6(e) of the Nidhi Rules 2014

Nidhis which have adhered to all the provisions of these rules (i.e. Nidhi Rules, 2014) may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding twenty per cent of the gross income of the Nidhi at any point of time during a financial year.

4. **Option (a)** Shri Murugan Wealth Nidhi Limited is not required to transfer any amount to General Reserve when it declares dividend of ₹ 9,50,000.

Reason

Rule 18 of the Nidhi Rules 2014

Rule 18 simply says that a Nidhi shall not declare dividend exceeding twenty five per cent in a financial year.

Note – Prior to 19.04.2022 there was requirement of transferring equal amount (equal to dividend) to general reserve.

CASE SCENARIO 38

Marigold Stationers Limited, incorporated in April 2014 by Pratham and Utkarsh as well as their close friends, has its Registered Office situated in Rajendra Place, New Delhi. Its manufacturing units are located in Chandigarh and Sangrur. The Company, in its infancy, manufactured smorgasbord of paper stationery like, Note Books of different sizes, Long Books, Note Pads, Registers, Account Books, etc., but moved on to add certain non-paper stationery products like Calculators, Rubber Stamp Kits, Gel-Pens, HB Pencils, Geometry Boxes, Drawing Colours, etc., in another five years' time. The company had a tie-up with stationery wholesalers for selling and distribution of its products.

As per the latest audited financial statements i.e. as on 31st March, 2021, the paid-up share capital of Marigold Stationers Limited was ₹ 300 crores and its turnover was ₹ 500 crores.

As regards the number of directors, there are twelve directors in this stationery manufacturing company. Out of these, Vishesh and Vinayak are independent directors whereas Pallavi and Bhavasrija are women directors. Further, leaving independent and women directors, out of remaining eight directors, six are executive directors. The Articles of Association of the company are silent on the issue of retirement of the directors at every Annual General Meeting.

Vallabh, one of the executive directors of Marigold Stationers Limited, recently shifted to his newly constructed house in Greater Kailash-I after vacating rented accommodation in Punjabi Bagh. He got his Aadhar card changed to accommodate new residential address. Since, DIR-3, earlier filed by him, contains his old residential address, he is desirous of changing his address in the records of Registrar of Companies.

In the immediate previous financial year, Marigold Stationers Limited had contributed a total ₹ 25,00,000 to two prominent political parties of the country, namely Nitya Vikas Party and Nav Bhor Party. In the current financial year, it is contemplating to contribute ₹ 50,00,000 to both the parties in the same proportion as was done in the financial year just gone by.

Lotus Stationery Limited, incorporated in June, 2015 by Kabir and Vishvender and their close relatives, has its Registered Office in Thane, Mumbai and is a

subsidiary of Marigold Stationers Limited. It is into the manufacturing of computer stationery, computer paper, inkjet cartridges, Pen Drives of different capacities and the like. It is managed by seven directors of which two are independent directors. Its issued and paid-up capital is ₹ 30 crores. In the immediate previous financial year, its turnover reached ₹ 90 crores.

Due to imminent expansion plans, Lotus Stationery Limited is desirous of appointing Anirudh, a well-qualified and experienced personality, as a director to strengthen its Board. It is noteworthy that Anirudh is already holding directorships in Marigold Stationers Limited, seven other public companies, six private limited companies of which two are subsidiaries of public limited companies and alternate directorship in Kitab Literacy Publishers Private Limited.

MULTIPLE CHOICE QUESTIONS

1. There are twelve directors in Marigold Stationers Limited. Considering the applicable provisions, choose the correct answer from the following options that indicates the number of directors who are liable for retirement by rotation and the actual number of directors who shall get retired:

   (a) Out of twelve directors in Marigold Stationers Limited, seven are liable for retirement by rotation whereas actual number of directors to be retired shall be two.

   (b) Out of twelve directors in Marigold Stationers Limited, six are liable for retirement by rotation whereas actual number of directors to be retired shall be two.

   (c) Out of twelve directors in Marigold Stationers Limited, eight are liable for retirement by rotation whereas actual number of directors to be retired shall be three.

   (d) Out of twelve directors in Marigold Stationers Limited, eight are liable for retirement by rotation whereas actual number of directors to be retired shall be two.

2. It is stated in the case scenario that Vallabh, one of the directors of Marigold Stationers Limited, recently changed his residence from Punjabi Bagh to Greater Kailash-I. In order to change his residential particulars already filled in DIR-3, through which Form Vallabh shall intimate the MCA (Central Government) and in how many days:

   (a) Vallabh is required to fill Form DIR-3A in 30 days with the MCA.

   (b) Vallabh is required to fill Form DIR-3A in 15 days with the MCA.

   (c) Vallabh is required to fill Form DIR-6 in 30 days with the MCA.

   (d) Vallabh is required to fill Form DIR-6 in 15 days with the MCA.

3. Lotus Stationery Limited is desirous of appointing Anirudh as a director to strengthen its Board. Anirudh is already holding directorships in Marigold Stationers Limited, seven other public companies, six private limited companies of which two are subsidiaries of public limited companies and alternate directorship in Kitab Literacy Publishers Private Limited. Select the correct option from those stated below whether Anirudh, keeping in view his directorships in other companies, can be appointed as a director in Lotus Stationery Limited:

   (a) Anirudh can be appointed as a director in Lotus Stationery Limited since he is permitted to hold directorships in maximum 20 companies whereas currently he is holding directorships in only 15 companies.

   (b) Anirudh cannot be appointed as a director in Lotus Stationery Limited since he is holding directorships in eight public companies and two private limited companies which are subsidiaries of public limited companies.

   (c) Anirudh cannot be appointed as a director in Lotus Stationery Limited since he is already holding directorships in maximum permitted 15 companies.

   (d) Anirudh can be appointed as a director in Lotus Stationery Limited since he is holding directorships only in eight public companies as against maximum permitted ten public companies.

4. In the current financial year, Marigold Stationers Limited is contemplating to contribute ₹ 50,00,000 to two political parties whom they contributed ₹ 25,00,000 in the previous financial year. Is it possible for Marigold Stationers Limited to make such contribution of ₹ 50,00,00? Choose the correct answer from the following options:

   (a) Marigold Stationers Limited can contribute to both the political parties maximum upto 125% of ₹ 25,00,000 which was contributed in the immediate previous financial year and such amount works out to ₹ 31,25,000.

   (b) Marigold Stationers Limited can contribute to both the political parties maximum upto 150% of ₹ 25,00,000 which was contributed in the immediate previous financial year and such amount works out to ₹ 37,50,000.

   (c) Marigold Stationers Limited can contribute to both the political parties maximum upto 175% of ₹ 25,00,000 which was contributed in the immediate previous financial year and such amount works out to ₹ 43,75,000.

   (d) Marigold Stationers Limited can contribute any amount to both the political parties irrespective of what was contributed in the immediate previous financial year.

ANSWER TO MULTIPLE CHOICE QUESTION

1. Option (a) Out of twelve directors in Marigold Stationers Limited, seven are liable for retirement by rotation whereas actual number of directors to be retired shall be two.

Reason

Section 152(6) read with Section 149(13)

Clause (a) to section 152(6) provides Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement of directors by rotation; and save as otherwise expressly provided in this Act, be appointed by the company in general meeting.

Note – As per Sub-section 13 to section 149, the provisions of sub-sections (6) and (7) of section 152 in respect of retirement of directors by rotation shall not be applicable to appointment of independent directors.

Therefore the number of directors who are liable to retiring by rotation shall be 2/3rd of 10 (i.e. 12 - 2 independent directors) that comes out to be 6.66 shall be round up to 7.

Further clause (c) to section 152(6) at the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed in accordance with clauses (a) and (b) and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

Therefore, number of director to be retired in upcoming AGM shall be 1/3rd of 7 (i.e. retiring by rotation) that comes to 2.33; but this round off (not round up) to nearest full number that is 2 directors.

2. **Option (c)** Vallabh is required to fill Form DIR-6 in 30 days with the MCA.

Reason

Rule 12(1) of the Companies (Appointment and Qualification of Directors) Rules, 2014

Every individual who has been allotted a Director Identification Number under these rules shall, in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the Central Government within a period of thirty days of such change(s) in Form DIR-6 in the following manner, namely;-

the applicant shall download Form DIR-6 from the portal, fill in the relevant changes, verify the Form and attach duly scanned copy of the proof of the changed particulars and submit electronically;

the form shall be digitally signed by a chartered accountant in practice or a company secretary in practice or a cost accountant in practice;

the applicant shall submit the Form DIR-6;

Students further advised to take note that rule 12(3) provides the DIN cell of the Ministry shall also intimate the change(s) in the particulars of the director submitted to it in Form DIR-6; to the concerned Registrar(s) under whose jurisdiction the registered office of the company(s) in which such individual is a director is situated.

Further rule 12(4) provides that the concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within fifteen days of such change.

3. **Option (b)** Anirudh cannot be appointed as a director in Lotus Stationery Limited since he is holding directorships in eight public companies and two private limited companies which are subsidiaries of public limited companies.

Reason

Proviso to section 165(1) in light of Explanation 1 thereto.

The maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Further the explanation I to sub-section 1 provides for reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

Including Marigold Stationers Limited, Mr. Anirudh is director of 8 public companies in addition to two private companies which are subsidiary of public companies (which shall also be counted as public companies for the purpose of checking ceiling limit of 10 directorship in public companies); therefore he already occupy the director office in 10 public companies.

4. **Option (d)** Marigold Stationers Limited can contribute any amount to both the political parties irrespective of what was contributed in the immediate previous financial year.

Reason

Section 182(1)

Notwithstanding anything contained in any other provision of the Companies Act 2013, a company (other than a Government company and a company which has been in existence for less than three financial year), may contribute any amount directly or indirectly to any political party.

Marigold Stationers Limited is not a government company and incorporated way back in 2014; hence can contribute any amount as political contribution.

CASE SCENARIO 39

Sitting over the fence, Shelly opted to face dynamism of consumer preferences, razor-cut competition and changing Government policies to fulfill her inherent passion for exotic make-up brands by launching a beauty product company in Bombay (now Mumbai), supported by her advocate father Bhimsen, elder brother Ashutosh and younger brother Soumit as well as ten close friends, way back in 1984 under the then Companies Act, 1956, much before the air of liberalisation, privatisation and globalisation touched the soil of our country.

The company M/s Beauty Products Limited with an Authorised Capital of ₹ 30,00,000 divided into 3,00,000 shares of ₹ 10 each (paid-up capital ₹ 25,00,000) and under the brand 'Angelic' began manufacturing cosmetic products like Nail-enamel, Foundation Cream, Compact, Mascara, Eye-pencil, etc. Its products had an international touch and captured the Indian market at a time when the elite class was splurging on imported cosmetics.

This unlisted company, under the strong and able leadership of Shelly, Ashutosh and Soumit, had not only observed a growth trend in terms of its turnover and profitability but had also earned name and fame in the hearts of consumers as well as cosmetic industry. Ashutosh directed the company in the capacity as Managing Director up to the satisfaction of all.

In 2015, M/s Beauty Products Limited felt the need, decided and raised its Authorised Capital to ₹ 20,00,00,000. Through private placements from time to time, it pumped in more capital and its paid-up capital reached to a level of ₹ 19,50,00,000 as on 31st March, 2021. At this juncture, its turnover was ₹ 850 crores.

The secretarial audit of M/s Beauty Products Limited was started in the year 2018 as the company had crossed the threshold limit relating to turnover as per the audited financial statements as on 31st March, 2017. M/s Keshav and Kaustubh & Associates, a firm of practicing company secretaries, was engaged to carry out the secretarial audit.

In the beginning of the current financial year, the total strength of directors of M/s Beauty Products Limited had reached eleven which included two independent directors. Some of the directors of the company were desirous of

appointing Mr. Soumit as Managing Director of the company in place of Mr. Ashutosh, who wanted to leave the office of Managing Director due to intense family pressure. It is to be noted that Mr. Soumit was also holding the office of Managing Director in M/s Glow and Glow Cosmetics Limited which was run by his father-in-law along with his relatives. For the appointment of Mr. Soumit as Managing Director of M/s Beauty Products Limited, a Board Meeting was convened by giving a specific notice of such meeting and of the resolution to be moved thereat, to all the directors then in India. At the Board Meeting, five out of nine directors present in the meeting consented to Mr. Soumit becoming as Managing Director.

By now, M/s Beauty Products Limited had over 150 products catering to every kind of consumer. Included in its diverse portfolio were moisturisers, aloe-vera gels, lip balms, deodorants and a variety of nail-paints to meet the demand of teenagers.

After some time, keeping in view the future expansion, M/s Beauty Products Limited wanted to appoint Mr. Amba Prasad, 74 years of age, as a Whole-time director with the approval of the Board. He had sharp business acumen and wide experience by working at a very senior position in Rich Bank Limited from where he superannuated 14 years back. At a Board Meeting, the proposal to appoint Mr. Amba Prasad as Whole-time director was approved with full majority of eight directors attending the Meeting. No further action was taken in this regard.

