

Paper 13 – Corporate Laws and Compliance

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Full Marks: 100

Time allowed: 3 hours

Section – A

1. Answer all questions.

(a) Multiple Choice Questions

[20 Marks]

- (i) If a person appointed as an auditor of a company incurs any of the disqualification specified in Section 141 (3), he shall be deemed to have vacated his office. Such vacation shall be deemed to be _____ in the office of the auditor.
- (a) casual vacancy**
(b) permanent vacancy
(c) ad-hoc vacancy
(d) None of the above
- (ii) A One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within _____ days from the closure of the financial year.
- (a) 180**
(b) 90
(c) 45
(d) 30
- (iii) The Court or Special Court, while deciding the amount of fine or imprisonment under Section 446A of Companies Act, shall have due regard to _____ .
- (a) Size of the company
(b) Injury to public interest
(c) Nature of default
(d) All of the above
- (iv) Contracts made by or on behalf of a company, may not be signed by _____ duly authorised by the Board in this behalf.
- (a) Key Managerial Person
(b) An Officer
(c) Employee of the company
(d) Auditor
- (v) A resolution professional can take action only with prior approval of committee of creditors, with _____ voting in favour
- (a) 75%**
(b) 10%

- (c) 51%
- (d) None of the above
- (vi) Chapter VIA of SEBI Act 1992 deals with _____
- (a) Powers and Functions of the Board
- (b) Penalties and Adjudication**
- (c) Registration Certificate
- (d) Finance, Accounts and Audit
- (vii) Wherever during the course of inquiry, the Competition Commission exercises its jurisdiction to pass interim orders; it should pass a final order in that behalf as expeditiously as possible and in any case not later than _____ days.
- (a) **60**
- (b) 45
- (c) 30
- (d) 180
- (viii) _____ includes a person to whom the whole of the interest of policy holder in the policy is assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition
- (a) Nominee
- (b) Policy-Holder**
- (c) Claimant
- (d) None of the above
- (ix) Section 25 of Banking Regulation Act, 1949 requires for the maintenance of assets equivalent to _____ of its demand and time liabilities in India, at the close of business of the last Friday of every quarter.
- (a) Maximum 75%
- (b) at least 75%**
- (c) Maximum 90%
- (d) at least 90%
- (x) SmartGov project has been developed to streamline operations, enhance efficiency through workflow automation and knowledge management for implementation in the _____ Secretariat.
- (a) Karnataka
- (b) Telengana
- (c) Andhra Pradesh**
- (d) West Bengal

Section – B

Answer any 5 questions:

[16×5 = 80]

2. (a) 'OPC is enabling entrepreneur(s) carrying on the business in the Sole Proprietor form of business to enter into a corporate framework.' – Discuss [8]

Answer:

This is very true that through One Person Company (OPC) a businessman can enter into a Corporate Framework from the Sole Proprietor form of business. The concept of OPC is new to this era of the corporate world. In very simple sense, In OPC, a single person could constitute a company. The new Companies Act, 2013 has done away with redundant provisions of the previous Companies Act, 1956, and provides for a new entity in the form of OPC, while empowering the Central Government to provide a simpler compliance regime for small companies. The introduction of OPC in the legal system is a move that would encourage corporatisation of micro-businesses and entrepreneurship. Whereas a Sole Proprietorship firm is also one person business but there are no legal formalities. A Sole Proprietorship means an entity which is run and owned by one individual and where there is no distinction between the owner and the business.

The Companies Act, 2013 classifies companies on the basis of their number of members into OPC, private company and public company. A private company requires a minimum of two members. In other words, an OPC is a kind of private company having only one member.

As per section 2(62) of the Companies Act, 2013, –One Person Company means a company which has only one person as a member. Section 3(1) (c) of the Companies Act, 2013 lays down that a company may be formed for any lawful purpose by one person. In other words, one person company is a kind of private company. An OPC shall have a minimum of one director. Therefore, an OPC will be registered as a private company with one member and one director. By virtue of section 3(2), an OPC may be formed either as a company limited by shares or a company limited by guarantee; or an unlimited liability company.

