

PAPER- 4 – CORPORATE AND ALLIED LAWS

Question No. 1 is compulsory.

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

Question 1

- (A) XYZ Ltd., having inadequate profits, proposes to declare 10% equity dividend out of its current profits and its free reserves.

Following are the data drawn from the latest audited financial statements as at 31st March, 2019:

17,500 Preference Shares of ₹100 each fully paid; (Dividend @ 9%)
7,00,000 Equity Shares of ₹ 10 each
General Reserves: ₹ 21,00,000/-
Capital Reserves: ₹ 3,50,000/-
Securities Premium: ₹ 3,50,000/-
Surplus (P&L): ₹ 63,000/- (Excluding Current year's profit given below)
Net Profit for the Year: ₹ 3,57,000/
Average Rate of Return for the last three years - 15%
Average Rate of Dividend during the three years: 15%
The company has declared dividends in each of the 3 preceding financial years.

In the light of the information given above, analysing and applying the provisions of the Companies Act, 2013 and the applicable Rules made thereunder, calculate the minimum amount that is required to be withdrawn from free reserves by XYZ Ltd. for declaring 10% dividend to the equity shareholders. **(6 Marks)**

- (B) Mr. Mania is the Managing Director of S Limited (and nowhere else), which is a subsidiary of H Limited. Seeing the success of S Limited, the directors of H Limited (which is a listed company) decided and approached Mr. Mania to act as the Managing Director of H Limited. Mr. Mania agreed with the directors of H Limited subject to a condition that he will continue to act as the Managing Director of S Limited also. In this direction, the directors of H Limited propose to appoint him by means of a resolution (containing the terms and conditions of appointment excluding remuneration) by circulation. Referring to and analyzing the relevant provisions of the Companies Act, 2013, decide whether the decision of appointing and the proposed mode of appointment of Mr. Mania as the Managing Director of H Limited is valid.

Will your answer differ in case S Limited is not a subsidiary of H Limited? **(4 Marks)**

- (C) The Board of Directors of Tours Ltd., in terms of the Articles of the Company, filled-up the casual, vacancy caused by the resignation of Mr. Philip (who was appointed in a duly held

general meeting) by appointing Mr. Max as a director on 18th May, 2019. Unfortunately, Mr. Max expired on 10th May, 2019 after working for a period of about 10 days as a director. The Board now intends to fill up the casual vacancy by appointing Mrs. Nini (Wife of late Mr. Max) in the forthcoming meeting of the Board. Referring to and analysing the provisions of the Companies Act, 2013, advise the Board whether it can do so. (4 Marks)

Answer

- (A) As per **Section 123(1)** of the Companies Act, 2013, owing to inadequacy or absence of profits in any financial year, the Company may 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 be made out of free reserves in accordance with **Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014.**

According to the said Rule,

- (1) The rate of dividend declared shall not exceed average of rates at which dividend was declared by it in three years immediately preceding that year.
- (2) The total amount drawn from such accumulated profits shall not exceed 1/10th of sum of its paid up capital and free reserves as appearing in the latest audited financial statement.
- (3) After withdrawal, the balance of reserves shall not be fall below 15% of its paid- up share capital as appearing in the latest audited financial statement.

As per the facts XYZ Ltd., having inadequate profits, proposes to declare 10% equity dividend out of its current profits and its free reserves.

Accordingly, calculation can be made in line with the above stated provisions and facts of the case:

1. Calculation of Profits available for distribution to Equity Shareholders

Particulars	Amount (in ₹)	Amount (in ₹)
Opening balance of P&L A/c- [Surplus(P&L)]	63,000	
Net profit for the year	<u>3,57,000</u>	4,20,000
Less: Preference dividend (9% Preference dividend on 17,500 preference shares of ₹ 100 each)	-	<u>(1,57,500)</u>
Profits available for distribution to equity shareholders		2,62,500

2. Total amount of dividend to be paid to equity shareholders = ₹ 7,00,000 (10% of ₹ 70,00,000)
3. Since, current year profits are insufficient to pay the dividend, hence, dividend has to be paid out accumulated profits for which company has to follow Rule 3. Thereby:

- (i) The rate of dividend declared (i.e. 10%) does not exceed average of rates at which dividend was declared by it in three years immediately preceding that year (i.e. 15%)
- (ii) The total amount drawn from such accumulated profits [i.e. ₹ 4,37,500 (₹ 7,00,000 – ₹ 2,62,500)] does not exceed 10% of sum of paid up capital and free reserves as appearing in the latest audited financial statement [i.e. ₹ 10,85,000 [(10% of (17,50,000+70,00,000+21,00,000))]]
- (iii) After withdrawal, the balance of reserves i.e. ₹ 16,62,500 (₹ 21,00,000 - ₹ 4,37,500) shall not fall below 15% of its paid- up share capital as appearing in the latest audited financial statement [i.e. ₹ 13,12,500 (15% of ₹ 87,50,000)]

Since, XYZ Ltd. has fulfilled the requirements of Rule 3, hence, it can use accumulated profits for paying the dividend. The **minimum amount** that the Company is required to withdraw from free reserves is ₹ 4,37,500.