MULTIPLE CHOICE QUESTIONS

1. As per the case scenario, some of the directors of M/s Beauty Products Limited were desirous of appointing Mr. Soumit as Managing Director of the company, who was also acting as Managing Director in M/s Glow and Glow Limited. At the Board Meeting convened in this respect, five out of nine directors present in the meeting consented to his becoming as Managing Director. Considering the applicable provisions, choose the correct alternative from those given below as to whether or not Mr. Soumit was appointed as Managing Director of M/s Beauty Products Limited?

(a) Since more than half directors (i.e. five out of nine directors) attending the Board Meeting consented to Mr. Soumit becoming the Managing Director, he must have been appointed as the Managing Director of M/s Beauty Products Limited.

(b) Since minimum two-third directors (i.e. six out of nine directors) attending the Board Meeting must consent to Mr. Soumit becoming the Managing Director, he could not have been appointed as the Managing Director of M/s Beauty Products Limited.

(c) Since minimum three-fourth directors (i.e. seven out of nine directors) attending the Board Meeting must consent to Mr. Soumit becoming the Managing Director, he could not have been appointed as the Managing Director of M/s Beauty Products Limited.

(d) Since all the directors attending the Board Meeting must consent to Mr. Soumit becoming the Managing Director, he could not have been appointed as the Managing Director of M/s Beauty Products Limited.

2. It is evident from the case scenario that the proposal to appoint Mr. Amba Prasad, aged 74 years, as Whole-time Director was approved by the Board of Directors of M/s Beauty Products Limited. Select the correct alternative from the following options that indicates the validity or invalidity of appointment of Mr. Amba Prasad as a Whole-time Director of the company after approval of proposal by the Board:

(a) In view of the fact that Mr. Amba Prasad has crossed the age of 70 years, his appointment as a Whole-time Director would be considered as valid only when an ordinary resolution is passed and thereafter, sanction of National Company Law Tribunal is sought.

(b) Even if Mr. Amba Prasad has crossed the age of 70 years, his appointment as a Whole-time Director would be considered as valid since it was approved by all the eight directors who attended the Board Meeting.

(c) In view of the fact that Mr. Amba Prasad has crossed the age of 70 years, his appointment as a Whole-time Director would not be

considered as valid since it was not approved by all the eleven directors.

(d) In view of the fact that Mr. Amba Prasad has crossed the age of 70 years, his appointment as a Whole-time Director would be considered as valid only when a special resolution is passed and if no such special resolution is passed, but the votes cast in favour of motion exceed the votes, if any, cast against the motion and the Central Government approves such appointment.

3. Suppose Mr. Amba Prasad, after due formalities, is appointed as Whole-time Director of M/s Beauty Products Limited, then what would be the maximum term for which he can be so appointed:

(a) The appointment of Mr. Amba Prasad as Whole-time Director of M/s Beauty Products Limited would be for a maximum term of three years.

(b) The appointment of Mr. Amba Prasad as Whole-time Director of M/s Beauty Products Limited would be for a maximum term of five years.

(c) The appointment of Mr. Amba Prasad as Whole-time Director of M/s Beauty Products Limited would be for a maximum term of seven years.

(d) The appointment of Mr. Amba Prasad as Whole-time Director of M/s Beauty Products Limited would be for a maximum term of ten years.

4. The case scenario mentions that in the year 2018, secretarial audit of M/s Beauty Products Limited was started as the company had crossed the threshold limit relating to turnover. At that time, what could be the threshold limit relating to turnover which necessitated starting of secretarial audit:

(a) At the time starting secretarial audit in the year 2018, the turnover of M/s Beauty Products Limited must have been ₹ 300 crores or more.

(b) At the time starting secretarial audit in the year 2018, the turnover of M/s Beauty Products Limited must have been ₹ 250 crores or more.

(c) At the time starting secretarial audit in the year 2018, the turnover of M/s Beauty Products Limited must have been ₹ 150 crores or more.

(d) At the time starting secretarial audit in the year 2018, the turnover of M/s Beauty Products Limited must have been ₹ 100 crores or more.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (d)** Since all the directors attending the Board Meeting must consent to Mr. Soumit becoming the Managing Director, he could not have been appointed as the Managing Director of M/s Beauty Products Limited.

Reason

Third proviso to Section 203(3)

A company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

2. **Option (d)** In view of the fact that Mr. Amba Prasad has crossed the age of 70 years, his appointment as a Whole-time Director would be considered as valid only when a special resolution is passed and if no such special resolution is passed, but the votes cast in favour of motion exceed the votes, if any, cast against the motion and the Central Government approves such appointment.

Reason

Proviso to section 196(3)(a)

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 twenty-one years or has attained the age of seventy years.

A person who has attained the age of seventy years may be appointed.

By passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person

and

where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.

3. Option (b) The appointment of Mr. Amba Prasad as Whole-time Director of M/s Beauty Products Limited would be for a maximum term of five years.

Reason

Section 196(2)

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

4. Option (b) At the time starting secretarial audit in the year 2018, the turnover of M/s Beauty Products Limited must have been ₹ 250 crores or more.

Reason

Section 204(1) read with Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules,2014

For the purposes of sub-section (1) of section 204 (i.e. companies required to annex secretarial audit report to board report), the class of companies in addition to listed companies shall be as under

(a) every public company having a paid-up share capital of fifty crore rupees or more; or

(b) every public company having a turnover of two hundred fifty crore rupees or more; or

(c) every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more.

CASE SCENARIO 40

To provide banking services to the people living in Emakulam, Kerala, which still was a far off location and devoid of accessing finance from nationalised banks and Non-Banking Financial Companies (NBFCs), Nagarajan, his close friends Krishnamurti, Raghunath, Govindam, Radhakrishnan, Vijay Krishnan and Chaitanya, who were experienced and dedicated persons from the field of business, trade and industry, thought of opening a Nidhi company which would act as the safest and cheapest way of inviting deposits from them and granting them loans.

Vinayak Strotram Nidhi Limited was thus incorporated by Nagarajan along with this group of close friends on 10th July, 2014 in Emakulam District of Kerala.

The Authorised Capital of this Nidhi, which wanted to nurture the habit of caution and savings among the members by receiving deposits from them and lending money to them only for their mutual benefit, was ₹ 70,00,000 divided into 7,00,000 equity shares of ₹ 10 each while issued and paid-up capital stood at a figure of ₹ 60,00,000 with just eight employees.

Through this Nidhi, savings could be deposited in the form of Savings Account, Recurring Deposit Account, Fixed Deposit Account and Daily Deposit Accounts while Vinayak Strotram Nidhi Limited granted loans to the members only against securities of immovable properties and movables such as gold, silver, jewellery, deposits, National Saving Certificates, life insurance policies and other Government securities as per the prescribed rules for Nidhi companies.

Customer centricity was at the core of Managing Director Nagarajan and three executive directors Krishnamurti, Raghunath and Govindam and it was this belief that had led the business to build long term relationships.

Since its inception, the Nidhi was earning profits year by year. In anticipation of growing and rendering better services to their members and stabilizing it as a profit centre, Nagarajan and his dedicated team felt that there was a demand for opening some branches in the district itself. Thus, Vinayak Strotram Nidhi Limited opened three more branches at Aluva, Kanayannur and Kothamanglam in Emakulam district of Kerala. These branches were inaugurated with more

focus on deposit mobilization and lending which was a core business of this Nidhi.

The Nidhi brought within its fold experienced persons like retired senior executives from national and multi-national banks to seek guidance and build it as the pioneer in rendering best services by adopting latest technology.

By the end of March, 2021, Vinayak Strotram Nidhi Limited had 11,000 members and 200 employees.

In the track of fast growth and with foresightedness in mind, Nagarajan desired to open a new branch in another district of Kerala. He chose Kannaur district since he had a special bonding with this place because he was an alumnus of Kannaur University, having graduated in commerce from this famous University. But instead of doing that way, he opened another Nidhi company by the name Vinayak Strotram Kannaur Nidhi Limited in Kannaur district of Kerala.

MULTIPLE CHOICE QUESTIONS

1. Kartikay, a resident of Aluva, is desirous of opening a Savings Account with Vinayak Strotram Nidhi Limited but before opening such account he must be a member of this Nidhi. How many minimum shares must be issued to him so that he becomes a member?

   (a) Kartikay must be issued minimum one share to become member of Vinayak Strotram Nidhi Limited so that he is able to open a Savings Account.

   (b) Kartikay must be issued minimum three shares to become member of Vinayak Strotram Nidhi Limited so that he is able to open a Savings Account.

   (c) Kartikay must be issued minimum five shares to become a member of Vinayak Strotram Nidhi Limited so that he is able to open a Savings Account.

   (d) Kartikay must be issued minimum ten shares to become member of Vinayak Strotram Nidhi Limited so that he is able to open a Savings Account.

2. Suppose Krishnamurti, one of the directors of Vinayak Strotram Nidhi Limited, were to hold office of director for a term upto ten consecutive years, then when shall he be eligible for re-appointment as director? Choose the correct alternative from those stated below:

   (a) After expiry of six months of ceasing to be director of Vinayak Strotram Nidhi Limited, he shall be eligible for re-appointment as director.

   (b) After expiry of one year of ceasing to be director of Vinayak Strotram Nidhi Limited, he shall be eligible for re-appointment as director.

   (c) After expiry of two years of ceasing to be director of Vinayak Strotram Nidhi Limited, he shall be eligible for re-appointment as director.

   (d) After expiry of three years of ceasing to be director of Vinayak Strotram Nidhi Limited, he shall be eligible for re-appointment as director.

3. Maximum how much interest Vinayak Strotram Nidhi Limited can offer on fixed and recurring deposits accepted from its members? Select the correct option from those mentioned below:

   (a) Vinayak Strotram Nidhi Limited is permitted to offer interest on fixed and recurring deposits at a rate not exceeding the maximum rate of interest that a Non-Banking Financial Company can pay on its public deposits.

   (b) Vinayak Strotram Nidhi Limited is permitted to offer interest on fixed and recurring deposits at a rate not exceeding the maximum rate of interest that a nationalised bank can pay on its public deposits.

   (c) Vinayak Strotram Nidhi Limited is permitted to offer interest on fixed and recurring deposits at a rate not exceeding the maximum rate of interest that a Rural Regional Bank can pay on its public deposits.

(d) Vinayak Strotram Nidhi Limited is permitted to offer interest on fixed and recurring deposits at a rate not exceeding the maximum rate of interest that a Co-operative Bank can pay on its public deposits.

4. In which year at the earliest, Vinayak Strotram Nidhi Limited would have got the approval to open branches at Aluva, Kanayannur and Kothamanglam in Emakulam district of Kerala.

(a) At the earliest, after 9th July, 2015, Vinayak Strotram Nidhi Limited would have got the approval to open branches at Aluva, Kanayannur and Kothamanglam in Emakulam district of Kerala.

(b) At the earliest, after 9th July, 2016, Vinayak Strotram Nidhi Limited would have got the approval to open branches at Aluva, Kanayannur and Kothamanglam in Emakulam district of Kerala.

(c) At the earliest, after 9th July, 2017, Vinayak Strotram Nidhi Limited would have got the approval to open branches at Aluva, Kanayannur and Kothamanglam in Emakulam district of Kerala.

(d) At the earliest, after 9th July, 2018, Vinayak Strotram Nidhi Limited would have got the approval to open branches at Aluva, Kanayannur and Kothamanglam in Emakulam district of Kerala.

5. Nagarajan, Managing Director of Vinayak Strotram Nidhi Limited, desired to open a branch in Kannaur district but changed his plan and rather opened a new Nidhi by the name Vinayak Strotram Kannaur Nidhi Limited. What could be the reason for change of his mind? Choose the appropriate option from those given below:

(a) Nagarajan, Managing Director of Vinayak Strotram Nidhi Limited, could not open a new branch in another district because he did not get permission from the Registrar of Companies.

(b) Nagarajan, Managing Director of Vinayak Strotram Nidhi Limited, could not open a new branch in another district because he did not get permission from the Regional Director.

(c) Nagarajan, Managing Director of Vinayak Strotram Nidhi Limited, could not open a new branch in another district because he did not get permission from the State Government.

(d) Nagarajan, Managing Director of Vinayak Strotram Nidhi Limited, could not open a new branch in another district because he did not get permission from the Reserve Bank of India.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (a)** Kartikay must be issued minimum one share to become member of Vinayak Strotram Nidhi Limited so that he is able to open a Savings Account.

Reason

Rule 7(3) of the Nidhi Rules 2014

A savings account holder and a recurring deposit account holder shall hold at least one equity share of rupees ten.

2. **Option (c)** After expiry of two years of ceasing to be director of Vinayak Strotram Nidhi Limited, he shall be eligible for re-appointment as director.

Reason

Rule 17(3) of the Nidhi Rules 2014

The Director shall be eligible for re-appointment only after the expiration of two years of ceasing to be a Director.