Also we can mention that, according to Section 2 (62) of the Companies Act, 2013 _One Person Company means a company which has only one person as a member. A company formed under one person company may be either:

- a) A company limited by shares, or
- b) company limited by guarantee, or
- c) An unlimited company.

OPC is a hybrid of Sole-Proprietor and Company form of business, and has been provided with concessional/relaxed requirements under the act.

(b) State the circumstances under which a company may be wound up by Tribunal.

[8]

Answer:

Circumstances in which company, may be wound up by Tribunal (Section 271)

Grounds on which a Company may be wound up by the Tribunal, a Company under Section 271(1) may be wound up by the Tribunal if:

- (i) The company is unable to pay its debts.
- (ii) The company has by special resolution resolved that the company be wound up by the Tribunal.
- (iii) The company has acted against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency, or morality.
- (iv) The Tribunal has ordered the winding up of the company under chapter XIX (i.e., Revival and Rehabilitation of Sick companies).
- (v) On an application made by the Registrar or any other person authorized by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up.
- (vi) The Company has made a default in filing with the registrar its financial statements or annual returns for immediately preceding five consecutive financial years or
- (vii) The Tribunal is of the opinion that it is just and equitable that the company should be wound up

3. (a) There are four directors in Jeans & Denims Limited. Mr. Michael, being the director in station, has been authorized to draw and endorse cheque or other negotiable instruments on account of the company and also to direct registration of transfer of shares and signing the share certificates etc. Evaluate whether he will be treated as Managing Director of the company. Also recommend the procedure of appointment of a Managing Director in a company in the light of the Companies Act, 2013. [8]

Answer:

Managing Director [Section 2(54)]: Section 2(54) of the Companies Act, 2013 defines a "Managing Director" as a director who is entrusted with substantial powers of management of the affairs of the company by:

- (a) virtue of articles of a company, or
- (b) an agreement with the company, or
- (c) a resolution passed in its general meeting, or by its Board of Directors, and includes a director occupying the position of the managing director, by whatever name called.

Explanation to Section 2 (54) clarifies that substantial powers of the management shall not be deemed to include the power to do such administrative acts of a routine nature when so authorised by the Board such as:

- (i) the power to affix the common seal of the company to any document or
- (ii) to draw and endorse any cheque on the account of the company in any bank or
- (iii) to draw and endorse any negotiable instrument or
- (iv) to sign any certificate of share or
- (v) to direct registration of transfer of any share.

In the instant case, Mr. Michael, a director in Jeans and Denims Limited has been, authorized to draw and endorse cheque or other negotiable instruments on account of the company and also to direct registration of transfer of shares and signing the share certificates etc.

Hence, according to explanation to section 2(54), Mr. Michael will not be treated as managing director of the company as he is authorized to do administrative acts of a routine nature.

Procedure of appointment of a managing director [Section 196(4)]

1. Subject to the provisions of section 197 and Schedule V, a managing director shall be appointed, and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting.
2. The terms and conditions and remuneration approved by Board of Directors as above shall be subject to the approval of shareholders by a resolution at the next general meeting of the company.
3. In case such appointment is at variance to the conditions specified in the Schedule V of the Companies Act, 2013, the appointment shall be approved by the Central Government.
4. The notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any.
5. A return in the prescribed form (Form No. MR.1) along with the prescribed fee shall be filed with the Registrar within sixty days of such appointment.

(b) Discuss the provisions regarding to vacation of office of director.

