

## PAPER – 4 : CORPORATE AND ALLIED LAWS

### PART – I: RELEVANT AMENDMENTS APPLICABLE FOR NOVEMBER 2019 EXAMINATION

#### (A) Applicability of Relevant Amendments/ Circulars/ Notifications/ Regulations etc.

For November 2019 examinations for Paper 4: Corporate and Allied Laws, the significant amendments made upto 30<sup>th</sup> April, 2019 are relevant.

**Relevant publications:** Students are advised to refer the following publications -

1	Study Material (Revised edition June 2018) containing Legislative amendments made upto 30 <sup>th</sup> April, 2018.
2	RTP of November 2019 examination containing a gist of all the significant legislative amendments of one year i.e. from 1 <sup>st</sup> May 2018 to 30 <sup>th</sup> April, 2019 along with the suggested sample questions and answers for understanding and practice.

**Relevant amendments:** Given here are the relevant amendments which shall be read in line with the principal Act. These amendments are arranged chapter wise as per the study material for the convenience of the students.

### SECTION A: COMPANY LAW & INSOLVENCY AND BANKRUPTCY CODE, 2016

#### CHAPTER 2: ACCOUNTS AND AUDIT

##### 1. Enforcement of the *Companies (Audit and Auditors) second Amendment Rules, 2018* vide Notification G.S.R. 432 (E) dated 7<sup>th</sup> May 2018

The Central Government makes the *Companies (Audit and Auditors) second Amendment Rules, 2018* to amend the *Companies (Audit and Auditors) Rules, 2014*.

In the *Companies (Audit and Auditors) Rules, 2014*,

- (i) In **rule 3** which deals with the **Manner and Procedure of selection and appointment of auditors**, following are the amendments:
  - (a) Explanation shall be omitted.
  - (b) proviso to sub-rule (7) shall be omitted.
- (ii) In the principal rules, **rule 9** which deals with the **Liability to devolve on concerned partners** only, shall be omitted.
- (iii) In the principal rules, in **rule 10A** i.e., related to **Internal Financial controls system**, for the words "adequate internal financial controls system", the words "internal financial controls with reference to financial statements" shall be substituted.
- (iv) In the principal rules, in **rule 14** which deals with **the remuneration of the cost auditor**, following are the changes-
  - (a) in clause (a), in sub-clause (i), for the words, "who is a cost accountant in practice", the words "who is a cost accountant" shall be substituted;

(b) in clause (b) for the words "who is a cost accountant in practice", the words "who is a cost accountant" shall be substituted.

**2. Enforcement of the Companies (Accounts) Amendment Rules, 2018 vide Notification G.S.R. 725(E) dated 31<sup>st</sup> July, 2018**

The Central Government makes the *Companies (Accounts) Amendment Rules, 2018* to amend the *Companies (Accounts) Rules, 2014*.

*In the Companies (Accounts) Rules, 2014,*

(i) In sub-rule (5) of **Rule 8** which deals with the **Matters to be included in Board's report**, after clause (vii) the following clauses shall be inserted, namely:-

“(ix) a disclosure, as to whether maintenance of cost records as specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013, is required by the Company and accordingly such accounts and records are made and maintained,

(x) a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013,”

(ii) after sub-rule (5), the following **Sub Rule (6)**, rule shall be inserted, namely:-

“(6) This rule shall not apply to One Person Company or Small Company”.

(iii) after rule 8, the following **rule 8A** shall be inserted, namely:-

“8A. Matters to be included in Board's Report for One Person Company and Small Company-

(1) The Board's Report of One Person Company and Small Company shall be prepared based on the stand alone financial statement of the company, which shall be in abridged form and contain the following:-

(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;

(b) number of meetings of the Board;

(c) Directors' Responsibility Statement as referred to in sub-section (5) of section 134;

(d) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;

(e) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report;

(f) the state of the company's affairs;

- (g) the financial summary or highlights;
- (h) material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company;
- (i) the details of directors who were appointed or have resigned during the year;
- (j) the details or significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future.

(2) The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2.”.

**3. Enforcement of the *Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018* vide Notification G.S.R. 865 (E) dated 19<sup>th</sup> September, 2018**

The Central Government makes *the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018* to amend the *Companies (Corporate Social Responsibility Policy) Rules, 2014*.