3. **Option (a)** Vinayak Strotram Nidhi Limited is permitted to offer interest on fixed and recurring deposits at a rate not exceeding the maximum rate of interest that a Non-Banking Financial Company can pay on its public deposits.

Reason

Rule 13(5) of the Nidhi Rules 2014

A Nidhi may offer interest on fixed and recurring deposits at a rate not exceeding the maximum rate of interest prescribed by the Reserve Bank

of India which the Non-Banking Financial Companies can pay on their public deposits.

4. **Option (c)** At the earliest, after 9th July, 2017, Vinayak Strotram Nidhi Limited would have got the approval to open branches at Aluva, Kanayannur and Kothamanglam in Emakulam district of Kerala.

Reason

Rule 10(1) of the Nidhi Rules 2014

A Nidhi may open branches, only if it has earned net profits after tax continuously during the preceding three financial years.

3 years from 10th July 2014 elapsed on 9th July 2017. It is mentioned in the facts of the case that since its inception, the Nidhi was earning profits year by year.

Students are advised to take note that subject to the condition stated, a Nidhi may open up to three branches within the district. If a Nidhi proposes to open more than three branches within the district or any branch outside the district, it shall obtain the prior permission of the Regional Director by applying in Form NDH-2 along with fee specified in the Companies (the Registration Offices and Fees) Rules, 2014 and an intimation is to be given to the Registrar about opening of every branch within thirty days of such opening.

5. **Option (b)** Nagarajan, Managing Director of Vinayak Strotram Nidhi Limited, could not open a new branch in another district because he did not get permission from the Regional Director.

Reason

Rule 10(3) of the Nidhi Rules 2014

Sub-rule 3 provides that if a Nidhi proposes to open more than three branches within the district or any branch outside the district, it shall obtain the prior permission of the Regional Director by applying in Form NDH-2 along with fee specified in the Companies (the Registration Offices and Fees) Rules, 2014 and an intimation is to be given to the Registrar about opening of every branch within thirty days of such opening.

Hence not getting approval may be reason/rational behind the change of mind.

Students are advised to take note that Sub-rule 2 provides that subject to the condition that it has earned net profits after tax continuously during the preceding three financial years, a Nidhi may open up to three branches within the district. Hence even if it is case of opening another branch in same district the permission is required under sub-rule 3.

CASE SCENARIO 41

Supported by the latest technology, supply chain management, product development, robust research and development, Akhil and Bharat Nandan along with other trusted persons incorporated Chai Garden Limited in 2014 with its Registered Office situated in Mumbai to transform every day's chai experience of the people living in Maharashtra, Gujarat and Karnataka by adopting business model of online tea ordering.

Their business was a great success because of game changing heat retaining disposable cardboard flasks that enabled the company to deliver the brew fresh to the consumers across the cities. Its orders for chai peaked between 9.30 AM to noon and then between 4.00 PM to 8.00 PM. Seeing the growth of the company Akhil and Bharat Nandan roped in four of their trusted friends, namely, Rohan, Rahul, Raunit and Raman as directors - to head finance, marketing, Research and Development and operations. Akhil was the MD of the company. The hard work put in by them and their team of employees paid good dividends.

By and by, the demand started spilling to week-ends as well showing that consumers were ordering tea from their cozy homes. By June, 2022, with over 1000 employees in 250 hubs across six cities viz. Mumbai, Pune, Surat, Vadodara, Bangalore and Mysore, the company was serving more than 2,00,000 cups per day.

The directors Akhil and Bharat Nandan thought of including healthy breakfast and snacks like poha, idly, cucumber sandwiches, egg sandwiches, atta cookies and the like that could perfectly complement existing business of chai. This diversification needed infusion of additional capital to buy high-tech machines, development of infrastructure, working capital for day-to-day operations. They were toying with the idea of availing loan from Top Bank Limited or private placement of shares.

Therefore, four more directors, namely, Nandish, Nandini, Nevil and Nandita were added to the Board of Directors after following due process of law. According to the Articles of the company, maximum directors can be up to twelve. However, keeping in view the future expansion plans, the Articles of Association were amended so that the company could appoint maximum of

twenty directors. In November, 2023, a meeting of the Board of Directors was called to ponder upon various issues including that of making provision in respect of healthy breakfast and snacks.

It is noteworthy that one week before the meeting of the Board of Directors, Avinash, one of the shareholders holding 1000 equity shares, requested the company to furnish him a copy of the Register of Directors and Key Managerial Personnel (KMPs).

In the Board meeting, everyone voted in favour of diversification and a Board Resolution was passed in this regard. This was followed by an intense discussion on whether to avail term loan or raise funds through private placement. However, all the directors assented to the private placement since the same seemed to be more beneficial.

Consequently, the strength of the shareholders also increased from 600 to 900 and thereafter to 1500 by March, 2024. There was no looking back.

MULTIPLE CHOICE QUESTIONS

1. According to the case scenario, Avinash, one of the shareholders holding 1000 equity shares, requested the company to furnish him a copy of the Register of Directors and Key Managerial Personnel (KMPs). What is the maximum time period within which the copy of said Register needs to be provided to a member? Choose the correct option from those given below:

   (a) When requested by a shareholder, a copy of the Register of Directors and Key Managerial Personnel (KMPs) needs to be provided maximum within seven days.

   (b) When requested by a shareholder, a copy of the Register of Directors and Key Managerial Personnel (KMPs) needs to be provided maximum within fifteen days.

   (c) When requested by a shareholder, a copy of the Register of Directors and Key Managerial Personnel (KMPs) needs to be provided maximum within thirty days.

(d) When requested by a shareholder, a copy of the Register of Directors and Key Managerial Personnel (KMPs) needs to be provided maximum within forty-five days.

2. Suppose, Chai Garden Limited decides to appoint total strength of twenty directors as allowed by its Articles of Association as against the maximum fifteen directors permitted by the Companies Act, 2013. Which way can the company appoint twenty directors? Choose the correct option from those given below:

(a) Chai Garden Limited can appoint twenty directors as allowed by the Articles of Association as against the maximum fifteen directors permitted by the Companies Act, 2013 by passing an ordinary resolution.

(b) Chai Garden Limited can appoint twenty directors as allowed by the Articles of Association as against the maximum fifteen directors permitted by the Companies Act, 2013 by passing a special resolution.

(c) Chai Garden Limited can appoint twenty directors as allowed by the Articles of Association as against the maximum fifteen directors permitted by the Companies Act, 2013 by passing an ordinary resolution and thereafter, it shall be required to seek approval of the Registrar of Companies.

(d) Chai Garden Limited can appoint twenty directors as allowed by the Articles of Association as against the maximum fifteen directors permitted by the Companies Act, 2013 by passing an special resolution and thereafter, it shall be required to seek approval of the Regional Director.

3. Is it mandatory for Chai Garden Limited to form a Stakeholders Relationship Committee keeping in view the current strength of the shareholders? Select the correct option from those given below:

(a) It is not mandatory for Chai Garden Limited to form a Stakeholders Relationship Committee because it does not have more than 2000 shareholders.

(b) It mandatory for Chai Garden Limited to form a Stakeholders Relationship Committee because it has more than 1000 shareholders.

(c) It is not mandatory for Chai Garden Limited to form a Stakeholders Relationship Committee because it does not have more than 2500 shareholders.

(d) It is not mandatory for Chai Garden Limited to form a Stakeholders Relationship Committee because it does not have more than 3000 shareholders.

4. The Audit Report of F.Y. 2022-23 pointed out that Raman in the capacity as director received excess remuneration than the prescribed limit to the extent of ₹ 2,10,000. In case Chai Garden Limited decides to waive the recovery of excess remuneration from Raman, which kind of resolution the company shall pass:

(a) For waiving the recovery of excess remuneration from Raman, Chai Garden Limited shall pass a Board Resolution.

(b) For waiving the recovery of excess remuneration from Raman, Chai Garden Limited shall pass an ordinary resolution.

(c) For waiving the recovery of excess remuneration from Raman, Chai Garden Limited shall pass an ordinary resolution but thereafter, it shall seek approval of the Central Government through Registrar of Companies.

(d) For waiving the recovery of excess remuneration from Raman, Chai Garden Limited shall pass a special resolution.

5. It is noticed that Raman in the capacity as director had received excess remuneration than the prescribed limit to the extent of ₹ 2,10,000. It is assumed that Chai Garden Limited passed the required resolution for waiving the recovery of excess remuneration from Raman. Choose from the following options the maximum time limit within which the required resolution must be passed:

(a) The required resolution approving the waiver of recovery of excess remuneration from Raman must be passed within two years from the date the sum becomes refundable.

(b) The required resolution approving the waiver of recovery of excess remuneration from Raman must be passed within three years from the date the sum becomes refundable.

(c) The required resolution approving the waiver of recovery of excess remuneration from Raman must be passed within four years from the date the sum becomes refundable.

(d) The required resolution approving the waiver of recovery of excess remuneration from Raman must be passed within five years from the date the sum becomes refundable.

ANSWER TO MULTIPLE CHOICE QUESTION

1. Option (c)

Reason

Refer Section 171 (1) (a). According to this clause, if a request is made by a member for obtaining a copy of the Register of Directors and Key Managerial Personnel (KMPs), the same shall be provided to him within thirty days.

2. Option (b)

Reason

As per proviso to section 149(1) of the Companies Act, 2013, every may appoint more than fifteen directors after passing a special resolution.

3. Option (b)

Reason

Refer Section 178 (5) which requires that the Board of Directors of a company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders

at any time during a financial year shall constitute a Stakeholders Relationship Committee.

4. Option (d)

Reason

Refer Section 197 (10) which requires passing of special resolution for approving waiving of recovery of excess remuneration paid to a director.

5. Option (a)

Reason

According to Section 197 (10) if a company decides to approve waiving of recovery of excess remuneration paid to a director, it shall pass the requisite resolution within two years from the date such sum becomes refundable.

CASE SCENARIO 42

With a view to revolutionise every day's tea experience of tea lovers, Sarthak, Vignesh, Kishore and his friend Shashank, all alumnus of IIT, Mumbai, along with some of their close relatives opened brick and mortar retail chain stores in Bangalore and Mumbai. Besides normal and 'kadak' tea, they served a wide range of tea including shahi tea, pahari tea, ginger tea, jaggery tea, aamras tea, to name a few. The company, Tea Point Limited earned a name of one of the largest organised tea retailer bringing a perfectly brewed cup of tea made with fresh natural ingredients. This was six years back. The authorised capital of the company was ₹ 20,00,00,000 (2,00,00,000 equity shares of ₹ 10 each) and there were ten directors namely, Sarthak, Vignesh, Kishore, Shashank, Avinash, Avantika, Uttara, Urmimala, Shantanu and Vibhore.

Slowly and gradually, their business grew and they wanted to open retail stores in six more cities. They decided to appoint Sridhar as Director (Operations). Three years passed on. The company had over 500 employees in eighty service hubs across eight cities.

The directors convened a Board Meeting to discuss about future plans. It was convened on Friday, the 19th January, 2024 at 10.30 AM at Head Office of the company situated at Bandra, Mumbai. On that day, the required quorum was not present. The meeting was adjourned and no business could be conducted on that day. There was no mention of this topic i.e. adjournment of meeting in the Articles of Association. However, the adjourned meeting was conducted on the scheduled time. Sarthak highlighted the necessity of opening of online tea-ordering business. Vibhore, another director, appreciated the idea and opined that for most of the white collared workers, to sip hot tea generally meant to step out of office to the nearest chai shop or walking to a tea vendor machine which could be avoided if online tea-ordering came into existence. All the directors present at the meeting agreed to the proposal. In order to generate funds to the extent of ₹ One crore for sustaining online tea-ordering business they identified seventy-five persons who could be issued shares through private placement.

It may be mentioned that Vignesh is also a partner in a firm, namely, M/s. Sooraj and Aakash Tea Distributers. In fact, in addition to Vignesh, his wife Sheela, his sons Sooraj and Aakash as well as Sooraj's close friend Rahul are also partners in this firm. Vignesh is desirous that a loan of ₹ 30,00,000 be granted to M/s. Sooraj and Aakash Tea Distributers by Tea Point Limited for furthering the business of the partnership firm.

Tea Point Limited has a wholly owned subsidiary, namely, Green Leaves Marketing and Exports Limited. This subsidiary company is involved in marketing full range of loose and packaged teas to meet the needs of the tea industry, domestic as well as overseas. With an aim of expansion, the directors of Tea Point Limited decided for merger of Green Leaves Marketing and Exports Limited after considering vital facts that such merger would result in economies of scale and economies of scope in production, distribution and financing.

Avinash, Director (HR) took a loan of ₹ 50,00,000 from the company to buy a readymade flat. After making repayment for first six years, Avinash wanted his repayment period of remaining four years to increase by another two years and he, therefore, made a written request to the Board of Directors.

MULTIPLE CHOICE QUESTIONS

1. As per Case Scenario, Avinash, Director (HR) who took a loan of ₹ 50,00,000 to buy a readymade flat wanted his repayment period of remaining four years to extend by another two years and he, therefore, made a written request to the Board of Directors. Which of the following options is applicable in the given situation:

   (a) The repayment period in case of Avinash, Director (HR), can be increased at a meeting of the Board if minimum two directors (apart from Avinash) agree to such proposal.