[8]

Answer:

The provisions regarding to vacation of office of director are contained in section 167 of the Companies Act, 2013, which are as follows:

As per **Section 167(1)**, the office of a director shall become vacant in case -

- (i) he incurs any of the disqualifications specified in section 164;
Provided that where he incurs disqualification under the above, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section

- (ii) 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;
- (iii) he acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;
- (iv) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;
- (v) he becomes disqualified by an order of a court or the Tribunal;
- (vi) 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:

Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f) above -

- (i) for thirty days from the date of conviction or order of disqualification;
 - (ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or
 - (iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of.
- (vii) he is removed in pursuance of the provisions of this Act;
- (viii) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

As per **Section 167(2)**, if a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in subsection (1), he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

As per **Section 167(3)**, where all the directors of a company vacate their offices under any of the disqualifications specified in sub-section (1), the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

As per **Section 167(4)**, a private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified in sub-section (1).

- 4. (a) State with reference to the relevant provisions of the Companies Act, 2013 whether the following persons can be appointed as a Director of a Company:**
- (i) Mr. Arvind Swamy who has huge personal liabilities far in excess of his Assets and Properties has applied to the court for adjudicating him as an insolvent and such application is pending.**

- (ii) **Mr. Bikash Halder who was caught red-handed in a shop lifting case two years ago, was convicted by a court and sentenced to imprisonment for a period of eight weeks. [6]**

Answer:

- (i) Section 164 (1)(c) states that a person shall not be eligible for appointment as a director: of a company if he has applied to be adjudicated as an insolvent and his application is pending. Therefore, in the present case, Mr. Arvind Swamy cannot be appointed as a Director of a Company- whether public or private.
- (ii) Section 164 (1)(d) states that a person shall not be eligible for appointment as a Director of a Company if he has been convicted by a Court for any offence involving general turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months, and a period of five years has not elapsed from the date of expiry of the sentence. In the present case, although the sentence was only two years ago but the period of sentence was only eight weeks i.e., less than six months. Hence, Mr. Bikash Halder does not come under the purview of this disqualification and can be appointed as a Director of a Company.

(b) Discuss the provisions of Companies Act, 2013 regarding declaration of dividend. [10]

Answer:

Declaration of Dividend [Section 123 of Companies Act, 2013]

- (1) No dividend shall be declared or paid by a company for any financial year except –
- (a) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of both

Provided that in computing profits any amount representing unrealised gains, notional gains or revaluation of assets and any change in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded; or

- (b) out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government:

Provided that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company:

Provided further that where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the free reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf:

Provided also that no dividend shall be declared or paid by a company from its reserves other than free reserves.

Provided also that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.

- (2) For the purposes of clause (a) of sub-section (1), depreciation shall be provided in accordance with the provisions of Schedule II.
- (3) The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend:

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

- (4) The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend.
- (5) No dividend shall be paid by a company in respect of any share therein except to the registered shareholder of such share or to his order or to his banker and shall not be payable except in cash:

Provided that nothing in this sub-section shall be deemed to prohibit the capitalisation of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company:

Provided further that any dividend payable in cash may be paid by cheque or warrant or in any electronic mode to the shareholder entitled to the payment of the dividend.]

(6) A company which fails to comply with the provisions of sections 73 and 74 shall not, so long as such failure continues, declare any dividend on its equity shares.

5. (a) Discuss about the acts taking place outside India but having an effect on competition in India [5]

Answer:

The Commission shall, notwithstanding that:

- (a) an agreement referred to in Section 3 has been entered into outside India. or
- (b) any party to such agreement is outside India. or
- (c) any enterprise abusing the dominant position is outside India. or
- (d) a combination has taken place outside India. or
- (e) any party to combination is outside India. or
- (f) any other matter or practice or action arising out of such agreement or dominant position or combination is outside India.

Have power to inquire in accordance with the provisions contained in Sections 19, 20, 26, 29 and 30 of the Act into such agreement or abuse of dominant position or combination if such agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on competition in the relevant market in India and pass such orders as it may deem fit in accordance with the provisions of this Act.