Note: Declaration of dividend out of profits for previous years which are disclosed under the head “Surplus” in the financial statements will not tantamount to declaration of dividend out of reserves and accordingly will not attract the requirements prescribed.

- (B) As per the facts given in the question, Mr. Mania is MD (Managing Director) of S Ltd. which is a subsidiary of H Ltd. Mr. Mania was proposed to act as the MD of H Ltd. He agreed subject to a condition that he will continue to act as the MD of S Limited. Directors of H Ltd. proposed to appoint him by means of a resolution (containing the terms and conditions of appointment excluding remuneration) by circulation.

According to **Section 196(4) read with Section 203(3) of the Companies Act, 2013**, a whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. **So, the decision of appointing Mr. Mania by H Ltd., holding the office in its subsidiary company S Ltd., is valid.** But the proposed mode i.e, **passing resolution by circulation** of his appointment as the MD of H Ltd. **is not valid**, because as per the section it can be made by means of a **resolution of the Board** at its meeting containing the terms and conditions of the appointment including the remuneration.

In case where S Ltd. is not a subsidiary of H Ltd:

As per **third proviso to Section 203 of the Companies Act, 2013**, 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.

Hence, in the second situation, the answer will remain same as to appointment of Mr. Mania.

- (C) A per **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.

In view of the above provision, in the given case, the appointment of Mr. Max in the place of the deceased director Mr. Philip was in order. In normal course, Mr. Max could have held his office as director up to the date up to which Mr. Philip would have held the same.

However, Mr. Max expired on 10th May 2019 and again a vacancy has arisen in the office of director owing to the death of Mr. Max who was appointed by the Board.

Vacancy arising on the Board due to vacation of office by the director appointed to fill a casual vacancy does not create another casual vacancy as Sec. 161(4) clearly mentions that such vacancy should have been created by the vacation of office by any director appointed by the Company in general meeting. Hence, the Board cannot fill in the vacancy arising from the death of Mr. Max.

The Board may, however, appoint Mrs. Nini as an **additional director** under **Sec. 161(1)** of the Companies Act, 2013, provided the Articles of Association authorizes the Board to do so, in which case Mrs. Nini will hold the office up to the date of the next annual general meeting or the last date on which the Annual General Meeting should have been held, whichever is earlier.

Question 2

- (A) *M/s. Unicorn Rubber Sheets Limited was incorporated and registered in the United Kingdom. M/s Artha Rubber Sheets Manufacturing and Trading Limited is an Indian Company incorporated and registered under the provisions of the Companies Act, 2013. A scheme of compromise between the above two companies provided for an amalgamation of the English Company with the Indian company. The CFO of the Indian Company is of the opinion that the companies being amalgamated must be companies registered in India and therefore an amalgamation with a company registered outside India is not possible. Explaining the relevant provisions of the Companies Act, 2013, examine the correctness or otherwise of the following with reference to a scheme of amalgamation of Companies:*
- (i) *Whether the contention of the CFO is correct that the companies being amalgamated must be Companies registered in India?*
 - (ii) *What is the majority required for approving the scheme of amalgamation in a meeting of members of a company called as per the directions of the Tribunal? Is the scheme required to be approved by the preference shareholders? **(4 Marks)***