In *Companies (Corporate Social Responsibility Policy) Rules, 2014*,

- (i) in **rule 2** which deals with the **definitions**, -
  - (a) in sub-rule (1), in sub-clause (i) of clause (c) which defines “Corporate Social Responsibility (CSR)”, after the words “relating to activities”, the words “, areas or subjects” shall be inserted;
  - (b) in sub-rule (1), in sub-clause (ii) of clause (c), for the words “cover subjects enumerated”, the words “include activities, areas or subjects specified” shall be substituted;
  - (c) in sub-rule (1), in clause (e) which defines “CSR Policy”, for the words “company as”, the words “company in areas or subjects” shall be substituted.
- (ii) in **rule 5** which deals with the “**CSR Committees**”, in clause (i) of sub rule (1), for the words “an unlisted public company or a private company”, the words “a company” shall be substituted.
- (iii) In **rule 6** which states of **CSR Policy**, following are the changes-
  - (a) in sub-rule (1), in clause (a), for the words “falling within the purview of” the words “areas or subjects specified in” shall be substituted;
  - (b) in sub-rule (1), in second proviso to clause (b), for the words, “activities included in Schedule VII” the words “areas or subjects specified in Schedule VII” shall be substituted.

(iv) in rule 7 i.e., “CSR Expenditure”, for the words, “purview of”, the words “areas or subjects, specified in” shall be substituted.

#### 4. Constitution of NFRA

The Central Government vide Notification No. S.O. 5099(E) appoints the 1<sup>st</sup> October, 2018 as the date of constitution of National Financial Reporting Authority.

#### 5. Enforcement of sub-sections (2), (4), (5), (10), (13), (14) and (15) of section 132 i.e., related “Constitution of National Financial Reporting Authority” of the Companies Act, 2013

The Central Government vide Notification S.O. 5385(E) appoints the 24th October, 2018 as the date on which the sub-sections (2), (4), (5), (10), (13), (14) and (15) of section 132 of the Companies Act, 2013 shall come into force.

#### 6. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 129 (Financial statement)	<p>In section 129 of the principal Act, for <b>sub-section (3)</b>, the following sub-section shall be substituted, namely:—</p> <p>"(3) Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2):</p> <p>Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries and associate company or companies in such form as may be prescribed:</p> <p>Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed."</p>
Amendment of section 134 (Financial statement, Board's report, etc)	<p>In section 134 of the principal Act,—</p> <p>(a) for <b>sub-section (1)</b>, the following sub-section shall be substituted, namely:—</p> <p>"(1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on</p>

	<p>behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.";</p> <p>(b) in <b>sub-section (3)</b>,—</p> <p>(i) for clause (a), the following clause shall be substituted, namely:—  "(a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;"</p> <p>(ii) in clause (p), for the words "annual evaluation has been made by the Board of its own performance and that of its committees and individual directors", the words "annual evaluation of the performance of the Board, its Committees and of individual directors has been made" shall be substituted;</p> <p>(iii) after clause (q), the following provisos shall be inserted, namely:—  "Provided that where disclosures referred to in this sub-section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report:  Provided further that where the policy referred to in clause (e) or clause (o) is made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available.";</p> <p>(c) after sub-section (3), the following <b>sub-section 3A</b> shall be inserted, namely:— "(3A) The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by One Person Company or small company.".</p>
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<p>Amendment of section 135 (Corporate Social Responsibility)</p>	<p>In section 135 of the principal Act,—</p> <p>(i) in <b>sub-section (1)</b>,—</p> <p>(a) for the words "any financial year", the words "the immediately preceding financial year" shall be substituted;</p> <p>(b) the following proviso shall be inserted, namely:— "Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.";</p> <p>(ii) in <b>sub-section (3)</b>, in clause (a), for the words and figures "as specified in Schedule VII", the words and figures "in areas or subject, specified in Schedule VII" shall be substituted;</p> <p>(iii) in <b>sub-section (5)</b>, for the Explanation, the following Explanation shall be substituted, namely:— 'Explanation.—For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.'</p>
<p>Amendment of section 137 (Copy of financial statement to be filed with Registrar).</p>	<p>In section 137 of the principal Act,—</p> <p>(i) in <b>sub-section (1)</b>,—</p> <p>(a) the words and figures "within the time specified under section 403" shall be omitted;</p> <p>(b) in the second proviso, the words and figures "within the time specified under section 403" shall be omitted;</p> <p>(c) after the fourth proviso, the following proviso shall be inserted, namely:— 'Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.'</p>

	(ii) in sub-section (2), the words and figures “within the time specified, under section 403” shall be omitted; (iii) in sub-section (3), for the words and figures “in section 403”, the word “therein” shall be substituted.
Amendment of section 139 (Appointment of auditors).	In section 139 of the principal Act, in <b>sub-section (1)</b> , the first proviso shall be omitted.