(b) M/s Samrat is a company engaged in providing services of supplying goods all over the world through aircrafts. The aircrafts of the said company is registered and insured in India with the reputed insurance company. Company found that the insurance policy of one of aircraft which is in Europe had expired. Company said to his officer to get new Insurance policy of that aircraft in Europe. State the validity of such an act of registration of aircraft in Europe. [5]

Answer:

Given problem is based on the Section 2CB of the Insurance Act, 1938. The said Section deals with the Indian properties not to be insured with foreign insurers. According to the Section No person shall take out or renew any policy of Insurance in respect of any property in India or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India, without the permission of the IRDAI. In the given case Act of registration of aircraft M/s Samrat which is an Indian property, with an insurer in Europe, is an invalid Act.

(c) Successful Limited defaulted in the repayment of term loan taken from a Bank against security created as a first charge on some of its assets. The Bank issued notice

pursuant to Section 13 of the SARFAESI Act, 2002 to the Company to discharge its liabilities within a period of 60 days from the date of the notice. The company failed to discharge its liabilities within the time limit specified. Identify and explain the measures to be taken by the Bank to enforce its security interest under the said Act.

[6]

Answer:

Sub-section (4) of section 13 of SARFAESI Act, 2002, provides that if the borrower fails to discharge his liability in full within the 60 days, the secured creditor may take recourse to one or more of the following measures to recover his secured debt:

- (i) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;
- (ii) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;

- (iii) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;
- (iv) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

In the instant case, the Bank may take the above mentioned procedure to enforce its security interest in case Popular Limited has failed to discharge its liabilities within the time limit specified.

6. (a) State the provisions of Initiation of corporate insolvency resolution process by a corporate debtor and the time limit for completion of insolvency resolution process as per Insolvency and Bankruptcy Code, 2016.

[10]

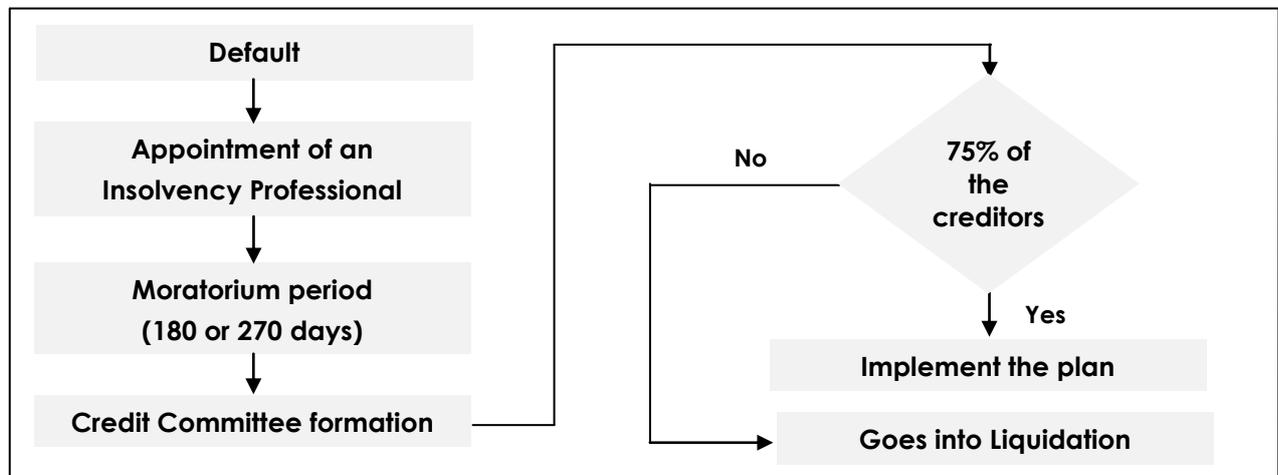
Answer:

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Corporate insolvency resolution process can be commenced when a corporate debtor commits a default - Section 4(1) of Insolvency and Bankruptcy Code, 2016.

The default should be minimum Rupees one lakh. The amount can be increased by Central Government but shall not exceed Rupees one crore - proviso to Section 4(1) of Insolvency and Bankruptcy Code, 2016.

