

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

Question No. 1 is compulsory.

Answer any **four** out of the remaining **five** questions

**Question 1**

- (a) Two (2) out of Ten (10) directors on the board of XYZ Limited have retired by rotation at an Annual General Meeting. These two (2) vacancies or place of retiring directors is not filled up and the meeting has also not expressly resolved 'not to fill the vacancy'. Since the AGM could not complete its business, it is adjourned to a later date. Neither place of retiring directors could be filled up at this adjourned meeting nor did the meeting expressly resolve 'not to fill the vacancy'.

Analyse & apply relevant provisions of the Companies Act, 2013 and decide:

- (i) Whether in such a situation the retiring directors shall be deemed to have been reappointed at the adjourned meeting?
- (ii) What will be your answer in case at the adjourned meeting, the resolutions for reappointment of these directors were lost?
- (iii) Whether such directors can continue in case the directors do not call the Annual General Meeting? **(8 Marks)**
- (b) M/s Tristar Ltd. (an unlisted public limited company) with the annual turnover of ₹ 700 crores entered into a contract of purchasing of raw material from M/s. PTC Pvt. Ltd. during the year 2018. M/s Tristar Ltd. appointed Mr. Sudhir, a Director of the Company, to act in this deal of transaction on behalf of the company. Mr. Sudhir is also one of the member of M/s PTC Pvt. Ltd. Mr. Sudhir settled the said transaction of purchase for ₹ 85 crores and entered into the contract. After a few transactions executed under the contract, the Board of M/s Tristar Ltd. finds degradation in the quality of the raw material supplied. Further, in a board meeting this contract was challenged considering it as a related party transaction and in contravention to section 188 (1) of the Companies Act, 2013 read with rules framed thereunder. During the period Mr. Sudhir was appointed as director in a newly incorporated company M/s Raaga Limited.

In the light of the given facts, examine the following situations as per the Companies Act, 2013.

- (i) What is the legal position of the contract entered between M/s Tristar Ltd. through its director Mr. Sudhir, and M/s. PTC Pvt. Ltd.?
- (ii) Is there any contravention of section 188 (1)? If yes, then state the liability of the wrongdoer.
- (iii) Comment upon the appointment of Mr. Sudhir as a Director in M/s Raaga Limited.

**(6 Marks)**

**Answer**

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

Section 152(7)(b) further provides that if at the adjourned meeting also, the place of the retiring is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless at the adjourned meeting or at the previous meeting a resolution for the reappointment of such directors was put and lost or he has given a notice in writing addressed to the company and the Board of Directors expressing his desire not to be re-elected or he is disqualified.

Therefore, in the given circumstances answer to the questions as asked shall be:

- (i) In the first case, applying the above provisions, the retiring directors shall be deemed to have been re-appointed.
- (ii) In the second case, where the resolutions for the reappointment of the retiring directors were lost, the retiring directors shall not be deemed to have been re-appointed.
- (iii) Section 152(6)(c) states that 1/3<sup>rd</sup> of the rotational directors shall retire at every AGM. They retire at the AGM and at its conclusion. Hence, they will retire as soon as the AGM is held. Further, as per section 96 (dealing with annual General Meeting) of the Companies Act, 2013, every company other than a One Person Company shall in each year hold an Annual General Meeting. Hence, it is necessary for the company to hold the AGM, whereby these directors will be liable to retire by rotation.

Further Section 97 states that, if any default is made in holding the annual general meeting of a company under section 96, the Tribunal may, on the application of any member of the company, call, or direct the calling of, an annual general meeting of the company. Such general Meeting shall be deemed to be an annual general meeting of the company under this Act.

- (b) (i) As per the given facts, Mr. Sudhir, a director of M/s Tristar Ltd., was also a member of M/s PTC private Ltd. with which he entered into contract for the purchase of the raw material. In terms of section 2(76) of the Companies Act, 2013, M/s Tristar Ltd. is a related party to M/s PTC private Ltd..

Also, as per section 188(1) of the Act, no company shall enter into any contract or arrangement with a related party with respect to the transaction related to the sale, purchase or supply of any goods or materials or made through an appointment of any agent for purchase or sale of goods, materials, services or property, except with

the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as given in rule 15 of the *Companies (Meetings of Board and its Powers) Rules, 2014* .

However, no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as prescribed in Rule 15(3) of *the Companies (Meetings of Board and its Powers) Rules, 2014*, shall be entered into except with the prior approval of the company by a resolution. [First proviso to section 188(1)]

A company shall not enter into transaction/s related to sale, purchase or supply of any goods or materials, directly or through appointment of agent, where the transaction or transactions to be entered into is amounting to 10% or more of the turnover of the company or rupees 100 crore, whichever is lower, except with the prior approval of the company by a resolution.