- (B) *Members of Sarat Solutions Ltd. are concerned about the performance of the company as they suspect gross negligence and mismanagement of the affairs of the company that may be detrimental to the interests of the company and therefore filed an application to the Central Government to appoint an inspector to carry on the investigation. Mr. X, who was appointed as inspector, is of the view that to find out the true picture it is necessary to investigate into the affairs of M/s. Hemant Softech Solutions Ltd., which is a subsidiary of Sarat Solutions Ltd. Referring to and analysing the provisions of the Companies Act, 2013 decide, whether the inspector has powers to investigate into the affairs of M/s Hemant Softech Solutions Ltd. (4 Marks)*
- (C) *Sakthi Cements Limited was incorporated on 1st April, 2015. The Company got its shares listed in Bombay Stock Exchange Limited on 30th September, 2016. The Company, at an Extra-Ordinary General Meeting held on 31st October, 2018, decided to go for public issue of equity shares to an extent of ₹ 300 Crores. The net worth of the Company as per the audited Balance Sheets in the financial years 2016-17 and 2017-18 was ₹ 59 Crores and ₹ 60 Crores respectively. During the financial year 2018-19 the Company had already issued equity shares amounting to ₹ 20 Crores. There is no change in the name of the Company or its business activities during the financial year 2018-19. Referring to the guidelines issued by Securities and Exchange Board of India, examine and advise the Company on the following:*
- (i) *Whether the Company can go ahead with the public issue of equity shares as stated above?*
- (ii) *What would be the position in case the Company in question VP changed its name to Annamalai Cements Limited during the year 2018-19, three months before filing the offer document and the revenue due to change of business activity suggested by the new name during the financial year 2018-19 was 40% less than the total revenue for the financial year 2017-18 reckoned from the date of filing the offer document? (6 Marks)*

Answer

- (A) (i) As per **Section 234(3) of the Companies Act, 2013**, a foreign company, may with the prior approval of the Reserve Bank of India, merge into a Company registered under this Act or vice versa as per the scheme to be drawn up for the purpose.
- Therefore, the **contention of CFO** of the M/s Artha Rubber Sheets Manufacturing and Trading Ltd. (Indian Company) **is incorrect**.
- (ii) According to **Section 230(3) of the Companies Act, 2013**, where a meeting is proposed to be called in pursuance of an order of the Tribunal, a notice of such meeting shall be sent to all the creditors / class of creditors and to all the members / class of members and the debenture-holders of the company.
- Where, at a meeting, 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, or, in case of a Company being wound up, on the liquidator, and the contributories of the Company.

As the expression used is 'members', not only holders of equity shares **but also preference shareholders will have to be taken into account** or, if the meeting of holders of preference shares and equity shares are ordered by the tribunal to be held separately, the **three-fourths majority of each class** will have to be ascertained separately. Where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable.

(B) Power of Inspector to Conduct Investigation into Affairs of Related Companies, etc.:

According to Section 219 of the Companies Act, 2013, if an Inspector appointed under Section 210 or Section 212 or Section 213 of the Companies Act, 2013 to investigate into the affairs of a Company and considers it necessary for the purposes of the investigation, to investigate also the affairs of any other body corporate which is, or has at any relevant time been the Company's Subsidiary Company or Holding Company, or a Subsidiary Company of its Holding Company; the Inspector, shall, subject to the prior approval of the Central Government, investigate into and report on the affairs of the other body corporate, in so far as he considers that the results of his investigation are relevant to the investigation of the affairs of the Company for which he is appointed.

Hence, as per the above provision, Inspector has power to investigate into the affairs of M/S Hemant Softech Solutions Ltd. which is a subsidiary of Sarat Solutions Ltd.

(C) As per the SEBI (ICDR) Regulations 2009, vide Regulation 26 (d) & (e), a listed Company shall be eligible to make a public issue of equity shares or any other security which may be converted into or exchanged with equity shares on a later date provided:

- (a) the aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size does not exceed five times its pre-issue net worth as per the audited balance sheet of the preceding financial year;
- (b) if it has changed its name within the last one year, at least fifty per cent of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name.

Applying the above Regulations, the questions as asked in the problem can be answered as under:

- (i) There are two conditions in the guidelines as stated above viz.
 - (a) that the aggregate issue i.e. proposed + all the previous issues made in the same financial year should not exceed 5 times the net worth of the Company;

(b) there is no change in the name of the issuer Company within the last 1 year.

In the question, the proposed issue of ₹ 300 Crore + Previous issue in the same financial year is ₹ 20 Crore, making an aggregate of ₹ 320 Crore.

Since the aggregate of the issue is more than 5 times of Net Worth, i.e. more than ₹ 300 Crore, the proposed offer is not within the limit, **Company cannot proceed ahead with the proposed issue of ₹ 300 Crore.**

- (ii) In the second case **the offer can be made** by Annamalai Cements Limited since the current year revenue earned is 60% (i.e. more than 50%) of the total revenue of the previous year.