The resolution process and timeline can be diagrammatically represented as:



Meaning of Corporate Person

Corporate person means company or LLP or other body corporate with limited liability. However, the Code completely excludes financial service providers. The reason is that they are regulated by specialized agencies. Thus, the Code does not cover Bank, Financial Institutions, Insurance Company, Asset Reconstruction Company, Mutual Funds, Collective Investment Schemes or Pension Funds.

Who can initiate insolvency resolution process

Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided - Section 6 of Insolvency and Bankruptcy Code, 2016.

Thus, application to initiate insolvency resolution process cannot be filed within 12 months or if there were violation of conditions or where order of liquidation has been made.

Time-limit for completion of insolvency resolution process

Subject to sub-Section 12(2), where extension of time is requested, the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

The resolution professional shall file an application to the Adjudicating Authority to extend the

period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of seventy-five per cent of the voting shares.

On receipt of an application under sub-Section 12(2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this Section shall not be granted more than once.

(b) Mr. Sandeep, an Indian National desires to obtain foreign exchange for the following purposes:

(i) Payment of commission on exports under Rupee State Credit Route.

(ii) Gift remittance exceeding US\$ 10,000.

Advise him whether he can get foreign exchange and if so, under what condition?

[6]

Answer:

Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction. However, the Central Government may, in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign 'Exchange Management (Current Account Transactions) (Rules, 2000. The (Rules stipulate some prohibitions and restrictions on drawal of foreign exchange for certain purposes. In the light of provisions of these rules, the answer to the given problem is as follows:

(i) (Rule 3 read with Schedule I of Foreign 'Exchange Management (Current Account Transactions) (Rules, 2000 prohibits payment of commission on exports under (Rupees State Credit (Route (except commission upto 10% of invoice value of exports of tea and tobacco). Therefore, payment of commission on exports under (Rupee State Credit (Route is prohibited unless such commission is paid for export of tea and tobacco, and the commission does not exceed 10% of invoice value of exports.

(ii) As per (Rule 5 read with Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000, individuals can draw foreign exchange upto US Dollar 2,50,000 for gift or donation referred to as 'the Liberalised (Remittance Scheme). Drawal of foreign exchange in excess of US Dollar 2,50,000 shall require prior approval of the Reserve Bank of India. Therefore, Mr. Sunny can obtain more than US Dollar 10,000 for gift without any approval of the Reserve Bank of India provided the total amount drawn by him during the entire financial year does not exceed US Dollar 2,50,000.

7. (a) CSR and Sustainability go hand in hand. Comment

[8]

Answer:

CSR and Sustainability

Sustainability (Corporate Sustainability) is derived from the concept of sustainable development which is defined by the Brundtland Commission as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". Corporate sustainability essentially refers to the role that companies can play in meeting the agenda of sustainable development and entails a balanced approach to economic progress, social progress and environmental stewardship.

CSR in India tends to focus on what is done with profits after they are made. On the other hand, sustainability is about factoring the social and environmental impacts of conducting business, that is, how profits are made. Hence, much of the Indian practice of CSR is an important component of sustainability or responsible business, which is a larger idea, a fact that is evident from various sustainability frameworks. An interesting case in point is the National voluntary Guidelines (NVGs) for social, environmental and economic responsibilities of business issued by the Ministry of Corporate Affairs in June 2011. Principle eight relating to inclusive development encompasses most of the aspects covered by the CSR clause of the Companies Act, 2013. However, the remaining eight principles relate to other aspects of the business. The United Nations Global Compact, a widely used sustainability framework has 10 principles covering social, environmental, human rights and governance issues, and what is described as CSR is implicit rather than explicit in these principles.