Since in the given case, M/s Tristar Ltd. has turnover of ₹ 700 crore. The transaction of purchase settled by Mr. Sudhir, is ₹ 85 crore which is more than 10% of the turnover (i.e., 700 crore x 10/100 = 70 crore). Neither M/s Tristar Ltd. had taken prior approval of the company by a resolution, nor it was ratified by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into. [Section 188(3)]

- (i) So, in terms of the above provision, this contract is of voidable nature at the option of the shareholders according to section 188(3) of the Companies Act, 2013.
- (ii) **Contravention of Section 188(1):** Yes, as per the answer given under Part (i), there is a contravention of section 188(1).

**Following is the liability of the Sudhir, Director of M/s Tristar Ltd:** Section 188(3) specifies, if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

Therefore, M/s Tristar Ltd, may proceed to recover loss. Section 188 (4) provides that it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.

**Penalty:** Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall be punishable with fine which shall not be less than 25,000 rupees but which may extend to 5 lakh rupees.

- (iii) **Appointment of Director in M/s Raaga Ltd.:** As per section 164(1)(g) of the Companies Act, 2013, a person shall not be eligible for appointment as a director

of a company, where he has been convicted of the offence of dealing with related party transactions under section 188 at any time during the last preceding 5 years;

In the given instance, Mr. Sudhir was not convicted rather only the contract was challenged in the board meeting considering it as a related party transaction which is in contravention to section 188(1) and may attract penalty in terms of Section 188(5) against the offence dealt with related party transaction hence Mr. Sudhir remains eligible to be appointed as a director of M/s Raaga Ltd.

### Question 2

- (a) (i) *A group of shareholders consisting of 30 members decide to file a petition before the Tribunal for relief against oppression and mismanagement by the Board of Directors of M/s. Aravalli Manufacturing Company Limited having a paid up Share Capital of ₹ 1 crore. The company has a total of 500 members and the group of 30 members holds one-tenth of the total paid-up share capital accounting for one-fifteenth of the issued share capital. The grievance of the group is that due to the mismanagement by the Board of Directors, the company is incurring losses and has not declared any dividend for the past five years. In the light of the provisions of the Companies Act, 2013, please advise the group of shareholders regarding the admission of the petition and the relief thereof. (4 Marks)*
- (ii) *A meeting of members of ABC Limited was convened as per the orders of the Court to consider a scheme of compromise and arrangement. Notice of the meeting was sent to 1000 members holding in aggregate 500000 equity shares. The meeting was attended by 800 members holding 350000 shares. 450 members holding 240000 shares voted in favour of the scheme; 200 members holding 60000 shares voted against the scheme. The remaining 150 members abstained from voting. Explain with reference to the provisions of the Companies Act, 2013, whether the scheme is approved by the requisite majority. (4 Marks)*
- (b) *A Nationalized Bank had provided a term loan of ₹ 20 crores to Allwell Pharma Limited at an interest rate of 12% p.a. and principal amount is payable in equal half yearly installments of ₹ 2 crores in 5 years from the date of disbursement of loan. The loan is fully secured against the plant and machinery of the company. The company was regular in paying 3 half yearly installments along with the interest during the first two years. Due to recession in the market and increased competition from multinational companies, the price of the goods manufactured by the company had fallen down and consequently the company has to close down the plant. Hence, the company failed to pay the 4th installment but it paid the interest amount as and when due. After a period of 2 months (60 days) from the due date of the 4th installment, the Bank decided to sell the loan to an Asset Reconstruction company. It has also decided to sell a loan of ₹ 50 lakhs given to a farmer which is secured against the agricultural lands. The Manager seeks your advice on the above proposals in the light of the Provisions of the SARFAESI Act, 2002. (6 Marks)*

**Answer**

(a) (i) Section 244 of the Companies Act, 2013 provides the right to apply to the Tribunal for relief against oppression and mis-management. This right is available only when the petitioners hold the prescribed limit of shares as indicated below:

- (1) In the case of company having a share capital, not less than 100 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, provided that the applicant(s) have paid all calls and other dues on the shares.
- (2) In the case of company not having share capital, not less than one-fifth of the total number of its members.