Question 3

- (A) *Buina Limited has discontinued its business since 2015 and has not been filing annual returns. The Registrar of companies issued a notice for striking off the company. Since no reply was received within the time specified in the notice, the name of the company was struck off from the register of companies. There were tax arrears and a notice was sent to the company by the tax recovery officer. The Directors contended that since the company's name has been struck off, the company does not exist and not liable to pay the tax. Referring to and analysing the relevant provisions of the Companies Act, 2013 examine the validity of the Company's claim. (4 Marks)*
- (B) *Blue Berry Ltd. is a Company incorporated outside India. 50% of its preference share capital and 20% of its equity share capital are held by Companies incorporated in India. It issued prospectus inviting subscriptions in India for its shares but did not state the Country in which it is incorporated. Examine in the light of the provisions of the Companies Act, 2013 whether the issue of prospectus by the Company is valid. (2 Marks)*
- (C) *XYZ Producer Company Limited, a producer company, was incorporated on 1st April, 2003. At present it has got 200 members and its board consists of 10 Directors. The Board of Directors of the Company propose to advance a Loan of ₹ 10,000/- to Mr. X, a Director of the Company repayable within a period of six months. Explaining the provisions of the Companies Act, 1956, examine the validity of the above proposal. (2 Marks)*
- (D) *Sunita Garments Limited is engaged in the business of exporting leather garments. The company is neither located in a Special Economic Zone, nor has availed any special status like Status Holder Exporter, Export Oriented Unit or a unit under Bio-Technology Park. The company seeks your advice regarding the time limit within which the company is required to realise and import into India the foreign exchange arising out of export of goods by them and to be paid to the authorised dealer. Referring to the provisions of the Foreign Exchange Management Act, 1999 advise the company. (3 Marks)*
- (E) *Mr. Jaydev was the Chairperson of the Competition Commission of India and he ceased to hold his office on 31st March, 2019. Recently, he has been offered the post of the*

Executive Director with an attractive remuneration and perquisites in the following organisations :

- (i) *Arnab Limited, a private sector public company, which has been a party to a proceeding before the Competition Commission of India.*
- (ii) *National Milk Products Limited, a Government Company, as defined under the provisions of the Companies Act, 2013.*

Mr. Jaydev is confused and seeks your advice regarding selection of the appropriate concern, with which he should join. Examine the situation in the light of the provisions of the Competition Act, 2002 and advise him. **(3 Marks)**

Answer

- (A)** According to **Section 248(6)** of the Companies Act, 2013, the Registrar, before passing an order for removal of name of the Company, shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the Company and for the payment or discharge of its liabilities and obligations by the Company within a reasonable time and, if necessary, obtain necessary undertakings from the Managing Director, Director or other persons in charge of the Management of the Company.

Provided that, notwithstanding the undertakings referred to in this sub-section, the assets of the Company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the Register of Companies.

Also, as per **sub-section (7)**, the liability, if any, of every Director, Manager or other Officer who was exercising any power of Management, and of every Member of the Company dissolved under **sub-section (5)**, shall continue and may be enforced as if the Company had not been dissolved.

Hence, in the instant case, Bunia Limited's claim not to pay the tax is not valid.

- (B)** According to **Section 387(1)(a)(iv)** of the Companies Act, 2013, no person shall issue, circulate or distribute in India any prospectus offering to subscribe for securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless the prospectus is dated and signed, and contains particulars with respect to the date on which and the country in which the company would be or was incorporated.

Hence, in the instant case, issue of prospectus by Blue Berry Limited is not valid as it did not state the Country in which it is incorporated.

- (C)** According to proviso to **Section 581ZK** of the Companies Act, 1956, any loan or advance by a Producer Company to any director or his relative shall be granted only after the approval by the Members in general meeting.

In the instant case, the proposal to advance a loan of ₹ 10,000 to Mr. X, a director of the XYZ Producer Company Limited by the Board of Directors will be valid only after the approval by the Members in general meeting is taken for granting of such loan.

- (D) Period within which amount representing the export value shall be realized & repatriated as per **Section 7 of the FEMA, 1999** read with Foreign Exchange Management (Export of Goods and Services) Regulations, 2015:

The amount representing the full export value of goods / software/ services exported shall be realized and repatriated to India within nine months from the date of export, provided:

- (a) that where the goods are exported to a warehouse established outside India with the permission of the Reserve Bank, the amount representing the full export value of goods exported shall be paid to the authorized dealer as soon as it is realized and in any case within fifteen months from the date of shipment of goods;
- (b) **Extension of Period:** Further that the Reserve Bank, or subject to the directions issued by that Bank in this behalf, the authorized dealer may, for a sufficient and reasonable cause shown, extend the period of nine months or fifteen months, as the case may be.

Sunita Garments Limited may be advised as above.

- (E) As per the provisions of **Section 12 of the Competition Act, 2002**, the Chairman and other Member of CCI shall not, for a period of two years from the date on which he ceased to hold office, accept any employment in or connected with the management or administration of any enterprise, which has been a party to a proceeding before the Commission.