   (b) The repayment period in case of Avinash, Director (HR), can be increased at a meeting of the Board if minimum three directors (apart from Avinash) agree to such proposal.

   (c) The repayment period in case of Avinash, Director (HR), can be increased by passing an ordinary resolution.

(d) The repayment period in case of Avinash, Director (HR), can be increased by passing a special resolution.

2. In the case scenario, there is mention of Board Meeting which was to be held on Friday, the 19th January, 2024 at 10.30 AM at Head Office of the company situated at Bandra, Mumbai but the same was to be adjourned for want of quorum. When do you think such adjourned meeting was held afterwards. Choose the correct option from the following:

(a) On Tuesday, the 23rd January, 2024 at 10.30 AM at Head Office situated at Bandra, Mumbai.

(b) On Friday, the 26th January, 2024 at 10.30 AM at Head Office situated at Bandra, Mumbai.

(c) On Saturday, the 27th January, 2024 at 10.30 AM at Head Office situated at Bandra, Mumbai.

(d) On Monday, the 29th January, 2024 at 10.30 AM at Head Office situated at Bandra, Mumbai.

3. Vignesh, one of the directors of Tea Point Ltd. is desirous that a loan of ₹ 30,00,000 be granted to M/s. Sooraj and Aakash Tea Distributers by Tea Point Limited for furthering the business of the partnership firm.

(a) No loan can be granted by Tea Point Ltd. to M/s. Sooraj and Aakash Tea Distributers in which Vignesh, one of its directors, is partner.

(b) A maximum loan of ₹ 5,00,000 can be granted by Tea Point Ltd. to M/s. Sooraj and Aakash Tea Distributers in which Vignesh, one of its directors, is a partner, by passing a special resolution.

(c) A maximum loan of ₹ 10,00,000 can be granted by Tea Point Ltd. to M/s. Sooraj and Aakash Tea Distributers in which Vignesh, one of its directors, is a partner, by passing a special resolution.

(d) A maximum loan of ₹ 20,00,000 can be granted by Tea Point Ltd. to M/s. Sooraj and Aakash Tea Distributers in which Vignesh, one of its directors, is a partner, by passing a special resolution.

4. The case scenario states that Tea Point Limited is desirous of merging its wholly owned subsidiary Green Leaves Marketing and Exports Limited. To proceed further, it is required that a notice of the proposed scheme of merger inviting objections or suggestions from the Registrar and Official Liquidators where the registered office of the respective companies are situated needs to be issued. Maximum within how much time such notice is required to be issued. Choose the correct option from those given below:

   (a) The required notice of the proposed scheme of merger needs to be issued within fifteen days.

   (b) The required notice of the proposed scheme of merger needs to be issued within thirty days.

   (c) The required notice of the proposed scheme of merger needs to be issued within sixty days.

   (d) The required notice of the proposed scheme of merger needs to be issued within ninety days.

5. It is assumed that certain suggestions were received in response to the notice of the proposed scheme of merger and the same were considered by the companies in their respective general meetings including other matters relating to merger. Thereafter, the scheme of merger was approved by the members. Choose the appropriate option from those given hereunder as to the minimum share-holding, the members had who approved the proposed scheme of merger:

   (a) The members who approved the proposed scheme of merger must be holding at least sixty percent of the total number of shares.

   (b) The members who approved the proposed scheme of merger must be holding at least seventy five percent of the total number of shares.

   (c) The members who approved the proposed scheme of merger must be holding at least ninety percent of the total number of shares.

   (d) The members who approved the proposed scheme of merger must be holding at least ninety five percent of the total number of shares.

ANSWER TO MULTIPLE CHOICE QUESTION

1. Option (d)

Reason

Refer Section 180 (1) (d) where it is provided that the Board of Directors shall exercise powers in relation to remit, or give time for the repayment of, any debt due from a director only with the consent of the company through a special resolution.]

2. Option (c)

Reason

Refer Section 174 (4) which states that a Board Meeting, not held for want of quorum, then, unless the articles of the company otherwise provide, shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a National Holiday, till the next succeeding day, which is not a National Holiday, at the same time and place.

3. Option (a)

Reason

Refer Section 185 (1) (b) which prohibits a company from advancing of any loan to a firm in which its director is a partner.

4. Option (b)

Reason

Refer Section 233 (1) (a) which requires that such notice needs to be issued within thirty days by both the transferor and transferee company.

5. Option (c)

Reason

According to Section 233 (1), the proposed scheme of merger is required to be approved by the members at a general meeting holding at least ninety percent of the total number of shares.

CASE SCENARIO 43

Venus Limited is a listed company that manufactures and trades in perfumes, attars, essential oils, natural extracts, and fragrance-based cosmetic and personal care items. It has the largest manufacturing plant for rose water extractions in Kannauj, the perfume capital of India and often referred to as the Grasse (France) of the East.

Venus Limited has 12 directors on its board, and Mr. Vinod Kapadia was appointed as managing director just a month ago. Mars Limited, another listed company, holds 12% of the equity shares and paid-up share capital of Venus Limited.

An audit committee was constituted, consisting of six directors, of whom three are independent and one is non-executive. Ms. Krishna, who is an independent director, was appointed as the chairperson of the audit committee. The audit committee of Venus Limited during 2022-2023 and 2023-2024 met on the following dates:

Meeting	Date & Place of the meeting	No. of member of committee, who attended the meeting
A	18th May 2022, RO	All 6 members
B	10th August 2022, RO	All 6 members
C	30th October 2023, RO	5 members including 3 independent directors
D	10th Jan 2023, RO	All 6 members
E	15th March 2023, RO	All 6 members
1	12th April 2023, RO	All 6 members
2	17th June 2023, RO	5 members including 3 independent directors
3	8th July 2023, Shimla (HP, India)	4 members including 2 independent directors
4	11th Nov 2023, RO	5 members including 2 independent and 1 non-executive directors

5	28th December 2023, Kannuaj (UP, India)	3 director including 1 independent and 1 non-executive directors
6	13th Jan 2024, Grasse (France)	All 6 members
7	10th March 2024, RO	1 independent and 1 non-executive director only

Since Mr. Vinod Kapadia is appointed as MD recently hence he is willing to know about the time within which the quarterly results need to be reported from end of the quarter in ordinary course of business.

MULTIPLE CHOICE QUESTIONS

You are an expert on securities laws, who is being professionally engaged to answer the following questions (specified as MCQs) by identifying the most appropriate option based upon provisions contained in the Securities and Exchange Board of India (Listing Obligation and Disclosure Requirements) Regulations, 2015.

1. Whether constitution of Audit Committee is in order in case of Venus Limited?

   (a) No, because audit committee shall consist of at least 3 directors with independent directors forming a majority.

   (b) No, because audit committee shall consist of at least 3 directors out of which at least 2/3 shall be independent directors.

   (c) Yes, because audit committee shall consist of at least 3 directors out of which at least 1/3 shall be independent directors.

   (d) Yes, because audit committee shall consist of at least 3 directors with at-least 2 independent directors and/or non-executive directors.

2. Which of following is the correct option that represents those meetings of audit committee convened during 2022-23, which was supposed to be adjourned for want of quorum?

   (a) Only 7th meeting.

(b) 5th and 7th meetings only.

(c) 3rd, 5th and 7th meeting only.

(d) None of the meeting.

3. How many instances of default by Venus Limited in context to number of meetings of audit committee and time gap between such meetings took place during 2022-23 and 2023-24;

(a) Not even once in both the years

(b) Once each during 2022-23 and 2023-24

(c) Once only in 2022-23

(d) Once only in 2023-24

4. Financial results of first quarter of 2024-25 need to be reported to stock exchange by Venus Limited within;

(a) 15th July 2024

(b) 30th July 2024

(c) 14th August 2024

(d) 29th August 2024

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (b)** No, because audit committee shall consist of at least 3 directors out of which 2/3 shall be independent directors.

Reason

Regulation 18(1) of the Securities and Exchange Board of India (Listing Obligation and Disclosure Requirements) Regulations, 2015

Every listed entity shall constitute a qualified and independent audit committee in accordance with the terms of reference, subject to the following:

The audit committee shall have minimum three directors as members.

At least two-thirds of the members of audit committee shall be independent directors

Students are advised to take note that in case of a listed entity having outstanding SR equity shares, the audit committee shall only comprise of independent directors

While in given case 3 out of 6 audit committee members are independent directors that amounts to ½ only, whereas requirement is of at least 2/3rd.

2. Option (b) 5th and 7th meetings only

Reason

Regulation 18(2)(b) of the Securities and Exchange Board of India (Listing Obligation and Disclosure Requirements) Regulations, 2015

The quorum for audit committee meeting shall either be two members or one third of the members of the audit committee, whichever is greater, with at least two independent directors.

In case of both 5th and 7th two independent directors were not present, hence these two meetings was supposed to be adjourned for want of quorum.

3. Option (d) Once only in 2023-24

Reason

Regulation 18(2)(a) of the Securities and Exchange Board of India (Listing Obligation and Disclosure Requirements) Regulations, 2015

The audit committee shall meet at least four times in a year and not more than one hundred and twenty days shall elapse between two meetings.

The time gap between 3th (8th July 2023) and 4th meeting (11th Nov 2023) is more than 120 days

4. Option (c) 14th August 2024

Reason

Regulation 33(3)(a) of the Securities and Exchange Board of India (Listing Obligation and Disclosure Requirements) Regulations, 2015

The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter.

Forty five days from end of first quarter i.e. 30th June 2024 last on 14th August 2024.

CASE SCENARIO 44

Ms. Pray, Ms. Soul, Mr. Blessing and Mr. Boon went to Budapest, Hungary after their CA Final exams on May 26th 2016. All four decided to return to India before declaration of Result. Result was declared on 26th July 2016 and all four cleared their exam and became Qualified CA. As decided, Ms. Pray and Ms. Soul went back to India on 16th of July and 25th July 2016 respectively. Mr. Blessing got highly inspired by his grandfather, Mr. Benedict who has also studied and remained in Budapest for 40 years and earned lot of money, fame and respect. Mr. Benedict converted his all earning in foreign securities and died in the year 2006 leaving behind his legacy to his son. Following him, his grandson also decided to pursue Certified Public Accountant (CPA) and came to India on 26th July 2016, to comply with other formalities required by the Institute of Chartered Accountants of India and Foreign Exchange Management Act (FEMA, 1999) and other regulatory authorities. He again went to Budapest on Dec 6th 2016 for further studies. Mr. Boon also first decided to pursue CPA but then circumstances made him to return to his home on 06th January 2017 discontinuing his further studies.

Mr. Blessing joined the course and started to work there as an Intern to meet his daily and other expenses. On 26th Dec 2016, his father, Mr. Sacred drew foreign exchange of USD 196000 for his admission and USD 76000 on 06th April 2017 for his other ancillary expenses. As a qualified CA and a CPA student and an intern as well, he gave consultancy in respect of incorporation of company in US to a client in India named Veni Vidi Vici, Chartered Accountants (a partnership firm) for which the firm paid USD 100000 to him. Before coming to Budapest, he also purchased a lottery ticket and fortunately won prize of ₹ 10 Lacs. He wants to use that amount for facilitating his higher studies and other expenses and making arrangement of withdrawal of the same. Mr. Sacred sold all the foreign securities which he inherited from his father and purchased a flat in Budapest exclusively from the fund received from sale proceed of securities.

Mr. Blessing is planning to settle their permanently and decided to marry a citizen of the Budapest. He also became the member of P & I club there. Considering the current situation, Mr. Sacred is also going to settle with his son there along with the family and looking for an agent who can sell his Villa. Finally, he outsourced this work to one company called Pious & co who with

their agent in Singapore sold that villa to resident of Singapore planning to settle in India, against the commission amounting to USD 96000 paid by Pious & co. The villa was sold for USD 40 Lacs. They left India on Nov 26th 2019.

In the year 2021, on 16th Nov, Mr. Blessing and his wife got a job opportunity in Microsoft in Bangalore and joined the office in Dec 2021. They send money to their family abroad from Resident Foreign Currency Account (RFC). Further the membership money of P & I club is also remitted using RFC account.

MULTIPLE CHOICE QUESTIONS

1. What will be the Residential status of Ms. Pray, Ms. Soul, Mr. Blessing and Mr. Boon as per applicable provisions of FEMA Act, 1999? In other words, mention who all are Person Resident in India (PRII) and who all are Person Resident Outside India (PROI) for financial year 2017-18 as per the FEMA Act, 1999?

   (a) Ms. Pray and Ms. Soul are PRII and Mr. Blessing and Mr. Boon are PROI

   (b) Ms. Pray, Ms. Soul and Mr. Boon are PRII and Mr. Blessing is PROI

   (c) Ms. Pray, Ms. Soud and Mr. Blessing are PRII and Mr. Boon is PROI

   (d) Ms. Pray is PRII and Ms. Soul, Mr. Blessing and Mr. Boon are PROI

2. "Further the membership money of P & I club is also remitted using RFC account" Elucidate the nature of transaction from below mentioned options.