As per the facts, a group of 30 members decided to file a petition. Total number of members are 500 & one tenth of 500 will be 50 and lower of above is 50. Thus, the group of shareholders who decides to file the petition are less than 50. However, the group of 30 members holds one-fifteenth of the issued share capital which is less than the required one tenth of the issued share capital. In view of this, the group is not having requisite number of shares and shareholding for being eligible to approach the Tribunal for relief.

Also, the shareholders may not succeed in getting any relief from the tribunal as continuous losses cannot, by itself, be regarded as oppression (*Ashok Betelnut Co. P. Ltd. vs. M.K. Chandrakanth*). Similarly, the failure to declare dividend or payment of low dividends also does not amount to oppression. (*Thomas Veddon V.J. Vs. Kuttanad Rubber Co. Ltd.*)

(ii) As per section 230 (6), of the Companies Act, 2013 where majority of persons at a meeting held representing 3/4<sup>th</sup> in value, 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 majority of person representing 3/4<sup>th</sup> Value shall be counted of the following:

- the creditors, or
- class of creditors or
- members or
- class of members, as the case may be,

Usage of word "majority" in the provision is dual in nature i.e., may be taken into account in number & in value. A simple majority of those voting is sufficient. Whereas the 'three-fourths' requirement relates to value. The three-fourths value is to be computed with reference to paid-up capital held by members present and voting at the meeting.

In this case, out of 1000 members, 800 members attended the meeting and 450 members voted in favor of the scheme, thus, the requirement relating to majority in number (i.e. more than 325) is satisfied.

Further, as per the facts, total 650 members participated in the meeting holding 3,00,000 shares. According to the provision, three-fourth of which works out to 2,25,000, while 450 members who voted for the scheme held 2,40,000 shares.

Hence, the requirements as to the holding of 3/4<sup>th</sup> values of shares as a majority is also met.

Therefore, the scheme is approved by the requisite majority.

- (b) The term loan sanctioned was ₹ 20 crore and the present balance is Rs 14 crore since 3 instalments of ₹ 2 crore are paid. This is more than 20 % of the total principal and interest amount as per section 31 (j). Therefore, the loan is to be treated as a financial asset and the bank has security interest over the property as defined in the Act.

As per the provisions of the Act, for enforcement of security, there has to be a default as defined under section 2(1)(j) which requires the loan to be classified as a Non Performing Asset (NPA) in the present case, the debts are overdue by two months only which is less than 90 days. Therefore, it is not yet classified as NPA unlike the other loan given to a farmer as agricultural loan.

Hence, the loan given to Allwell Pharma Limited cannot be sold to an Asset Reconstruction company.

Further the loan given to a farmer being secured against agricultural land, cannot be sold as per the provisions of SARFAESI Act are not applicable to such assets as per section 31(j).

### Question 3

- (a) *Info-tech Overtrading Ltd. was ordered to be compulsory wound up by an order dated 10<sup>th</sup> March, 2019 by the Tribunal. The official liquidator who has taken control of the assets and other records of the company has noticed that :*

- (i) *One of the contributory whose calls are pending to be paid is about to leave India for evading payment of calls and;*
- (ii) *A person having books of accounts of the company his possession may abscond to avoid examination of books of accounts in respect of the affairs of the company.*

*Apprehending such possibilities, Tribunal detained such contributory for next 6 month disallowing him to leave India as well as arrest & seized books of accounts from the person which may possibly abscond to avoid examination of the affairs of the company.*

*Referring to the provisions of Companies Act, 2013, answer the following in current scenario :*

- (i) *What is the validity of Tribunal's order for detention of contributory disallowing him to leave India?*
- (ii) *Is it correct from Tribunal's part to arrest and seize books of accounts from the person planning to abscond to avoid examination of books of accounts in respect of the affairs of the company?* **(8 Marks)**
- (b) (i) *Mr. Dawood Moosa, a known smuggler was caught in transfer of funds illegally exporting narcotic drugs from India to some countries in Africa. State the maximum punishment that can be awarded to him under Prevention of Money Laundering Act, 2002.* **(2 Marks)**
- (ii) *Mr. Robert has been arrested for a cognizable and non-bailable offence under Part-A of the schedule punishable for a term of imprisonment for more than three years under the Prevention of Money Laundering Act, 2002. He seeks your advice as to how can he be released on bail. Advise him.* **(4 Marks)**

**Answer**

- (a) According to section 301 of the Companies Act, 2013, at any time either before or after passing a winding up order, if the Tribunal is satisfied that
- a contributory or
  - a person having property, accounts or papers of the company in his possession
- is about to leave India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company,
- the Tribunal may cause—
- (a) the contributory to be detained until such time as the Tribunal may order; and
- (b) his books and papers and movable property to be seized and safely kept until such time as the Tribunal may order.
- In the instant case, by taking into account the above provisions:
- (i) The Tribunal's order for detention of contributory for next 6 months disallowing him to leave India, is valid.
- (ii) It is correct from Tribunal's part to arrest and seize books of accounts from the person planning to abscond to avoid examination of books of accounts in respect of the affairs of the company.
- (b) (i) Paragraph 2 of Part A of the Schedule to the Prevention of Money Laundering Act, 2002, covers Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985. Whereby, illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances (section 23) is covered under paragraph 2 of Part A.