However, these provisions will not apply to any appointment in a Government Company or the Central Government or any State Government or local authority or any Corporation established by or under any Central or State or Provincial Act.

- (i) In view of the aforesaid, Mr. Jaydev cannot join Arnab Limited for a period of two years starting from 1st April, 2019.
- (ii) However, there is no bar for him to join National Milk Products Limited, since it is a Government Company.

Question 4

- (A) *MF Capital Private Limited accepted inter-corporate deposits from JS financial Services Private Limited. MF Capital Private Limited is a Non-banking financial company which obtained a certificate from the Reserve Bank of India for carrying on the business of providing financial services. As there was a default in repayment of deposits, JS Financial Services Private Limited filed' an application with the NCLT under Section 7 of the Insolvency and Bankruptcy Code, 2016. Examine the validity of the Application.*

(4 Marks)

- (B) Mr. Atul was appointed as the Insolvency Resolution Professional for XYZ Ltd. An application to replace the Insolvency resolution professional was filed before the Adjudicating Authority by some Financial Creditors. The financial Creditors propose to appoint Mr. K as the insolvency professional instead of Mr. Atul. Referring to the relevant provisions of the Insolvency and Bankruptcy Code 2016, decide whether Mr. Atul can be replaced and if so, state the procedure to be followed to appoint another IRP in place of existing one. **(4 Marks)**
- (C) Various complaints and allegations been received by the Reserve Bank of India against the conduct of a Co-operative Banking Company to the effect that if un-inspected, the shareholders, depositors and others will suffer heavily, and in this regard the complainants requested for the inspection of the records of the Co-operative bank. Analysing the provisions of the Banking Regulation Act, 1949, decide whether the RBI has powers to inspect the records of the Co-operative Bank to ascertain the truthfulness or otherwise of the complaints. **(3 Marks)**
- (D) Mr. Bagi, one of the Directors of Pradeep Life Insurance Company Limited, had taken some life insurance policies from the company. The total sum insured on all the policies amounted to ₹ 20,00,000/-. Till today, he had paid in total an amount of ₹ 3,00,000/- against all the life insurance policies. The surrender value of all these policies taken together comes to ₹ 1,80,000/-. He now wants to avail a temporary loan of ₹ 2,00,000/- from the company. The company refused to grant such loan on the ground that there is a prohibition in this regard. Advise Mr. Bagi with reference to the Insurance Laws (Amendment) Act, 2015 and Section 185 of the Companies Act, 2013, whether any amount of such loan can be availed by him. **(3 Marks)**

Answer

- (A) As per Section 2 of the Insolvency and Bankruptcy Code, 2016, the provisions of the Code shall apply for insolvency, liquidation, voluntary liquidation or bankruptcy of the following entities:-
- (a) Any Company incorporated under the Companies Act, 2013 or under any previous law.
 - (b) Any other Company governed by any Special Act for the time being in force, except in so far as the said provision is inconsistent with the provisions of such Special Act.
 - (c) Any Limited Liability Partnership under the LLP Act, 2008.
 - (d) Any other body incorporated under any law for the time being in force, as the Central Government may by notification specify in this behalf.
 - (e) personal guarantors to corporate debtors;
 - (f) partnership firms and proprietorship firms; and
 - (g) individuals, other than persons referred to in clause (e)

Further, Preamble to the Insolvency & Bankruptcy Code, implicit that the purpose of this Act is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals.

Section 3(7) of Insolvency & Bankruptcy Code, 2016 states that "Corporate Person" shall not include any financial service provider such as Banks, Financial Institutions, Insurance Company, Asset Reconstruction Company, Mutual Funds, Collective Investment Schemes or Pension Funds.

As per decision in the case of *Jindal Saxena Financial Services Vs Mayfair Capital* (2018), NBFC which has obtained a certificate from the Reserve Bank of India will be considered as a financial service provider.

In view of above, filing of an application with NCLT under Section 7 of the IBC, 2016 by JS Financial Services Private Limited against MF Capital Private Limited is invalid.

(B) Replacement of Resolution Professional (Section 27 of the Insolvency and Bankruptcy Code, 2016)

- (1) Where, at any time during the corporate insolvency resolution process, the committee of creditors (comprising all financial creditors of the corporate debtor) is of the opinion that a resolution professional appointed under Section 22 is required to be replaced, it may replace him with another resolution professional.
- (2) The committee of creditors [COC] may, at a meeting, by a vote of sixty-six per cent of voting shares, resolve to replace the resolution professional appointed under Section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.
- (3) The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.
- (4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16.
- (5) Where any disciplinary proceedings are pending against the proposed resolution professional, the resolution professional appointed under Section 22 shall continue till the appointment of another resolution professional under this Section.