   (a) Current account transaction which is prohibited

   (b) Current account transaction which requires prior approval from Reserve Bank of India

   (c) Current account transaction which is permissible and does not require any approval

   (d) Current Account transaction which requires prior approval of Government of India, Ministry of Finance but when the said remittance is done from RFC account no approval is required.

3. Below are the various current account transactions undertaken. Some of them are permissible and does not require prior approval of Government of India or Reserve Bank of India and some of them require prior approval.

   1. Withdrawal by Mr. Sacred on two different dates (26th Dec 2016 for USD 176000 and 07th April 2017 for USD 76000) for the purpose of studies abroad of his son.
   2. Payment of consultancy fees by Veni Vidi Vici to Mr. Blessing in Budapest for USD 100000
   3. Withdrawal from lottery winnings
   4. Payment of Commission of USD 96000 against inward remittance of USD 4000000 by Pious & co to agent in Singapore for selling Villa.
   5. Payment of membership of P & I club from RFC account.

   Mention which of the above transactions can be freely taken and does not require prior approval of RBI/GOI

   (a) 1, 2, 3 and 4

   (b) 1, 2, 4 and 5

   (c) 2, 3, 4 and 5

   (d) 1, 3, 4 and 5

4. Out of following transactions, which one is permissible capital account transaction?

   (a) Withdrawal of Foreign exchange by Mr. Sacred for admission and other expenses of his son, Mr. Blessing

   (b) Payment of consultancy fees by Veni Vidi Vici to Mr. Blessing in Budapest

   (c) Payment of Commission by Mr. sacred to agent in Singapore for selling Villa

   (d) Purchase of Flat in Budapest by Mr. Sacred.

5. What is permissible limit of payment of commission to agent abroad for sale of residential flats in India?

   (a) USD 25000

   (b) USD 100000

   (c) USD 25000 or 5% of Inward remittance whichever is higher

   (d) USD 250000

ANSWER TO MULTIPLE CHOICE QUESTION

1. Option (a)

Reason

Ms. Pray and Ms. Soul are PRII and Mr. Blessing and Mr. Boon are PROI as per FEMA, Sec 2(n), any person resides in India for more than 182 days are PRII except for the case if the person goes out of India for any purpose which would indicate his intention to stay outside for uncertain period. In the given scenario, Mr. Boon resides less than 182 days in India so he is PROI and at the same time though Mr. Blessing reside for more than 182 days but he goes out for education and his intention to stay there is for uncertain period so he is also PROI.

2. Option (d)

Reason

Current Account Transaction which requires prior approval of Government of India, Ministry of Finance but when the said remittance is done from RFC account no approval is required. Under schedule II of Sec 5 of the FEMA Act, 1999, said remittance requires approval from Ministry of Finance but exempted when done from RFC account.

3. Option (b)

Reason

1, 2, 4 and 5.

1. As per the applicable provisions of FEMA schedule I, II and III of sec 5 of the said Act, Individuals can avail foreign exchange facility upto

USD 250000 for the purpose of studies abroad. Though Mr. Sacred withdrew more than USD 250000 but that were in two different financial years so permissible.

2. Remittance by person other than individual upto USD 1000000 for consultancy services procured from outside India is permissible and doesnot require any approval. In the above case Veni Vidi Vici, Chartered Accountant only remiited USD 100000 so permissible

3. Remittance out of lottery winnings is prohibited so it is not permissible.

4. Commission to agent abroad for sale of flats in India exceeding 5% of inward remittance or USD 25000 whichever is more. In the above case, commission is within limit of 5% of USD 4000000 is USD 200000 but Mr. Sacred remitted only USD 96000 so permissible.

5. Though remittance for membership of P & I club requires prior approval of Government of India, Ministry of Finance but as it is from RFC account, it does not require any approval and thus permissible.

4. Option (d)

Reason

Purchase of flat in Budapest by Mr. Sacred. As per sec 6(4) of FEMA Act, 1999, A person resident in India may hold, own, transfer or invest in foreign currency or any immovable property outside India if such security or immovable 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.

Again, as per subclause iv of sec 6(4) – A person resident in India may freely utilize their eligible assets abroad and make any fresh investment abroad without approval of Reserve Bank of India provided the cost of investment are met exclusively out of funds forming part of eligible assets held by him.

So taking into consideration the situation where Mr. Sacred inherited foreign securities from his father Mr. Benedict when former was resident of India was eligible asset for him and when he sold the securities and purchased flat was also very well under the permissible provisions of the act.

5. Option (c)

Reason

USD 25000 or 5% of Inward remittance whichever is higher.

CASE SCENARIO 45

M/s. Sahashtravali Private Limited is a Real Estate company registered under companies Act having its registered office in Chennai, represented and administered by Board of directors having two directors. It is running its project in all metropolitan cities. In Chennai, the company is constructing a society under the name of "Kailash Niwas" comprising of 96 villas. Each villa cost ₹ 2 crores. Construction has been started in the year June 2019 and 76% advance has been taken by villa buyers. The company promised, by way of legal instrument, to handover the homes by the end of June 2023. It however handed over 46 villas to respective buyers in time. But company is not handing over the same to other allottees in spite of legal reminders by them. The following is the extract of Balance sheet of M/s. Sahashtravali Private limited

Balance Sheet (Extract) as on 31.12.2023

Liabilities	Amount (₹ in Lacs)	Assets
Secured Loan		
Bank of Maharashtra	98.00	
Bank of Baroda	108.00	
Sundry Creditors		
Creditors For Raw Material (Due for more than a year) Achyutam Builders Mangalam Ceramics Others	 116.00 86.00 56.00	

One allotee named Somam commercials along with other 16 allotees who have not been allotted villas have jointly filed an application against M/s. Sahashtravali Private Limited to initiate Corporate Insolvency Resolution Process (CIRP) before NCLT in accordance with the provisions contained in Insolvency and Bankruptcy code, 2016. Copy of such application has been forwarded to registered office of the company and to the Board along with record of the default and other information on 16.01.2023. NCLT has rejected the application and gave notice to applicant to rectify the defects in the

application. The mistake in the application has been duly rectified by applicants on 31st Jan 2023. Following the rectification of mistake, Order of admission of application has been given on 01.02.2023 to both Somam Commercials and M/s. Sahashtravali Private Limited.

Mr. Achyutam being an Interim Resolution Professional who has also been awarded best employee of the year 2021 by the firm of secretarial Auditors of M/s. Sahashtravali Private Limited has made public announcement as required under sec 15 of Insolvency and Bankruptcy Code, 2016 with all the particulars on 09.02.2023. All the allottees except two submitted their claims with proof before 16.02.2023 as it was the last date to submit claim. Other two submitted their claim on 26.04.2023. Committee of Creditors (CoC) has been formed comprising 15 allottees.

First meeting of CoC was duly convened and they have decided with votes of 76% that IRP being ineligible has to be replaced with new Resolution Professional and application in this regard has been filed along with the name of Proposed Resolution Professional (RP) Mr. Hansam. Following the comprehensive process of CIRP, Mr. Hansam prepared Information memorandum on 26th Mar 2023. He then invited Expression of Interest from prospective resolution applicants to submit Resolution Plan. Most appropriate plan has been presented to CoC for their approval. The Resolution Plan was approved by CoC with majority votes. Further the resolution plan was also approved by NCLT on 28.7.2023. Finally, Resolution plan was implemented.

This news of resolution plan provoked Achyutam builder and other creditors. On 01.02.2024 they again filed an application to NCLT for Corporate Insolvency Resolution Process.

MULTIPLE CHOICE QUESTIONS

1. As per the important definitions defined U/s. 3 and 5 of Insolvency and Bankruptcy code, 2016, which of the following option is correct?

	Corporate Debtor	Financial Creditor	Operational Creditor
(a)	M/s. Sahashtravali Private Limited	Allottees of Kailash Niwas, Secured Loan	Creditors for Raw Material

(b)	Achyutam Builders	Allottees of Kailash Niwas, Secured Loan	M/s. Sahashtravali Private Limited
(c)	M/s. Sahashtravali Private Limited	Creditors for Raw Material	Secured Loan
(d)	Allottees of Kailash Niwas	Creditors for Raw Material	M/s. Sahashtravali Private Limited

2. In the above cases scenario, Somam Commercial being financial creditor has initiated corporate insolvency resolution process (CIRP) against M/s. Sahashtravali Private Limited. As referred to clauses (a) and (b) of subsection (6A) of section 21 of the Act, an application for initiating Corporate Insolvency Resolution Process (CIRP) against the corporate debtor shall be filed jointly by not less than .....of such financial creditor in the same class or not less than ..... of the total number of such creditor in the same class, whichever is less.

   Fill in the above blanks with correct option.

   (a) 50, 10%

   (b) 100, 10%

   (c) 50, 5%

   (d) 100, 5%

3. After choosing the correct option from above, why do you think that Somam Commercials has met the requirement of clauses (a) and (b) of subsection (6A) of section 21 of the Act.

   (a) Min 50 or 10% of 50 allotees who have not been allotted i.e. 5. Application filed by 17. So Somam Commercial has met the requirement

   (b) Min 100 or 10% of total 96 allotees i.e.10. Application filed by 17. So Somam Commercial has met the requirement

   (c) Min 50 or 5% of total 50 allotees who have not been allotted i.e.3. Application filed by 17. So Somam Commercial has met the requirement

(d) Min 100 or 5% of total 96 allotees i.e. 5. Application filed by 17. So Somam Commercial has met the requirement

4. NCLT, at first, has rejected the application of financial creditors and ordered them to rectify the defect. Why was application defective as per the provisions of IBC, 2016?

   (a) Adjudicating Authority has not ascertained the existence of default.

   (b) The amount of default is less than one crore rupees.

   (c) The name of the Insolvency professional to act as an interim resolution professional was not proposed.

   (d) The application has been filed by less than minimum number of applicants as required U/s. 21 (6A) of the Code, IBC 2016.

5. Why the appointment of Mr. Achyutam was ineligible and replaced by CoC?

   (a) He made public announcement after the due date

   (b) Mr. Achyutam was a related party of corporate Debtor

   (c) He is not eligible to be appointed as independent director of the corporate debtor.

   (d) Mr. Achyutam was an employee of the firm of secretarial auditors of the M/s. Sahashtravali Private Limited in the last three years

6. Regulation 40B of the CIRP regulations require an IRP/RP to file set of forms from CIRP 1 to CIRP 6 within seven days of completion of specific activities. If specific activity is not completed then there would be no filing of CIRP 1 to 6. This makes monitoring of progress difficult. So, the regulation requires filing of form CIRP 7 within three days of due date of completion of any activity. On the basis of above regulation, please identify which of the activities require filing of CIRP 7.

   (a) Specified date of making public announcement is upto 3rd day of Insolvency commencement date so CIRP 7 need to be filed

   (b) Information memorandum required to be issued within 51 days of public announcement so CIRP 7 need to be filed.

(c) CIRP need to completed by 180th day of Insolvency commencement day so CIRP 7 need to be filed

(d) Two creditors submitted their claim after the date mentioned in public announcement so CIRP 7 need to be filed

7. Can Achyutam builders initiate Corporate Insolvency Resolution Process against M/s. Sahashtravali Private Limited?

(a) Yes, as the Achyutam builder is Operational creditor

(b) No, Achyutam builder is not financial creditor

(c) No, as resolution plan has already been approved for M/s. Sahashtravali Private Limited, 12 months preceding the date of making application by Achyutam builders

(d) Yes, as 6 months has lapsed since when last resolution plan has been approved

ANSWER TO MULTIPLE CHOICE QUESTION

1. Option (a)

Reason

	Corporate Debtor	Financial Creditor	Operational Creditor
a	M/s. Sahashtravali Private Limited	Allottees of Kailash Niwas, Secured Loan	Creditors for Raw Material

2. Option (b)

Reason

As per section 7 of the IBC, 2026, an application for initiating a Corporate Insolvency Resolution Process (CIRP) must be filed jointly by at least 100 financial creditors in the same class. Alternatively, the application can be filed by at least 10% of the total number of creditors in the same class, whichever is less.

3. Option (b)

Reason

In the light of above reasoning.

4. Option (c)

Reason

The name of Insolvency professional to act as an interim resolution professional was not proposed. As per the procedure to be followed by financial creditor, the name of the Insolvency professional to act as an interim resolution professional shall be furnished along with the application.

5. Option (d)

Reason

Mr. Achyutam was an employee of the firm of secretarial auditors of the M/s. Sahashtravali Private Limited in the last three years. As per the information given in the case law, Mr. Achyutam has been awarded best employee of the year award in 2021 that is why, he is ineligible as per Regulation 3 of Insolvency and Bankruptcy Regulations, 2016

6. Option (a)

Reason

Specified date of making public announcement is up to 3rd day of Insolvency commencement date so CIRP 7 need to be filed. Public announcement has to be made by 04.02.2023 and actually made on 09.02.2023 so CIRP has to filed on 07.02.2023 i.e. due date + 3 days.