**Punishment:** Section 4 of the said Act provides for the punishment for Money-Laundering. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine. But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to 10 years instead of 7 years. Thus, in the given case, the maximum punishment may extend to 10 years.

- (ii) Section 45 of the Prevention of Money Laundering Act, 2002 provides that the offences under the Act shall be cognizable and non bailable. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence [under this Act shall be released on bail or on his own bond unless-
- (i) The Public Prosecutor has been given an opportunity to oppose the application for such release and
  - (ii) Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

In case of any person who is under the age of 16 years or in case of a woman or in case of a sick or infirm or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees may be released on bail, if the Special Court so directs.

In compliance to above provision, Mr. Robert can be released on bail.

#### Question 4

- (a) (i) *ABC Primex Ltd., an unlisted company is into profitable manufacturing business. It has net worth of more than ₹10 crore since preceding last four full years with net tangible assets of ₹5 crore in each of the four preceding years. Around 80% of the net tangible assets are held in monetary assets (readily convertible into cash). It has consistent track record of declaring dividend for last 5 years. With the expansion plan, Company plans to raise funds through Initial Public Offer (IPO). Advice the Company on:*
- (A) *Eligibility of the Company to raise funds through IPO route.*
  - (B) *Will it be eligible for IPO if Company has changed its name to XYZ Primex Ltd. since last 6 months and 60% of the revenue for the preceding one full year earned by it from the activity indicated by the new name?*
  - (C) *Will your answer be different if there are any outstanding convertible securities issued by the company earlier?* **(4 Marks)**
- (ii) (A) *What are the factors to be considered by the Adjudicating Officer while adjudging the quantum of penalty under Sec. 231 of the Securities Contract (Regulation) Act, 1956?* **(2 Marks)**

(B) Define the term "Derivative" as appearing in the Securities Contract (Regulation) Act, 1956. **(2 Marks)**

- (b) After giving a reasonable opportunity of being heard, Central Government cancelled the certification of registration of Toastea Ltd, a company registered under FCRA on the ground of public interest 2.5 years have passed since such cancellation. Company has submitted its written declaration not to involve in such activity again and request to restore the registration. Advise Toastea Ltd. on its eligibility for re-registration or grant of prior permission. Also state the circumstance under which Government can cancel the certificate of registration granted to a person under the Foreign Contribution (Regulation) Act, 2010. **(6 Marks)**

**Answer**

- (a) (i) Under SEBI (ICDR) Regulations, 2009 guidelines have been provided that regulate the public issues by unlisted companies.

(A) **Eligibility of company to raise funds through IPO route:** Following are the particulars given in the question:

- (i) The company have a net tangible assets of ₹ 5 crore in each of the four preceding years. Around 80% of the net tangible assets are held in monetary assets (readily convertible into cash). This does not satisfy the requirement of having a net tangible assets of atleast ₹ 3 crore in each, of the preceding three full years (of twelve months each), of which not more than 50% are held in monetary assets.
- (ii) It has net worth of more than ₹ 10 crore since preceding last four full years. This satisfies the requirement of having net worth of atleast ₹ 1 crore in each of the preceding 3 full years (of twelve months each).
- (iii) \*It has consistent track record of declaring dividend for last 5 years. This satisfies the requirement.

Since, the company is not complying with all the conditions given in the said regulation, ABC Primex Ltd. is not eligible to raise funds through IPO route.

- (B) If company has changed its name to XYZ Primex Ltd. since last 6 months and 60% of the revenue for the preceding one full year earned by it from the activity indicated by the new name, the company is eligible for IPO as it has complied with the requirement of regulation regarding obtaining of minimum fifty percent of the revenue for the preceding one full year (Before change of name).

**Note:** It may be presumed that part (B) is not an independent question and to be replied in relation to part (A), there in such case, the company is not eligible for IPO as the company has not complied with the requirements of raising the fund through IPO.