Globally, the notion of CSR and sustainability seems to be converging as is evident from the various definitions of CSR put forth by global organizations. The genesis of this convergence can be observed from the preamble to the recently released rules relating to the CSR clause within the Companies Act, 2013 which talks about stakeholders and integrating it with the social, environmental and economic objectives, all of which constitutes the idea of a triple bottom line approach. It is also acknowledged in the Guidelines on Corporate Social Responsibility and sustainability for Central Public Sector Enterprises issued by the Department of Public Enterprises (DPE) in April 2013. The new guidelines, which have replaced two existing separate guidelines on CSR and sustainable development, issued in 2010 and 2011 respectively, mentions the following:

"Since CSR and sustainability are so closely entwined, it can be said that CSR and sustainability is a company's commitment to its stakeholders to conduct business in an economically, socially and environmentally, sustainable manner that is transparent and ethical."

(b) Write a note on OECD Guidelines.

[8]

Answer:

OECD Guidelines

(a) The OECD Guidelines on Corporate Governance of State-Owned Enterprises (the Guidelines) are recommendations to governments on how to ensure that SOEs operate efficiently, transparently and in an accountable manner. They are the internationally agreed standard for how governments should exercise the state ownership function to avoid the pitfalls of both passive ownership and excessive state intervention. The Guidelines were first developed in 2005 as a complement to the OECD Principles of Corporate Governance. They have been updated in 2015 to reflect a decade of experience with their implementation and address new issues concerning SOEs in the domestic and international context.

The Guidelines aim to:

- (1) professionalise the state as an owner.
- (2) make SOEs operate with similar efficiency, transparency and accountability as good practice private enterprises, and
- (3) ensure that competition between SOEs and private enterprises, where such occurs, is conducted on a level playing field.

(b) The Guidelines do not address whether certain activities are best placed in public or in private ownership. However, if a government decides to divest SOEs then good corporate governance is an important prerequisite for economically effective privatisation, enhancing SOE valuation and hence bolstering the fiscal proceeds from the privatisation process.

The OECD guidelines focused on the following areas:

(1) Rationales for State Ownership

The state exercises the ownership of SOEs in the interest of the general public. It should carefully evaluate and disclose the objectives that justify state ownership and subject these to a recurrent review.

(2) The State's Role as an Owner

The state should act as an informed and active owner, ensuring that the governance of SOEs is carried out in a transparent and accountable manner, with a high degree of professionalism and effectiveness.

(3) State-Owned Enterprises in the Marketplace

Consistent with the rationale for state ownership, the legal and regulatory framework for SOEs should ensure a level playing field and fair competition in the marketplace when SOEs undertake economic activities.

(4) Equitable Treatment of Shareholders and other Investors

Where SOEs are listed or otherwise include non-state investors among their owners, the state and the enterprises should recognise the rights of all shareholders and ensure shareholders' equitable treatment and equal access to corporate information.

(5) Stakeholder Relations and Responsible Business

The state ownership policy should fully recognise SOEs' responsibilities towards stakeholders and request that SOEs report on their relations with stakeholders. It should make clear any expectations the state has in respect of responsible business conduct by SOEs.

(6) Disclosure and Transparency

State-owned enterprises should observe high standards of transparency and be subject to the same high quality accounting, disclosure, compliance and auditing standards as listed companies.

(7) The Responsibilities of the Boards of State-Owned Enterprises

The boards of SOEs should have the necessary authority, competencies and objectivity to carry out their functions of strategic guidance and monitoring of management. They should act with integrity and be held accountable for their actions.

8. Write a note on: (Any Four)

[4 × 4 = 16]

(i) Public Financial Institutions

Answer:

Public Financial Institutions

According to Section 2 (72) of the Companies Act, 2013 the following institutions are to be regarded as public financial institutions:

- (1) The Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956.
- (2) The Infrastructure Development Finance Company Limited,
- (3) Specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002.
- (4) Institutions notified by the Central Government under Section 4A (2) of the Companies Act, 1956 so repealed under Section 465 of this Act.
- (5) Such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

Provided that no institution shall be so notified unless:

- a) it has been established or constituted by or under any Central or State Act. Or
- b) not less than fifty-one per cent of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments.