Information memorandum need to be published within 51 days from the date of public announcement i.e. 01.04.2023 but it has been done on 26.03.2023 so no CIRP needed.

CIRP need to be completed within 180 days of insolvency commencement date i.e.30.07.2023. it was duly completed on 28.07.2023 so no CIRP needed.

Delay in submission of claim by Sundry creditors is not specified activity so no CIRP needed.

7. Option (c)

Reason

No, as resolution plan has already been approved for M/s. Sahashtravali Private Limited, 12 months preceding the date of making application by Achyutam builders. Application can be made after 12 months.

CASE SCENARIO 46

Mr. Ayur and Mr. Veda are planning to float a company under the name of M/s. Ayurveda limited. Being the promoter and founder of the company, Mr. Ayur is thinking of becoming Managing director of the Company. Mr. Ayur is 24-year-old and did MBA from IIM. He has been convicted of an offence involving moral turpitude and sentenced to imprisonment for 6 month 16 days in the year May 2009. Mr. Veda is planning to become Whole time Director. The company duly registered and incorporated in the year Jan 2016. Mr. Ayur and Mr. Veda appointed Mr. Peace as an independent director. Three more directors have been added to the board. They also appointed Mrs. Pink as women director. Finally, Ayurveda limited constituted its board with 7 directors including 1 independent and 1 woman director. Managerial remuneration was paid as per sec 197 of the act. By virtue of the articles of the company, Mr. Ayur and Mr. Veda has substantial powers to manages the company's budget and allocate its resources, interact with client and company shareholders. Mr. Ayur also creates strategic business plans for meeting the company's goals and affix the common seal of the company to some documents without any authorization by the board. Perseverance and devotion of the directors toward the company was the driving force to reappoint them in the board for another next term of five years in the AGM. Now, Mr. Ayur, Mr. Veda, Mrs. Pink, Mr. Healthy and Mr. Peace got their reappointment in Jan 2021. As Mr. Veda is going to turn 70 in 2023, he wants Board to reappoint them again for next five years. Board denied the request. Since then, he is irregular in attending board meeting but since Nov 2022, he did not attend any meeting of board without seeking leave of absence. The company has recorded the highest turnover of ₹ 146 crores in 2022. In view of increasing turnover and added responsibilities, Mr. Peace inform the board that it is mandatory now to appoint Company Secretary for smooth functioning of company. In Dec 2023, the company received offer of amalgamation with the renowned company of the same line of business. Offer was accepted by board and shareholders as well. In that amalgamation, Mr. Ayur has become Whole time director of the resultant company, Mr. Peace has been elected as an independent director and Mrs. Pink again as woman director. Mr. Veda and Mr. Healthy had to vacate the office. Mr. Veda and Mr. Healthy are asking for compensation for loss of the office as per sec 202 of Companies Act, 2013.

Following is the extract of Audited Balance sheet of the M/s. Ayurveda Limited as on

	31.12.2024	31.12.2023
Particulars (Liabilities)	Amount (Crore)	Amount (Crore)
Paid up Share Capital	26.00	16.00
Loan from Banks	106.00	116.00

Following is the Audited Profit & Loss Account of M/s. Ayurveda limited for the year ended

Particulars	**Amount (₹)**	**Amount (₹)**
Income	31.12.2024	31.12.2023
Turnover	160.00 Cr	146.00 Cr
Gross Profit	60,26,000	
Subsidy from State Govt	1,60,000	
Total Income	61,86,000	
Salaries and Wages	6,60,000	
Depreciation	4,90,000	
Managerial Rem	5,60,000	
Total	17,10,000	
Net Profit	44,76,000	

Depreciation as per the Companies Act was ₹ 3,96,000.00.

MULTIPLE CHOICE QUESTIONS

1. As per the fact given in above case study, Mr. Ayur has been convicted of an offence involving moral turpitude and sentenced to imprisonment for 6 month 16 days in the year 2009. Though he has been imprisoned for more than 6 months, he is not disqualified for appointment as per sec 164 of companies act, 2013. Why?

   (a) Because as per sec 164 of the act, 5 years has been elapsed from the date of expiry of the sentence.

(b) Because as per sec 164 of the act, imprisonment was for less than 5 yrs.

(c) Because as per sec 164 of the act, 7 years has been elapsed from the date of expiry of the sentence.

(d) Because as per sec 164 of the act, imprisonment was for less than 7 yrs.

2. Mr. Ayur has been entrusted with substantial powers of management. Which of the act undertaken by Ayur shall not be deemed to include the power to do such administrative acts of routine nature as per sec 2(54) of the Act?

(a) To manages the company's budget and allocate its resources

(b) To interact with client and company shareholders

(c) To creates strategic business plans for meeting the company's goals

(d) To affix the common seal of the company to some documents

3. How many directors were required to retire by rotation in the above scenario in Jan 2021?

(a) 2

(b) 1

(c) 4

(d) 3

4. Are Mr. Veda and Mr. Healthy eligible to get compensate for loss of office in accordance with sec 202 of the Companies Act? Choose the correct option from table below.

(a)	Mr. Veda	Eligible	He is Whole Time Director and Act provide compensation for loss of office of WTD.
(b)	Mr. Veda	Not Eligible	He absents himself from all the meeting of the Board of directors during a period of 12 months (Nov 2032-Dec 2024)

	Mr. Healthy	Not Eligible	He is other than MD, WTD or Manager
(c)	Mr. Veda	Eligible	He has been in the board for more than 5 years
	Mr. Healthy	Not Eligible	He is other than MD, WTD or Manager
(d)	Mr. Healthy	Eligible	He has not resigned but retired due to amalgamation.

5. On which basis does sec 204 of the Act containing provision for secretarial Audit and sec 203 containing provision for appointment of Key managerial personnel are applicable to Ayurveda Limited?

   (a) Sec 203 – Appointment of CS - Public company having paid up share capital of 15 crore

   Sec 204 – Secretarial Audit -Every company having outstanding loans or borrowings from bank of 50 crore rupees or more

   (b) Sec 203 – Appointment of CS - Public company having paid up share capital of 5 crore

   Sec 204 – Secretarial Audit -Every company having turnover of 100 crore rupees or more

   (c) Sec 203 – Appointment of CS - Public company having paid up share capital of 6 crore

   Sec 204 – Secretarial Audit -Every company having paid up share capital of 100 crore

   (d) Sec 203 – Appointment of CS - Public company having paid up share capital of 10 crore or more

   Sec 204 – Secretarial Audit -Every company having outstanding loans or borrowings from bank of 100 crore rupees or more

6. Calculate the maximum limits of the managerial remuneration as per Companies Act, 2013

   (a) ₹ 560000

   (b) ₹ 492360

   (c) ₹ 564300

   (d) ₹ 447600

ANSWER TO MULTIPLE CHOICE QUESTION

1. Option (a)

Reason

Because as per sec 164 of the act, 5 years has been elapsed from the date of expiry of the sentence. As per 164(1)(d) of the Act, a person shall not be appointed a director, if he has been convicted by court of any offence, whether involving moral turpitude or otherwise, and sentenced to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence. So, in the above case though imprisonment was for more than 6 months but 5 years has already expired from the date of expiry of sentence.

6 months 16 days from May 2009 will expire in Dec 2009 and he has been appointed as director in Jan 2016 after expiry of 6 years.

2. Option (d) To affix the common seal of the company to some documents.

3. Option (b)

Reason

As per 152(6) regarding retirement of director states that 2/3rd of the total number of director shall be liable to retire by rotation and 1/3rd shall retire. Independent directors are non-rotational director and does not retire by rotation.

So out of 7, 1 is independent director. Hence 7-1 = 6 *2/3 = 4 liable to retire by rotation and 1/3*4=1 need to actually retire.

4. Option (b)

Reason

(b)	Mr. Veda	Not Eligible	He absents himself from all the meeting of the Board of directors during a period of 12 months (Nov 2023-Dec 2024)
	Mr. Healthy	Not Eligible	He is other than MD, WTD or Manager

As per sec 202 of Companies Act, 2013, a company may make payment only to MD, WTD or Manager by means of compensation for loss of office but payment shall not be made where the office of that WTD or MD or Manager is vacated under sec 167(1) of the Act.

In the above case though, Mr. Veda was WTD but he absents himself from all meetings of board during 12 months i.e. from Nov 2022 to Dec 2023 made him ineligible for compensation

Similarly, this provision is applicable only for MD, WTD or Manager and Mr. Healthy is neither of those so not eligible for compensation.

5. Option (d)

Reason

Sec 203 – Appointment of CS - Public company having paid up share capital of 10 crore or more.

Sec 204 – Secretarial Audit -Every company having outstanding loans or borrowings from bank of 100 crore rupees or more.

Sec 204 - As per the latest audited balance sheet of the company, Outstanding loans and borrowings from bank is 106 crores i.e. more than 100 crores, so applicable.

Sec 203 - As per the Act, if paid up share capital of any company is more than 10 crores then KMP or CS has to be appointed. Here paid-up capital is more than 10 crores so applicable.

6. Option (c)

Reason

₹ 564300. It will be (Net Profit + excess depreciation over Companies act + managerial remuneration) *11% = {4476000+(490000-396000) +560000} *11% = 5130000*11% = 564300.

CASE SCENARIO 47

Background

Company Name: Gamma Electronics Pvt. Ltd.

Creditor: Delta Components Ltd.

Industry: Gamma Electronics manufactures electronic gadgets. Delta Components supplies microchips required for these gadgets.

Contractual Relationship:

On June 1, 2023, Gamma Electronics and Delta Components entered into a contract for the supply of microchips.

Delta Components agreed to deliver 50,000 microchips monthly at ₹1,000 per chip.

Payment terms: Net 45 days from the date of invoice.

Facts of the Case

Supply and Invoicing: Delta Components delivered microchips as per the agreement from June to October 2023.

Total invoiced amount for these months: ₹2.5 crores.

Payments for the months of August, September, and October, amounting to ₹1.5 crores, remained unpaid as of December 31, 2023.

Initial Communication:

On January 10, 2024, Delta Components sent a reminder email to Gamma Electronics requesting payment of the overdue amount.

Gamma Electronics replied on January 15, 2024, stating financial constraints and requested a deferred payment plan.

Demand Notice:

Delta Components issued a Demand Notice under Section 8 of the IBC on February 1, 2024, demanding payment of ₹1.5 crores along with accrued interest.

The notice was sent in the prescribed Form 3.

Response to Demand Notice:

On February 10, 2024, Gamma Electronics responded, alleging that the microchips supplied in September and October were defective, causing production losses. They claimed a set-off of ₹ 1 crore for the alleged defective goods.

Creditor's Rebuttal:

Delta Components refuted the defect claims, asserting that Gamma Electronics had not raised any quality concerns at the time of delivery or within the stipulated period in the contract.

Delta Components claimed that the alleged defects were fabricated excuses to delay payment.

Action Taken

Filing of Application:

On March 1, 2024, Delta Components filed an application under Section 9 of the IBC with the National Company Law Tribunal (NCLT), Bengaluru Bench, to initiate a Corporate Insolvency Resolution Process (CIRP) against Gamma Electronics.

The application included details of the contract, invoices, the demand notice, and all communications.

Tribunal's Deliberation:

The NCLT considered whether the debt was due and if there was any substantial dispute regarding the defects claimed by Gamma Electronics.

Tribunal's Decision

Outcome: The NCLT determined that the defect claims were not raised within the appropriate time and lacked credible evidence.

The tribunal admitted the application, commencing the CIRP against Gamma Electronics, and appointed an Interim Resolution Professional (IRP).

Moratorium: A moratorium was declared under Section 14 of the IBC, freezing all claims and proceedings against Gamma Electronics.

MULTIPLE CHOICE QUESTIONS

1. When did Delta Components issue the Demand Notice to Gamma Electronics?
   (a) January 15, 2024
   (b) February 1, 2024
   (c) March 1, 2024
   (d) December 31, 2023
2. What was the primary reason for Gamma Electronics' non-payment, according to their response?
   (a) Financial constraints
   (b) Disputed quantity of goods
   (c) Alleged defects in the microchips
   (d) Change in contract terms
3. Under which section of the IBC did Delta Components file the application to initiate CIRP?
   (a) Section 7
   (b) Section 8
   (c) Section 9
   (d) Section 14
4. What was the total outstanding amount Delta Components claimed in the Demand Notice?
   (a) ₹ 1 crore
   (b) ₹ 2 crores
   (c) ₹ 2.5 crores
   (d) ₹ 1.5 crores

5. Which document was essential for Delta Components to file under Section 9 of the IBC?
   (a) Financial statements of Gamma Electronics
   (b) Demand Notice in Form 3
   (c) Certificate of Incorporation of Gamma Electronics
   (d) Contract between the parties
6. What role did the NCLT play in this scenario?
   (a) Approved the new payment plan proposed by Gamma Electronics
   (b) Rejected the claims of Delta Components
   (c) Determined the presence of a genuine dispute and dismissed the application
   (d) Commenced CIRP and appointed an IRP
7. What is a key requirement under Section 9 of the IBC for an operational creditor before filing an application?
   (a) Prove the financial incapacity of the debtor
   (b) Issue a Demand Notice and wait for the debtor's response
   (c) Obtain approval from other creditors
   (d) File a police complaint against the debtor
8. Why did the NCLT reject Gamma Electronics' defense regarding the defects?
   (a) Lack of evidence and delay in raising the issue
   (b) The contract did not allow claims for defects
   (c) The NCLT found the microchips to be of high quality
   (d) Delta Components admitted the defects

TO MULTIPLE CHOICE QUESTION

1. Option (b)

Reason

Delta Components issued the Demand Notice under Section 8 of the Insolvency and Bankruptcy Code (IBC) on **February 1, 2024**, as explicitly mentioned in the facts provided. The notice was for the overdue amount of ₹1.5 crore and was issued in the prescribed **Form 3**.