- (C) If there are any outstanding convertible securities issued by the company earlier, the company shall not make an IPO.

\*The point “track record of distributable profits which deals with the declaration of dividends” asked in the question is not in existence due to change in the SEBI (ICDR) Regulation, 2009 vide SEBI (ICDR) fourth amendment Regulation, 2012. Though it's not effecting on the answering of the question.

- (ii) (A) Factors to be taken into account by Adjudicating Officer [Section 23J of Securities Contract (Regulation) Act, 1956]

While adjudging the quantum of penalty under section 23-I, the adjudicating officer shall have due regard to the following factors –

- (a) The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) The amount of loss caused to an investor or group of investors as a result of the default;
- (c) The repetitive nature of the default.

The power of the Adjudicating Officer to adjudge the quantum of penalty levied under sections 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section.

- (B) According to section 2(ac) of the Securities Contract (Regulation) Act, 1956, Derivative includes –

- i. a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for difference or any other form of security;
- ii. a contract which derives its value from the prices, or index of prices, of underlying securities.
- iii. Commodity derivatives;
- iv. Such other instruments as may be declared by the Central Government to be derivatives.

- (b) **Restoration of Registration:** As per section 14(3) of the Foreign Contribution (Regulation) Act, 2010, any person whose certificate has been cancelled under this section shall not be eligible for registration or grant of prior permission for a period of three years from the date of cancellation of such certificate.

In the instant case, Toastea Ltd. is not eligible for re-registration or grant of prior permission as only 2.5 years have passed since such cancellation. So, requirement of 3 years of cooling period from the date of cancellation of such certificate for re-registration is not complied with.

**Circumstances for cancellation of certificate of registration [Section 14(1) of the Foreign Contribution (Regulation) Act, 2010]**

- (i) The Central Government may, by an order, cancel the certificate if —
- the holder of the certificate has made a statement in, or in relation to, the application for the grant of registration or renewal thereof, which is incorrect or false; or
  - the holder of the certificate has violated any of the terms and conditions of the certificate or renewal thereof; or
  - in the opinion of the Central Government, it is necessary in the public interest to cancel the certificate; or
  - the holder of certificate has violated any of the provisions of this Act or rules or order made there under; or
  - if the holder of the certificate has not been engaged in any reasonable activity in its chosen field for the benefit of the society for two consecutive years or has become defunct.

**Question 5**

- (a) *Gulmohar Ltd. is a company registered in India for last 5 years. Since last 2 financial years, it has not been carrying on any business or operations and has not filed financial statements and annual returns saying that it has not made any significant accounting transaction during the last two financial years. Considering the current situation, Directors of the Company is contemplating to apply to Registrar of Companies to obtain status of dormant or inactive company. Advise them on :*
- Whether Gulmohar Ltd. is eligible to apply to Registrar of Companies to obtain dormant status for the company?*
  - Will your answer be different if Gulmohar Ltd is continuing payment of fees to Registrar of Companies and payment of rentals for its office and accounting records for last two financials years?*
  - Is special resolution in general meeting a pre-requisite to make an application to Registrar of Companies for obtaining the status of dormant company?*
  - What will be your answer if it is found after making an application of dormant company to Registrar of Companies that an investigation is pending against the company which was ordered 6 months ago?* **(8 Marks)**
- (b) *The following particulars relate to M/s. Star House (P) Limited which has gone into Corporate Insolvency Resolution Process (CIRP):*

S. No.	Particulars	Amount in Rupees
1.	Amount realized from the sale of liquidation of Assets	7,00,000

2.	Secured Creditors who has relinquished the security	2,50,000
3.	Unsecured Financial Creditors.	2,00,000
4.	Income Tax Payable within a period of two years preceding the liquidation commencement date.	25,000
5.	Cess Payable to State Government within a period of one year preceding the liquidation commencement date.	10,000
6.	Fees payable to resolution professional.	37,500
7.	Expenses incurred by the resolution professional in running the business of M/s. Star House (P) Limited on going concern.	17,500
8.	Workmen salary payable for a period of thirty months preceding the liquidation commencement date. The workmen salary is equal per month.	1,50,000
9.	Equity Shareholders.	5,00,000

State the priority order in which the liquidator shall distribute the proceeds under the Insolvency & Bankruptcy Code, 2016. **(6 Marks)**

#### Answer

- (a) (i) According to section 455 of the Companies Act, 2013, an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

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

Gulmohar Ltd., since from last two years is not carrying on business or operations and has not filed financial statements and annual returns saying it has not made any significant accounting transaction during the last two financial years. Thus, it falls within the definition of inactive company as stated above and hence is eligible to apply to Registrar of Companies to obtain the status of Dormant company.