Hence, in the instant case, Mr. Atul can be replaced by the COC comprising of financial creditors of corporate debtors, by following the above procedure.

(C) Power of Reserve Bank of India (RBI) to inspect Banks (Section 35 of the Banking Regulation Act, 1949): RBI is empowered to conduct inspection of any bank including co-operative banks and to give them direction as it deems fit. All banks are bound to comply with such directions. Every directors or other officer of the bank shall produce all such books, documents as required by the inspector. The inspector may examine on oath any director or other officers.

RBI shall supply the bank a copy of such report of the inspection. RBI submits report to Central Government and the latter, on scrutiny, if is of the opinion that the affairs of the bank are being conducted detrimental to the interest of its depositors, it may, after giving an opportunity of being heard, to the bank, may order in writing prohibiting the bank from receiving fresh deposits and direct the RBI to apply under Section 38 for the winding up of the bank.

- (D) **Section 29** of the Insurance Act, 1938 as amended by the Insurance Laws (Amendment) Act, 2015 provides for the prohibition of loans. According to this Section, no insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life insurance policies issued by him within their surrender value, to any director, manager, actuary, auditor or officer of the insurer, if a company or to any other company or firm in which any such director, manager, actuary or officer holds the position of a director, manager, actuary, officer or partner.

In the instant case, Mr. Bagi can avail a temporary loan of ₹ 1,80,000 only (not ₹ 2,00,000 as claimed by him) being the surrender value of all the policies taken by him.

Also, the provisions of **Section 185** of the Companies Act, 2013 shall not apply to a loan granted to a director of an insurer being a Company, if the loan is one granted on the security of a policy on which the insurer bears the risk and the policy was issued to the director on his own life, and the loan is within the surrender value of the policy. If the temporary loan availed by Mr. Bagi is within the surrender value of the policy i.e. ₹ 1,80,000, then Section 185 of the Companies Act, 2013 is not applicable.

Question 5

- (A) *Aggrieved by an order of Hon'ble NCLT, dated 3rd April, 2018, passed without the consent of parties, Solan Minerals Limited decided to file an appeal before Hon'ble NCLAT. The order was received by the company on 4th April, 2018. The employees and officers went on a strike for a period of 10 days from 22nd May, 2018 demanding higher bonus and pay. In view of this, the management of the company was forced to a grinding halt during the strike period. Thereafter, the appeal was filed on 6th June, 2018 before the Hon'ble NCLAT and the company prayed for condonation of delay. Referring to and analysing the applicable provisions of the Companies Act, 2013, decide the following:*

- (i) *Whether the proposed appeal would be admitted by the Hon'ble NCLAT.*
- (ii) *What is the maximum period allowed by the NCLAT for condonation of delay?*

(4 Marks)

- (B) *Akri Nidhi Limited proposes:*

- (i) *To reappoint Mr. X, a Director who has completed a term of 10 consecutive year as a Director of the Nidhi.*
- (ii) *To pay dividend at the rate of 45%.*

Examine and analyse the validity of the above proposals with reference to Nidhi Rules 2014 formulated under Companies Act, 2013. **(4 Marks)**

- (C) *The Adjudicating Authority appointed under the Prevention of Money Laundering Act, 2002 issued an order attaching certain properties of SVG Limited, alleging to be involved in money laundering for a specified period. The Company, aggrieved by the Order of the Adjudicating Authority, seeks your advice about the remedy that is available under the Act. Analyse and apply the relevant provisions of the Act in relation to the above situation and advise.* **(4 Marks)**
- (D) *Analyse and explain the significance of the conjunctive and disjunctive words "or" and "and" while you are involved in interpretation of statutes.* **(2 Marks)**

Answer

(A) Appeal from Orders of Tribunal [Section 421 of the Companies Act, 2013]

- (1) **Appeal to Appellate Tribunal:** Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal (AT).
- (2) **When order made by consent of parties:** No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.
- (3) **Period for filing of appeal:** Every appeal against order of Tribunal, shall be filed **within a period of 45 days** from the date on which a copy of the order of the Tribunal is made available to the person aggrieved.
- (4) **Extension of period:** However, the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, **but within a further period not exceeding 45**, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

Thus,

- (i) In the instant case, the appeal was filed on 6th June, 2018 before the NCLAT, and Company prayed for condonation of delay. As per the provisions of the Act, the appeal should have been filed with NCLAT by 19th May, 2018 (i.e. 45 days from 4th April, 2018). Though the appeal could have been admitted on the grounds that the order of NCLT was passed without the consent of the parties. But the appeal was not tendered within the prescribed time. Further, the delay of condonation cannot be given as the strike started in the company from 22nd May, 2018 i.e. after 45 days of receiving the order of the NCLT and thus, the appellant was not prevented by sufficient cause from filing the appeal within the prescribed period. Hence the proposed appeal by Solan Minerals Limited will not be admitted by the NCLAT.
- (ii) The maximum period allowed for condonation is **45 days** if the AT is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

- (B) (i) According to **Rule – 17** of the *Nidhi Rules, 2014*, the Director of a Nidhi shall hold office for a term up to ten consecutive years on the Board of Nidhi and he shall be eligible for re-appointment only after the expiration of two years of ceasing to be a Director.