2. Option (c)

Reason

Gamma Electronics claimed that the **microchips** supplied in **September and October 2023** were **defective**, which led to production losses. This was the reason they provided for not making the payment, although Delta Components refuted the claim, asserting that no quality concerns were raised at the time of delivery.

3. Option (c)

Reason

Delta Components, being an **operational creditor**, filed an application under **Section 9** of the IBC, which allows operational creditors to initiate the **Corporate Insolvency Resolution Process (CIRP)** against a defaulting company. Section 7 applies to financial creditors, whereas Section 9 is for operational creditors like Delta Components.

4. Option (d)

Reason

The **total outstanding amount** claimed in the **Demand Notice** was ₹1.5 crores. This was the amount that Gamma Electronics owed for the months of **August, September, and October 2023** as per the agreed terms of supply, and it had remained unpaid as of **December 31, 2023**.

5. Option (b)

Reason

To initiate a **CIRP** under **Section 9** of the IBC, an operational creditor must first issue a **Demand Notice in Form 3** to the debtor. Delta Components issued this notice on **February 1, 2024**, before filing the application with the NCLT.

6. Option (d). Reasoning: The **National Company Law Tribunal (NCLT)** assessed the application and concluded that there was no **genuine dispute** regarding the debt. The NCLT admitted the **application** and commenced the **Corporate Insolvency Resolution Process (CIRP)** against Gamma Electronics. It also appointed an **Interim Resolution Professional (IRP)** to oversee the process.

7. Option (b) Issue a Demand Notice and wait for the debtor's response

Reason

Section 9 of the IBC requires that before an operational creditor can file an application for CIRP, the creditor must **issue a Demand Notice** and wait for the debtor's response. The debtor has 10 days to respond, failing which the creditor can proceed with filing the application with the NCLT.

8. Option (a)

Reason

The NCLT rejected Gamma Electronics' defense because they failed to provide **credible evidence** of the alleged defects and did not raise the issue in a timely manner. Under the contract, any claims for defective goods should have been made **within the stipulated period** (as per the contract terms). Since Gamma Electronics raised the defect claim too late (after months of non-payment), the NCLT found it to be a **delayed excuse** to avoid payment and dismissed the claim.

CASE SCENARIO 48

Born and brought up in the environs of the magnificent Kanchanchanga amidst the idyllic and scenic surroundings of hills and the tea plantations of Darjeeling, Samanvay who successfully completed his MBA from Sikkim University, has over the years developed a deep passion for God's gift for mankind - Darjeeling hills, Darjeeling Tea and Golden Leaves Private Limited, the company founded by his grandfather at the time when tea estates were sold to business houses by the Britishers soon after India's independence.

The tea estate, owned by Golden Leaves Private Limited, is presently managed by Samanvay's father Harendra who is company's Chairman and Managing Director (CMD). In addition, following persons are acting as directors of the company:

1. Parmendra (Elder paternal uncle of Samanvay);
2. Yogendra (Younger paternal uncle of Samanvay);
3. Shailesh and Nilesh (Sons of Parmendra);
4. Shubhasheesh and Shubham (Sons of Yogendra);
5. Viswas (College friend of Nilesh).

Samanvay also joined as director of the company in May, 2021.

The Authorised capital of Golden Leaves Private Limited is ₹ 15,00,00,000 (divided into 1,50,00,000 equity shares of ₹ 10 each). Its paid-up capital was increased from ₹ 8,00,00,000 (80,00,000 equity shares of ₹ 10 each) to ₹ 12,00,00,000 (divided into 1,20,00,000 of ₹ 10 each) when equity shares worth ₹ 4,00,00,000 were allotted to the existing members in the month of April, 2023.

The tea estate is spread over 180 hectares at a height of 2100 mts. above sea level. The range of teas cultivated by the company includes black tea, white tea, green tea, etc. The directors of the company make sure that their teas are as fresh as in the gardens when they reach their clients. Their tea plantation is hand-cultivated and produced with a tremendous level of care, experience and expertise in handling and manufacture of pure Darjeeling tea leaves.

The tea cultivated by the company, after due process, is sold in packs of 10 gms, 20 gms, 50 gms, 100 gms, 250 gms, 500 gms and 1000 gms. Their tea business

is a flourishing one. Samanvay wants to take the golden legacy forward by popularising the concept of the finest and most exotic tea from Darjeeling across the world in countries like Japan, Canada, Germany, etc. Currently, the company is registered with Tea Board of India.

The business is growing by and by. However, it was noticed that Viswas, one of the directors of Golden Leaves Private Limited, was involved in certain activities which were not conducive to the growth of the company and accordingly, it was decided to ask Viswas to resign from the office of director. Though Viswas resigned but he demanded compensation for loss of office as director.

On patriotic front, Golden Leaves Private Limited always wanted to do something for the nation as a whole. In the current financial year 2023-24, Samanvay's father Harendra, CMD, is desirous of contributing ₹ 8,00,000 to the National Defence Fund though his elder brother Parmendra is of the view that the company can contribute maximum upto ₹ 5,00,000 to the said Fund.

It is noteworthy that Golden Leaves Private Limited is mulling upon the issue of merger of Big Horizon Marketing Private Limited with itself. For this purpose, it is contemplating filing a petition with the jurisdictional National Company Law Tribunal (NCLT).

Amrit is Production Manager of Golden Leaves Private Limited. He has applied for a loan of ₹ 15,00,000 for the marriage of his daughter Sneha. However, according to Akhil, the Finance Manager of the company, limits provided under Section 186 (2) in respect of loan etc. have already been exceeded.

MULTIPLE CHOICE QUESTIONS

1. According to the case scenario, Viswas resigned as director since it was noticed that his activities were not conducive to the growth of the company. However, he demanded compensation for loss of office as director. Which option do you think is correct:

   (a) Being an ordinary director, Viswas would not be paid any compensation for loss of office as director.

   (b) Since Viswas was asked by the company to resign as director, he would be compensated for loss of office as director maximum upto

50% of the amount payable to other directors during the remaining tenure of Viswas after his resignation.

(c) Since Viswas was asked by the company to resign as director, he would be compensated for loss of office as director maximum upto 60% of the amount payable to other directors during the remaining tenure of Viswas after his resignation.

(d) Since Viswas was asked by the company to resign as director, he would be compensated for loss of office as director maximum upto 75% of the amount payable to other directors during the remaining tenure of Viswas after his resignation.

2. The case scenario does not state about the appointment of a whole-time company secretary by Golden Leaves Private Limited. Is it necessary for the company to appoint a whole-time company secretary? Choose the correct option from those given below:

(a) Golden Leaves Private Limited is a private company and therefore, it is not necessary for it to appoint a whole-time company secretary.

(b) Golden Leaves Private Limited is required to appoint a whole-time company secretary since its paid-up capital has exceeded the threshold limit of ₹ 10,00,00,000.

(c) Golden Leaves Private Limited is not required to appoint a whole-time company secretary since its paid-up capital has not exceeded the threshold limit of ₹ 15,00,00,000.

(d) Golden Leaves Private Limited is not required to appoint a whole-time company secretary since its Authorised capital has not exceeded the threshold limit of ₹ 20,00,00,000.

3. The case scenario states that Amrit, the Production Manager of Golden Leaves Private Limited has applied for a loan of ₹ 15,00,000 for the marriage of his daughter Sneha. However, according to Akhil, the Finance Manager, limits provided under Section 186 (2) in respect of loan etc. have already been exceeded Select the correct option from those given hereunder:

(a) Keeping in view that limits provided under Section 186 (2) in respect of loan etc. have already been exceeded, a special resolution needs to be passed for granting loan of ₹ 15,00,000 to Amrit.

(b) Though limits provided under Section 186 (2) in respect of loan etc. have already been exceeded, yet there is no need to pass a special resolution for granting loan of ₹ 15,00,000 to Amrit.

(c) Keeping in view that limits provided under Section 186 (2) in respect of loan etc. have already been exceeded, an ordinary resolution needs to be passed for granting loan of ₹ 15,00,000 to Amrit.

(d) Keeping in view that limits provided under Section 186 (2) in respect of loan etc. have already been exceeded, prior permission of jurisdictional Registrar of Companies needs to be obtained for granting loan of ₹ 15,00,000 to Amrit.

4. On the question of making contribution to the National Defence Fund, there is some controversy between Harendra, CMD and his elder brother Parmendra, one of the directors of the company. You are required to select the correct option from those given below:

(a) It is within the discretion of the company to contribute such amount as it thinks fit to the National Defence Fund.

(b) Parmendra's view point that the company can contribute maximum upto ₹ 5,00,000 to the National Defence Fund is correct.

(c) Parmendra's view point would have been correct if he had advised for contribution of maximum ₹ 6,00,000 to the National Defence Fund.

(d) Parmendra's view point would have been correct if he had advised for contribution of maximum ₹ 7,50,000 to the National Defence Fund.

5. According to the case scenario, the company is mulling upon the issue of merger of Big Horizon Marketing Private Limited with itself. Select the correct option which you think is applicable:

(a) The company will be required to alter its Memorandum of Association to get empowered for merger of Big Horizon Marketing Private Limited with itself.

(b) The company will not be required to alter its Memorandum of Association for merger of Big Horizon Marketing Private Limited with itself.

(c) The company will be required to alter its Memorandum of Association and to seek permission from jurisdictional Registrar of Companies to get empowered for merger of Big Horizon Marketing Private Limited with itself.

(d) The company will be required to add a specific clause in the Articles of Association in respect of merger.

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (a)** Being an ordinary director, Viswas would not be paid any compensation for loss of office as director.

Reason

Section 202 states that a company may make payment to a managing director or whole-time director or manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.]

2. **Option (b)** Golden Leaves Private Limited is required to appoint a whole-time company secretary since its paid-up capital has exceeded the threshold limit of ₹ 10,00,00,000.

Reason

Refer Section 203. Also refer Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, which states that every private company which has a paid-up share capital of ten crore rupees or more shall have a whole-time company Secretary.]

3. **Option (b)** Though limits provided under Section 186 (2) in respect of loan etc. have already been exceeded, yet there is no need to pass a special resolution for granting loan of ₹ 15,00,000 to Amrit.

Reason

Refer Explanation to Section 186 (2) which mentions that for the purpose of Section 186 (2), the word 'person' does not include any individual who is in the employment of the company.

4. **Option (a)** It is within the discretion of the company to contribute such amount as it thinks fit to the National Defence Fund.

Reason

Refer Section 183 of the Companies Act, 2013 which provides for contribution of any amount to the National Defence Fund.

5. **Option (b)** The company will not be required to alter its Memorandum of Association for merger of Big Horizon Marketing Private Limited with itself.

Reason

Refer Section 232 of the Companies Act, 2013 which is a complete code in respect of merger and amalgamation of companies. It fully empowers National Company Law Tribunal (NCLT) to sanction merger and amalgamation of companies irrespective of whether the 'objects clause' of Memorandum of Association contains such empowerment or not.

CASE SCENARIO 49

Background

Company Name: Omega Constructions Ltd.

Applicant: Epsilon Bank Ltd.

Industry: Omega Constructions Ltd. is a large construction company involved in various infrastructure projects.

Financial Situation:

- Omega Constructions borrowed ₹200 crores from Epsilon Bank in 2021 for the development of a commercial real estate project.
- Due to economic downturns and project delays, Omega Constructions defaulted on its loan repayments in November 2023.

Facts of the Case

1. **Initiation of CIRP:**

   Epsilon Bank issued a demand notice under Section 7 of the Insolvency and Bankruptcy Code (IBC), 2016, and subsequently filed an application with the National Company Law Tribunal (NCLT), Delhi Bench, on February 15, 2024, to initiate a Corporate Insolvency Resolution Process (CIRP) against Omega Constructions.

2. **Admission of Application:**

   The NCLT admitted the application on March 15, 2024, based on the evidence of default provided by Epsilon Bank.

   The tribunal appointed an Interim Resolution Professional (IRP) and declared a moratorium under Section 14 of the IBC, 2016.