- (ii) According to Explanation to section 455, “significant accounting transaction” means any transaction other than—
- (1) payment of fees by a company to the Registrar;
  - (2) payments made by it to fulfill the requirements of this Act or any other law;
  - (3) allotment of shares to fulfill the requirements of this Act; and
  - (4) payments for maintenance of its office and records.

Thus, Gulmohar Ltd. is still eligible to apply to the Registrar of Companies to obtain the status of Dormant company even if it has continued ‘payment of fees to Registrar

of Companies and payment of rentals for its office and accounting records' for last two years, as these transactions have been kept outside the purview of significant accounting transactions.

- (iii) According to the Rule 3 of the *Companies (Miscellaneous) Rules, 2014*, a company may make an application in prescribed form to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455 after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4<sup>th</sup> shareholders (in value).

Thus, special resolution is a pre- requisite to make an application to Registrar of Companies for obtaining the status of dormant company.

- (iv) According to the Rule 3 of the *Companies (Miscellaneous) Rules, 2014*, a company shall be eligible to apply under this rule only, if no inspection, inquiry or investigation has been ordered or taken up or carried out against the company.

According to section 455(6), 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 455.

In the given case, Gulmohar Ltd. was not eligible to apply for the status of a dormant company as an investigation was pending against the company which was ordered 6 months ago. But since, it has already made an application and then it came to the light about the pending investigation against the company, the Registrar shall not register it as a dormant company and if already registered as a dormant company, strike off the name of a dormant company from the register of dormant companies as the company has contravened the necessary requirements.

- (b) **The priority order in which the liquidator shall distribute the proceeds will be as under:**

Particulars	Amount (in ₹)	
Amount realised from the sale of liquidation of assets		7,00,000
Less: (i) Fees payable to resolution professional	37,500	
(ii) Expenses incurred by the resolution professional in running the business of M/s Star House (P) Ltd. on going concern	<u>17,500</u>	(55,000)
Balance available		6,45,000
Less: (i) Secured creditors who has relinquished the security	2,50,000	
(ii) Workmen salary payable for a period of 24 months preceding the liquidation commencement date [1,50,000*(24/30)]	<u>1,20,000</u>	(3,70,000)

Balance available		2,75,000
Less: Unsecured Financial Creditor	<u>2,00,000</u>	(2,00,000)
Balance available		75,000
Less: (i) Income tax payable	25,000	
(ii) Cess payable to State Government	<u>10,000</u>	(35,000)
Balance available		40,000
Less: Balance Workmen salary payable (apart for a period of 24 months preceding the liquidation commencement date) [1,50,000 – 1,20,000]	<u>30,000</u>	(30,000)
<b>Balance Available for equity shareholders</b>		<b>10,000</b>

**Question 6**

- (a) *M/s Bright Motors (P) Limited at the Annual General Meeting (AGM) held on 30.09.2016 appointed Mr. Anmol as a Non-Executive Director on the board of the company for a period of three years. On 2<sup>nd</sup> October, 2017 Mr. Anmol suffered a severe heart failure and expired. The board of directors of the company on 16<sup>th</sup> October, 2017 appointed Mr. Prateek to fill the casual vacancy so created. The appointment of Mr. Prateek was made for a term of three years by the board. Subsequently at the AGM held on 29-09-2018 Mr. Prateek's appointment was not proposed or approved as the board was of the view that it is not required. But the CFO of the company is of the opinion that the board of directors have contravened the provisions of the Companies Act, 2013 in respect of non-approval of the appointment of Mr. Prateek and his office tenure. Decide. (4 Marks)*

OR

*The following information is provided in respect of M/s Fortune Limited under three different case scenarios on the borrowing powers of the Board of Directors of the company. Mr. Murlu, the CFO seeks your advice with explanations as to the nature of resolution which needs to be passed under each of the case scenarios as per the provisions of section 180 (1) (c) of the Companies Act, 2013. Detailed workings should form part of your answer.*

Particulars	Case I (₹ in Crores)	Case II (₹ in Crores)	Case III (₹ in Crores)
Equity Share Capital (Paid-up)	150	150	150
Preference Share Capital (Paid-up)	50	50	50
Securities Premium Account	50	50	50
Free Reserves	20	20	20
Total:	270	270	270