(ii) Offences to be non-cognizable u/s 439 of Companies Act, 2013

Answer:

Offences to be non-cognizable u/s 439 of Companies Act, 2013

Section 439 of the Companies Act, 2013 provides for offences to be non-cognizable. According to this section:

- (a) Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub-section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.
- (b) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder or a member of the company, or of a person authorized by the Central Government in that behalf.
- (c) The court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorized by the Securities and Exchange Board of India.
Nothing in this sub-section shall apply to a prosecution by a company of any of its officers.
- (d) Where the complainant is the Registrar or a person authorized by the Central Government, the presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial. The above provisions shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX or in any other provision of this Act relating to winding up of companies.
- (e) The liquidator of a company shall not be deemed to be an officer of the company.

(iii) Insurable Interest

Answer:

To constitute insurable interest, it must be an interest such that the risk would by its proximate effect cause damage to the assured, that is to say, cause him to lose a benefit or incur a liability. The validity of an insurance contract, in India, is dependent on the existence of an insurable interest in the subject matter. The person seeking an insurance policy must establish some kind of interest in the life or property to be insured, in the absence of which, the insurance policy would amount to a wager and consequently void in nature.

The test for determining if there is an insurable interest is whether the insured will in case of damage to the life or property being insured, suffer pecuniary loss [New India Insurance Company Ltd. v. G.N. Sainani, (1997) 6 SCC 383]. A person having a limited interest can also insure such interest.

Insurable interest varies depending on the nature of the insurance. The controversy as to the existence of an insurable interest between spouses was settled by the court, which held that such an interest could exist as neither was likely to indulge in any 'mischievous game'. The same analogy may be extended to parents and children. Further, the courts have also held that such an insurable interest would exist for a creditor (in a debtor) and for an employee (in an employer) to the extent of the debt incurred and the remuneration due, respectively.

The existence of insurable interest at the time of happening of the event is another important consideration. In case of life and personal accident insurance it is sufficient if the insurable interest is present at the time of taking the policy. However, in the case of fire and motor accident insurance the insurable interest has to be present both at the time of taking the policy and at the time of the accident. The case is completely different with marine insurance wherein there need not be any insurable interest at the time of taking the policy.

(iv) Persons who are not entitled to initiate insolvency resolution process.

Answer:

The Code states that a corporate debtor (which includes a corporate applicant in respect of such corporate debtor) shall not be entitled to make an application to initiate corporate insolvency resolution process [Section 11 of Insolvency and Bankruptcy Code, 2016] in the following cases:

- (a) when undergoing a corporate insolvency resolution process; or
- (b) having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or
- (c) or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or
- (d) in respect of him a liquidation order has been made.

Thus, application to initiate insolvency resolution process cannot be filed within 12 months or if there were violation of conditions or where order of liquidation has been made.

(v) Business should support inclusive growth and equitable development

Answer:

Business should support inclusive growth and equitable development

The principle recognizes the challenges of social and economic development faced by India and builds upon the development agenda that has been articulated in the government policies and priorities. The principle recognizes the value of the energy and enterprise of businesses and encourages them to innovate and contribute to the overall development of the country, especially to that of the disadvantaged, vulnerable and marginalised sections of society.

The principle also emphasizes the need for collaboration amongst businesses, government agencies and civil society in furthering this development agenda. The principle reiterates that business prosperity and inclusive growth and equitable development are interdependent.

Core Elements:

- (a) Businesses should understand their impact on social and economic development, and respond through appropriate action to minimise the negative impacts.
- (b) Businesses should innovate and invest in products, technologies and processes that promote the well being of society.
- (c) Businesses should make efforts to complement and support the development priorities at local and national levels, and assure appropriate resettlement and rehabilitation of communities who have been displaced owing to their business operations.
- (d) Businesses operating in regions that are underdeveloped should be especially sensitive to local concerns.