Hence, in the instant case, Akri Nidhi Limited cannot reappoint Mr. X as a director for a period of two years after completion of 10 consecutive years.

- (ii) According to **Rule 18** of the *Nidhi Rules, 2014*, a Nidhi shall not declare dividend exceeding 25% or such higher amount as may be specifically approved by the Regional Director for reasons to be recorded in writing and further subject to the following conditions, namely:—
- (a) an equal amount is transferred to General Reserve;
 - (b) there has been no default in repayment of matured deposits and interest; and
 - (c) it has complied with all the rules as applicable to Nidhis.

In the instant case, if the Company wants to pay dividend at the rate of 45%, it has to follow the procedure mentioned under Rule 18.

- (C) **Section 25** of the Prevention of Money Laundering Act, 2002 empowers the Central Government to establish an Appellate Tribunal to hear appeal against order of the Adjudicating Authority and other authorities under the Act.

Section 26 deals with the right and time frame to make an appeal to the Appellate Tribunal. Any person aggrieved by an order made by the Adjudicating Authority may prefer an appeal to the Appellate Tribunal within a period of **45 days** from the date on which a copy of the order is received by him. The appeal shall be in such form and be accompanied by such fee as may be prescribed. The Appellate Tribunal may extend the period if it is satisfied that there was sufficient cause for not filing it within the period of 45 days.

The Appellate Tribunal may after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, confirming, modifying or setting aside the order appealed against.

The Act also provides of further appeal. According to **Section 42** any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the order of the Appellate Tribunal.

In the light of the provisions of the Act explained above, SVG Limited is advised to prefer an appeal to Appellate Tribunal in the first instance.

- (D) **Conjunctive and Disjunctive Words 'or' and 'and'**: The word '**or**' is normally disjunctive and '**and**' is normally conjunctive. However, at times they are read as *vice versa* to give effect to the manifest intention of the legislature as disclosed from the context. This would be so where the literal reading of the words produces an unintelligible or absurd result. In such a case 'and' may be read for 'or' and 'or' for 'and' even though the result of so

modifying the words is less favorable to the subject, provided that the intention of the legislature is otherwise quite clear.

Example: In the Official Secrets Act, 1920, as per section 7 any person who attempts to commit any offence under the principal Act or this Act, or solicits or incites or endeavors to persuade another person to commit an offence, or aids or abets **and** does any act preparatory to the commission of an offence'. Here, the word 'and' in bold is to be read as 'or'. Reading 'and' as 'and' will result in unintelligible and absurd sense and against the clear intention of the Legislature. [*R v. Oakes, (1959)*]

Question 6

- (A) *KMR Limited, a listed public company, has 15 directors on its Board.*

The Articles of Association of the said company provide for the maximum number of Directors in the 'company to be 15. Due to diversification and expansion of activities, the Board of Directors of the said company desire to increase the number of Directors to 18. Decide with reference to the applicable provisions of the Companies Act, 2013:

- (i) *Whether the Board of Directors can do so?*
 (ii) *Will your answer differ if the said Company would have been a Government Company?* **(4 Marks)**

OR

B Ltd. is a listed Company and it has been served with a notice for appointment of a small shareholders' director. Referring to the provisions of the Companies Act, 2013, examine the following:

- (i) *The tenure of small shareholders' director and whether he can be re-appointed as such, after expiry of his tenure?*
 (ii) *Whether he can be appointed as an officer of the Company on expiry of his tenure as small shareholders' director.*
- (B) *Vogue Limited has an Authorised Capital of 250 lakhs and paid up capital of 200 lakhs. The free reserves are there to the tune of 150 Lakhs. The company has advanced a loan of ₹ 160 Lakhs to other companies as on 30th November, 2018. Now the company proposes to advance an interest free loan of ₹ 60 Lakhs to its wholly owned subsidiary Fashion Limited.*

Discuss the validity of the proposed transaction with reference to the restrictions imposed by the applicable provisions of the Companies Act, 2013 and relevant Rules made thereunder. **(4 Marks)**