Working Capital Loan (repayable on demand-Existing) from Sigma Capital Limited	50	50	50
Cash Credit Limit from a scheduled bank (repayable on demand-Existing)	120	120	120
6 months loan for purchase of Plant & Machinery from scheduled bank (proposed)	30	40	130
24 months loan for purchase of Plant & Machinery from scheduled bank (proposed)	10	20	150
Total	210	230	450

**(4 Marks)**

- (b) Mr. Dhruv is a Director of M/s. LT Limited and XT Limited respectively. M/s. LT Limited did not file its financial statements for the year ended 31<sup>st</sup> March, 2016, 2017 & 2018 respectively with the Registrar of Companies (ROC) as mandated under the Companies Act, 2013. M/s. LT Limited also did not pay interest on loans taken from a public financial institution from 1<sup>st</sup> April, 2017 and also failed to repay matured deposits taken from public on due dates from 1<sup>st</sup> April, 2017 onwards.

Answer the legality of the following in the light of the relevant provision of the Companies Act, 2013 :

- (i) Whether Mr. Dhruv is disqualified under Companies Act, 2013 and if so, whether he can continue as a Director in M/s LT Limited? Further can he also seek reappointment when he retires by rotation at the AGM of M/s. XT limited scheduled to be held in September, 2019?
- (ii) Mr. Dhruv is proposed to be appointed as an Additional Director of M/s. MN Limited in June 2019. Is he eligible to be appointed as an Additional Director in M/s. MN Limited? Decide.
- (c) (i) Who is a "Reporting Entity" under the Prevention of Money Laundering Act, 2002 and what are the obligations cast on them under Sec. 12 of the Act? The Bank account of Amar has been attached by the order of an Assistant Director for a period of 180 days. The lawyer of Amar objected to this attachment. Decide the validity of the attachment.

**(3 Marks)**

- (ii) Continental Rubber Limited is a supplier of raw materials to Smooth Latex Limited. It filed a petition before the NCLT for the recovery of ₹ 10,00,000 from Smooth Latex Limited. Smooth Latex Limited, the Corporate Debtor, has other financial creditors to the extent of ₹ 1,50,00,000 and they also joined together and filed petitions to NCLT. The Corporate Debtor has a total of 40 financial creditors and 2 operational creditors. Further, all the financial creditors are having equal voting rights/shares.

Notice was issued on 1<sup>st</sup> August, 2018 for the conduct of the first meeting to be held on 5<sup>th</sup> August, 2018 at a common venue. The meeting was attended by all 40 financial

*creditors and 2 operational creditors. A resolution was passed to appoint Mr. TK as a Resolution Professional. 25 of the financial creditors voted in favour of the resolution and 10 voted against the resolution and 5 financial creditors and 2 operational creditors abstained from voting. Decide whether the resolution passed is valid? In the light of the provisions of Insolvency and Bankruptcy Code, 2016 read with rules framed thereunder, explain the requirements of issue of notice and quorum for the conduct of the meeting. (3 Marks)*

**Answer**

- (a) According to section 161(4) of the Companies Act, 2013, 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.

In the given question, the casual vacancy caused due to death of Mr. Anmol (who was appointed by the company in AGM held on 30.9.2016, for a period of 3 years) is filled by the Board of Directors by appointing Mr. Prateek for a period of three years. However, the appointment of Mr. Prateek for a period of three years is in contravention of above stated provisions as he can hold office only up to the date up to which Mr. Anmol would have held office if it had not been vacated.

Further, as per the provisions of the Act, the appointment of Mr. Prateek ought to be approved by members in the immediate next general meeting. However, the appointment of Mr. Prateek was not even proposed or approved in the AGM held on 29.9.2018. Hence, the appointment of Mr. Prateek is in contravention of the provisions of the Companies Act, 2013. Therefore, the opinion of CFO is correct.

**OR**

According to section 180(1)(c) of the Companies Act, 2013, the Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely:—(c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital, free reserves and securities premium, apart from temporary loans obtained from the company's bankers in the ordinary course of business:

Explanation—For the purposes of this clause, the expression “temporary loans” means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature.