3. **Moratorium Provisions:**

   As per Section 14, the moratorium period began immediately upon admission of the application. The provisions included:

   - **Prohibition on Institution of Suits:** No new legal proceedings against Omega Constructions can be initiated.

- **Stay on Existing Proceedings:** All existing legal proceedings against Omega Constructions are stayed.
- **Prohibition on Transfer of Assets:** Omega Constructions is prohibited from transferring, encumbering, or disposing of any assets.
- **No Recovery Actions:** Creditors cannot recover or enforce any security interest against the assets of Omega Constructions during the moratorium.

4. **Challenges Faced During Moratorium:**

Legal Proceedings: A subcontractor, Zeta Services Ltd., had a pending arbitration against Omega Constructions for non-payment of ₹10 crores for services rendered. The arbitration was stayed as per the moratorium.

Recovery Actions: Delta Finance Ltd., which holds a charge on Omega Constructions' machinery, attempted to repossess the machinery due to loan default but was barred by the moratorium.

Operational Issues: Omega Constructions' suppliers demanded immediate payment for ongoing supplies but were informed that payments could not be made due to the moratorium.

5. **Interim Resolution Professional's Actions:**

The IRP took control of Omega Constructions' operations, ensured continuity of essential projects, and negotiated with suppliers to provide goods and services on a credit basis during the moratorium.

6. **Lifting of Moratorium:**

The moratorium will end upon approval of a resolution plan or upon passing an order for liquidation by the NCLT if no viable resolution plan is approved within the stipulated time frame.

Tribunal's Deliberation and Actions

- **Tribunal's Consideration:**

The NCLT evaluated the compliance of the IRP's actions with the moratorium provisions and addressed various creditors' concerns regarding their inability to take enforcement actions during this period.

The NCLT reinforced the importance of the moratorium to ensure a fair and equitable resolution process without disruption from individual creditor actions.

- **Outcome:**

  The NCLT maintained the moratorium, upheld the IRP's actions, and continued the CIRP proceedings.

MULTIPLE CHOICE QUESTIONS

1. What was the primary purpose of the moratorium imposed on Omega Constructions Ltd.?
   (a) To allow creditors to recover dues
   (b) To enable Omega Constructions to sell assets freely
   (c) To protect the interests of creditors and ensure a structured resolution process
   (d) To allow Omega Constructions to merge with another company
2. When did the NCLT admit the application for CIRP against Omega Constructions?
   (a) February 15, 2024
   (b) March 15, 2024
   (c) November 15, 2023
   (d) December 15, 2023
3. Which action is NOT prohibited under the moratorium declared under Section 14?
   (a) Initiating new legal proceedings against Omega Constructions
   (b) Transferring assets of Omega Constructions
   (c) Enforcing security interests against Omega Constructions' assets
   (d) Continuing essential business operations of Omega Constructions

4. What happens to existing legal proceedings against Omega Constructions during the moratorium?
   (a) They continue as usual
   (b) They are dismissed automatically
   (c) They are stayed until the moratorium ends
   (d) They are transferred to the IRP for resolution
5. Which party took control of Omega Constructions' operations during the moratorium?
   (a) The original management of Omega Constructions
   (b) Epsilon Bank Ltd.
   (c) The Interim Resolution Professional (IRP)
   (d) The NCLT
6. How did the moratorium affect Delta Finance Ltd.'s attempt to repossess machinery from Omega Constructions?
   (a) Delta Finance Ltd. successfully repossessed the machinery
   (b) Delta Finance Ltd. was prohibited from repossessing the machinery
   (c) Delta Finance Ltd. sold the machinery to recover dues
   (d) Delta Finance Ltd. received payment in full during the moratorium
7. When does the moratorium period typically end according to the IBC, 2016?
   (a) When the IRP completes its term
   (b) Upon approval of a resolution plan or order for liquidation by the NCLT
   (c) After one year from the date of imposition
   (d) When all creditors are paid off
8. Which entity is responsible for ensuring compliance with the moratorium provisions?
   (a) The original management of the debtor company

(b) The creditors of the debtor company

(c) The Interim Resolution Professional (IRP)

(d) The NCLT directly

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (c)** To protect the interests of creditors and ensure a structured resolution process

Reason

The moratorium was imposed to prevent any individual creditor from taking independent action during the Corporate Insolvency Resolution Process (CIRP). This ensures that the resolution process is fair, equitable, and conducted in a structured manner. It prevents disruptions from creditors attempting to enforce claims while the CIRP is ongoing.

2. **Option (b)** March 15, 2024

Reason

The National Company Law Tribunal (NCLT) admitted the application to initiate the CIRP against Omega Constructions on March 15, 2024. This admission was based on the evidence of default provided by Epsilon Bank, the financial creditor.

3. **Option (d)** Continuing essential business operations of Omega Constructions

Reason

The moratorium prohibits the initiation of new legal proceedings, the transfer of assets, and the enforcement of security interests. However, it allows the continuation of essential business operations (like negotiating with suppliers), as the IRP took control of operations and worked to maintain business continuity.

4. **Option: (c)** They are stayed until the moratorium ends

Reason

During the moratorium, any existing legal proceedings against the debtor are stayed (put on hold). This includes the pending arbitration case with

Zeta Services Ltd., which was stayed during the CIRP. The purpose of the moratorium is to prevent any disruptions in the resolution process while the company is under the IRP's control.

5. **Option (c)** The Interim Resolution Professional (IRP)

Reason

Under the Insolvency and Bankruptcy Code (IBC), when the CIRP is initiated, the Interim Resolution Professional (IRP) takes control of the company's operations. The IRP is responsible for managing the company's affairs, ensuring continuity of operations, and negotiating with creditors and suppliers during the moratorium period.

6. **Option(b)** Delta Finance Ltd. was prohibited from repossessing the machinery

Reason

The moratorium prohibits creditors, such as Delta Finance Ltd., from taking any recovery actions or enforcing security interests against the assets of the debtor. In this case, Delta Finance Ltd. was barred from repossessing the machinery under the provisions of the moratorium.

7. **Option (b)** Upon approval of a resolution plan or order for liquidation by the NCLT

Reason

The moratorium period ends when either a resolution plan is approved by the NCLT or when the NCLT orders liquidation of the company. The moratorium is designed to provide a period of stability for the resolution process to occur, without interference from creditors.

8. **Option (c)** The Interim Resolution Professional (IRP)

Reason

The IRP is responsible for overseeing the debtor company's operations during the moratorium period and ensuring compliance with all the provisions of the IBC. This includes enforcing the moratorium restrictions and managing the company's affairs while the CIRP is underway.

CASE SCENARIO 50

Toastea Ltd. is a company engaged in activities that were registered under the Foreign Contribution (Regulation) Act (FCRA), 2010. The Central Government, after providing Toastea Ltd. an opportunity to be heard, has canceled its certification of registration on the grounds that such cancellation was in the public interest. This cancellation occurred two and a half years ago. The company has since submitted a written declaration stating that it will not engage in such activities again and is now requesting the restoration of its FCRA registration.

In light of the Foreign Contribution (Regulation) Act, 2010, Toastea Ltd. wishes to know whether it is eligible to re-register or if it can obtain prior permission for receiving foreign contributions despite the previous cancellation of registration.

Meanwhile, other scenarios require an examination of the FCRA, 2010 provisions, particularly concerning the receipt of foreign contributions in various situations. These scenarios involve:

M/s KG & Co., a partnership firm, obtaining a loan from a club registered in London.

Hello FM, a registered association, receiving funds from a foreign company to establish a radio station.

Mr. Happy, who receives a wristwatch as a gift from his uncle, a citizen of the USA, and whether it qualifies as foreign contribution.

Mr. Ramakant Hathi, an IAS officer, who receives foreign hospitality in the form of medical treatment while in Germany.

XYZ Foundation, a society under the **Societies Registration Act, 1860**, which received foreign contribution and is now considering investing its proceeds in mutual funds.

MULTIPLE CHOICE QUESTIONS

1. Can Toastea Ltd. apply for re-registration under the FCRA after its registration was canceled 2.5 years ago?

   (a) Yes, without any restrictions

(b) Yes, only if the company provides a valid reason for its non-compliance with the FCRA rules during the past period

(c) No, it can never apply for re-registration

(d) Yes, but it must apply for prior permission before receiving foreign contributions

2. M/s KG & Co., a partnership firm, obtains a loan from a foreign club registered in London. Is this loan considered a foreign contribution under the FCRA, 2010?

(a) Yes, since it is a foreign loan

(b) No, loans do not qualify as foreign contributions under the FCRA

(c) Yes, it qualifies as foreign contribution if the loan is provided for business purposes

(d) No, because loans are not typically given under the FCRA

3. Is Hello FM, a registered association, permitted to receive funds from a foreign company for establishing a Frequency Modulation (FM) radio station to broadcast audio news?

(a) Yes, since Hello FM is a registered association under FCRA

(b) No, as broadcasting is a restricted activity under FCRA

(c) Yes, if the foreign company is not engaged in prohibited activities

(d) No, as foreign companies cannot contribute to broadcasting projects under the FCRA

4. Mr. Happy receives a wristwatch worth ₹ 25,000 from his uncle, a citizen of the USA, as a marriage anniversary gift. Does this qualify as foreign contribution under the FCRA?

(a) Yes, as it is a gift from a foreign source

(b) No, personal gifts from relatives do not qualify as foreign contributions

(c) Yes, it is considered a foreign contribution since the sender is a foreign citizen

(d) No, since the value is below ₹ 50,000, it is not foreign contribution

5. Mr. Ramakant Hathi, an IAS officer, received foreign hospitality of INR 65,000 during his visit to Germany. Does he need to report this under the FCRA, 2010?

   (a) Yes, as the amount exceeds INR 25,000

   (b) No, since he is an official of the Indian government

   (c) Yes, since it is foreign hospitality received during an official visit

   (d) No, foreign hospitality is not reportable under FCRA

6. XYZ Foundation, registered under the Societies Registration Act, 1860, received foreign contributions from Mala Company LLC, a company incorporated in Singapore. The Foundation intends to invest the maturity proceeds of the deposits in mutual funds. Is this permissible under the FCRA?

   (a) Yes, XYZ Foundation can invest in mutual funds as long as the funds are from foreign contributions

   (b) No, foreign contributions cannot be invested in mutual funds under the FCRA

   (c) Yes, but only if the mutual funds are part of an approved government scheme

   (d) No, because the funds were deposited in a bank and earned interest, which is restricted under the FCRA

ANSWER TO MULTIPLE CHOICE QUESTION

1. **Option (d)** Yes, but it must apply for prior permission before receiving foreign contributions

Reason

Under the **FCRA, 2010**, once the registration of an organization is canceled, the organization cannot receive foreign contributions until its registration is restored. Since **Toastea Ltd.** was registered under FCRA but had its registration canceled, it must apply for **prior permission** before it can receive any foreign contribution, even though it has pledged not to engage in prohibited activities again. The two and a half-year period does

not automatically restore the company's eligibility for receiving foreign contributions without re-registration or prior permission.

2. **Option (b)** No, loans do not qualify as foreign contributions under the FCRA

   Reason

   Under the **FCRA, 2010**, a **foreign contribution** is defined as any amount or article received from a foreign source, but **loans** are **explicitly excluded** from the definition of foreign contribution. The fact that **M/s KG & Co.** received a loan for business purposes from a foreign club does not make it a foreign contribution under the Act. Foreign contributions are restricted to **donations** or **grants**, not loans.

3. **Option (b)** No, as broadcasting is a restricted activity under FCRA

   Reason

   Under the **FCRA, 2010**, associations engaged in certain activities such as broadcasting, news media, or other mass communication projects are subject to strict regulation. In this case, **Hello FM** receiving funds from a **foreign company** to establish a **radio station** is likely considered a prohibited activity unless it has specific permission for such purposes. The Act generally restricts foreign contributions for activities that may influence public opinion in India, such as media broadcasts.

4. **Option (b)** No, personal gifts from relatives do not qualify as foreign contributions

   Reason

   The **FCRA, 2010** does not treat personal gifts from **relatives** as **foreign contributions**. Since Mr. Happy received a gift from his **uncle**, a **foreign citizen**, it is considered a personal gift and not a **foreign contribution** under the provisions of the Act. The **FCRA** regulates donations and grants but does not apply to personal, non-business gifts between individuals.

5. **Option (b)** No, foreign contributions cannot be invested in mutual funds under the FCRA

Reason

Under the **FCRA, 2010**, any Indian **public servant**, including an **IAS officer**, who receives foreign hospitality exceeding **INR 25,000** must inform the **Government of India**. The amount of **INR 65,000** for medical treatment in Germany qualifies as foreign hospitality and must be reported under the **FCRA rules**.

6. Option (b)

Reason

Under the **FCRA, 2010**, foreign contributions can only be used for specific purposes that align with the objectives for which the contributions were received. The **investment of foreign contributions** in speculative or non-aligned ventures such as **mutual funds** is **not allowed** under the Act. The funds must be used for the objectives of the society or organization and cannot be used for activities not directly related to the purpose for which the foreign contributions were received.