- (C) *Some coconut producers of Bengaluru in Karnataka are proposing to form an association to control the production of coconuts. Referring to the provisions of the Competition Act, 2002, examine whether the proposed association to control the production of coconuts will fall within the jurisdiction of the term "Cartel" under the provisions of the said Act?* **(3 Marks)**

- (D) *Mr. Manoranjan, an officer investigating a case of money laundering, is of the view that important evidence relating to the case is available in a foreign country, (Contracting State) with which agreement for exchange of information has already been entered into.*

Advise Mr. Manoranjan, referring to the provisions of the Prevention of Money Laundering Act, 2002, about the procedure to be followed for collecting such evidence. (3 Marks)

Answer

- (A) According to **Section 149(1)** of the Companies Act, 2013, the minimum number of directors in the case of a public company is 3. The maximum number of directors shall be 15.

The proviso to Section 149(1) states that a Company may appoint more than 15 directors after passing a **special resolution**.

- (i) Yes, the Board of Directors can do so by following the below mentioned provisions:
- (1) A special resolution of members will be required to alter the Articles of Association under **Section 14** of the Companies Act, 2013, so as to increase the number of directors in the Articles from 15 to 18;
 - (2) Further, the number of directors is proposed to be increased beyond 15 directors, such authority must be obtained from the members through a special resolution and only after that approval, new directors can be appointed.
- (ii) In case of a Government company, the Ministry of Corporate Affairs has clarified vide Notification **G.S.R. 463(E) dated 5th June, 2015**, the limit of maximum of 15 directors and their increase in limit by special resolution shall not apply to Government Company. Thus, in case of a Government Company the Board of Directors can increase the number the directors without following the provisions as mentioned in part (i).

OR

According to **Section 151** of the Companies Act, 2013, read with **Rule 7** of *Companies (Appointment and Qualifications of the Directors) Rules, 2014*, a listed company may have one director elected by small shareholders in such manner and on such terms and conditions as may be prescribed.

- (i) The tenure of small shareholders' director shall not exceed a period of 3 consecutive years and on the expiry of the tenure, such director shall not be eligible for re-appointment.
 - (ii) A small shareholders' director shall not, for a period of 3 years from the date on which he ceases to hold office as a small shareholders' director in a company, be appointed in or be associated with such company in any other capacity, either directly or indirectly.
- (B) According to **Section 186(2)** of the Companies Act, 2013, no Company shall directly or indirectly give any loan, guarantee or provide security to other body corporate, exceeding

60% of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more.

Sub section (3) of Section 186 provides that 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:

However, where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply.

Further, sub- section (7) provides that no loan shall be given under Section 186 at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.

In the given question, Vogue Limited has to provide interest free loan to its wholly owned subsidiary Fashion Limited. The maximum amount of loan that Vogue Limited can provide to other body corporate is ₹ 210 lakhs [Higher of {60% of (200+150)} or {100% of 150}]. But, Vogue Limited has already provided loans of ₹ 160 lakhs to other companies. Thus, if Vogue Limited proposes to provide loan beyond of ₹ 50 lakhs (₹ 210-160 lakhs) it requires shareholders' approval.

However, since Fashion Limited is a wholly owned subsidiary of Vogue Limited, it can give loan to Fashion Limited without approval of shareholders.

However, the Companies Act, 2013, prohibits giving interest free loan, Vogue Limited cannot provide an interest free loan even to its wholly owned subsidiary.

- (C) As per **Section 2(c)** of the Competition Act, 2002 the term “cartel” includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control, or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services.

The term “cartel” has an inclusive meaning. Thus, an association formed to control the production of coconuts is within the aforesaid definition of a cartel. Hence, the association of coconuts producers of Bengaluru in Karnataka will be considered as a cartel under the provisions of the Act.

- (D) According to **Section 57** of the **Prevention of Money Laundering Act, 2002**, the following procedure may be followed for collecting evidence relating to the case that Mr. Manorajan is investigating:

1. **Issue of letter of request:** If, in the course of an investigation into an offence or other proceedings under this Act, an application is made to a Special Court by the Investigating Officer or any officer superior in rank to the Investigating Officer that any evidence is required in connection with investigation into an offence or proceedings under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the investigation into an offence or proceedings under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to-
 - (i) examine facts and circumstances of the case,
 - (ii) take such steps as the Special Court may specify in such letter of request, and
 - (iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.
2. **Transmission of letter of request:** The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.
3. **Letter of request to be deemed as an evidence:** Every statement recorded or document or thing received shall be deemed to be the evidence collected during the course of investigation.