Particulars	Case I (₹ In crores)	Case II (₹ In crores)	Case III (₹ In crores)
Total amount of Paid up share capital, free reserves and securities premium	270	270	270
Hence, Total amount that the company can borrow without passing Special Resolution <b>Amount (A)</b>	270	270	270
(a) Existing Working Capital Loan (Repayable on demand) from Sigma Capital Limited since it is not a banker	50	50	50
(b) Total amount of Loan that Company needs is:	30	40	130
(i) 6 months loan for purchase of Plant & Machinery	<u>10</u>	<u>20</u>	<u>150</u>
(ii) 24 months loan for purchase if Plant & Machinery	<b>40</b>	<b>60</b>	<b>280</b>
<b>Amount (B)</b>	<b>90</b>	<b>110</b>	<b>330</b>
Is <b>Amount (A) &gt; Amount (B)</b> , then <b>SR need not be passed</b>	SR not to be passed	SR not to be passed	SR to be passed

**Working Notes:**

1. Paid up share capital includes both equity share capital and Preference share capital
  2. 'Cash credit limit from scheduled bank' are temporary loans as they are repayable on demand.
  3. '6 months loan for purchase of Plant & Machinery' is not treated as a temporary loan as temporary loans does not include loans raised for the purpose of financial expenditure of a capital nature.
- (b) According to section 164(2) of the Companies Act, 2013, no person who is or has been a director of a company which—
- (a) has not filed financial statements or annual returns for any continuous period of three financial years; or
  - (b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.

Also, according to section 167(1)(a), the office of a director shall become vacant in case he incurs any of the disqualifications specified in section 164;

Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.

Thus, in the light of the said provisions of the Act and the facts of the question:

- (i) Yes, Mr. Dhruv is disqualified under the Companies Act, 2013, as M/s LT Limited did not file financial statements for a period of three years. Also, the M/s LT Limited has defaulted in the repayment of matured deposits taken from public since 1<sup>st</sup> April, 2017 (i.e. the default has continued for more than one year).

Mr. Dhruv can continue as a director in M/s LT Limited as proviso to section 167(1)(a) provides that where the director incurs disqualification under section 164(2), the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section. Whereas he has to vacate the office of director in M/s XT Limited.

Mr. Dhruv cannot be reappointed (in the AGM to be held in September 2019) as director in M/s. XT Limited.

- (ii) Mr. Dhruv cannot be appointed as an Additional Director (in the AGM to be held in June 2019) of M/s MN Limited because as per section 164(2), he is not eligible to be appointed in other company for a period of five years from the date of such default.

- (c) (i) "Reporting entity" means a banking company, financial institution, intermediary or a person carrying on a designated business or profession.

Section 12 of the Prevention of Money Laundering Act, 2002 provides for the obligation of Banking Companies, Financial Institutions and Intermediaries.

According to section 12,

1. Maintenance of records: Every reporting entity shall –
  - (a) maintain a record of all transactions,
  - (b) furnish to the Director information relating to such transactions, whether attempted or executed, the nature and value of the said transactions;
  - (c) verify the identity of its clients
  - (d) identify the beneficial owner, if any, of its clients,
  - (e) maintain record of documents evidencing identity of its clients and

beneficial owners as well as account files and business correspondence relating to its clients.

2. Maintenance of records related to the transactions (i.e. for above clause a): The records shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.
3. Maintenance of records related to evidencing identity of its clients and beneficial owners (i.e., for above clause e): The records shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

In the instant case, the bank account of Amar has been attached by the order of an Assistant Director for a period of 180 days. As per section 5 of the Prevention of Money Laundering Act, 2002, attachment of a property can be done by the Director or any other officer not below the rank of Deputy Director. Here the order is issued by an Assistant Director who is below the rank of the Deputy Director. Therefore, the objection of the lawyer of Amar is valid.

- (ii) According to section 22 of the Insolvency and Bankruptcy Code, 2016,

#### **First Meeting of Creditors**

- The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.
- The committee of creditors in the first meeting may by a majority vote of not less than sixty-six per cent. of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

#### **Notice of the Meeting**

The resolution professional shall give notice of each meeting of the committee of creditors to:-

- (a) Members of Committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5);
- (b) Members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;
- (c) Operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.

#### **Quorum for the Meeting**

- A meeting of committee of creditors shall quorate if members of the committee of creditors representing at least thirty three percent of the voting rights are

present either in person or by video/audio means.

- If the requisite quorum for committee of creditors is not fulfilled the meeting cannot be held and the meeting shall automatically stand adjourned at the same time and place on the next day.
- The adjourned meeting shall quorate with the members of the committee attending the meeting.

As per the facts of the question and the provisions of law:

- (1) The first meeting of committee of creditors was validly held within three days of the constitution of the committee of creditors.
- (2) The requisite quorum was present in the meeting as all 40 financial creditors attended the meeting.
- (3) The Act requires that not less 66% of the financial creditors shall resolve to appoint resolution professional. However, in the given case 71.4%  $[(25/35) * 100]$  voted in favour of Mr. TK. Hence, the said appointment is valid.