7. **Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2<sup>nd</sup> November, 2018**

Relevant sections	Amendment
<b>Amendment of section 137.</b>	In section 137 of the principal Act, in sub-section (3),— (a) for the words “punishable with fine”, the words “liable to a penalty” shall be substituted; (b) for the portion beginning with “punishable with imprisonment”, and ending with “five lakh rupees or with both”, the words “shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees” shall be substituted.
<b>Amendment of section 140.</b>	In section 140 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:— “(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”.

**CHAPTER 3: APPOINTMENT AND QUALIFICATION OF DIRECTORS**

1. **Enforcement of the *Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2018* vide Notification G.S.R. 431(E) dated 7th May 2018**

The Central Government makes the *Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014*.

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*,

- (a) **rule 5** which deals with the Qualifications of Independent director, shall be numbered as sub-rule (1) thereof, and after sub-rule (1) as so numbered, the following sub-rule shall be inserted, namely:-

“(2) None of the relatives of an independent director, for the purposes of sub-clauses (ii) and (iii) of clause (d) of sub-section (6) of section 149,-

- (i) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors; or
- (ii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for an amount of fifty lakhs rupees, at any time during the two immediately preceding financial years or during the current financial year.”

- (b) In the principal rules, in **rule 16** which deals with the **copy of resignation of director to be forwarded by him**, for the word “shall”, the word “may” shall be substituted.

**2. Enforcement of the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2018 vide Notification G.S.R. 558 (E) dated 12th June 2018**

The Central Government makes the *Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014*.

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*, in the annexure, for form DIR-3 which deals with the Application for allotment of Director Identification Number, a new form shall be substituted.

**3. Enforcement of the Companies (Appointment and Qualification of Directors) fourth Amendment Rules, 2018 vide Notification G.S.R. 615(E) w.e.f. 10<sup>th</sup> July, 2018**

The Central Government makes the *Companies (Appointment and Qualification of Directors) Fourth Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014*.

In *Companies (Appointment and Qualification of Directors) Rules, 2014*,

- (i) The **rule 11** (related to cancellation or surrender or deactivation of DIN) shall be renumbered as sub-rule (1) thereof and after sub-rule (1) as so renumbered, the following sub-rules shall be inserted, namely:-

“(2) The Central Government or Regional Director (Northern Region), or any officer authorised by the Central Government or Regional Director (Northern Region) shall, deactivate the Director Identification Number (DIN), of an individual who does not intimate his particulars in e-form DIR-3-KYC within stipulated time in accordance with Rule 12A.



(3) The de-activated DIN shall be re-activated only after e-form DIR-3-KYC is filed along with fee as prescribed under Companies (Registration Offices and Fees) Rules, 2014.

(ii) after rule 12, the following **rule 12A** shall be inserted, namely:-

“12A Directors KYC:- Every individual who has been allotted a Director Identification Number (DIN) as on 31<sup>st</sup> March of a financial year as per these rules shall, submit e-form DIR-3-KYC to the Central Government on or before 30<sup>th</sup> April of immediate next financial year.

Provided that every individual who has already been allotted a Director Identification Number (DIN) as at 31<sup>st</sup> March, 2018, shall submit e-form DIR-3 KYC on or before 31<sup>st</sup> August, 2018.”;

(iii) In the Annexure after Form DIR-3 the Form DIR-3-KYC shall be inserted.

**4. Enforcement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2018 vide Notification G.S.R. 798 (E) dated 21st August 2018**

The Central Government makes the *Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014*.

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*,

(i) in the proviso to **rule 12A** i.e., Directors KYC, for the words and numbers “DIR-3 KYC on or before 31<sup>st</sup> August, 2018, the words and numbers “DIR-3 KYC on or before 15<sup>th</sup> September, 2018” shall be substituted.

(ii) in the Annexure, for Form No.DIR-3 KYC, a new Form shall be substituted.

**5. Enforcement of the Companies (Appointment and Qualification of Directors) Sixth Amendment Rules, 2018 vide Notification G.S.R. 904(E) dated 20th September 2018**

The Central Government makes the *Companies (Appointment and Qualification of Directors) Sixth Amendment Rules, 2018* to amend the *Companies (Appointment and Qualification of Directors) Rules, 2014*.

In the *Companies (Appointment and Qualification of Directors) Rules, 2014*, in the proviso to **rule 12A**, for the words and figures “before 15<sup>th</sup> September, 2018,” the words and figures “**before 5th October, 2018**” shall be substituted.

**6. Amendments through the Companies (Amendment) Act, 2017**

Relevant sections	Amendment
Amendment of section 149 (Company to	In section 149 of the principal Act,— (i) for <b>sub-section (3)</b> , the following sub-section shall be substituted, namely:—

<p>have board of directors)</p>	<p>"(3) Every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year: Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.";</p> <p>(ii) in <b>sub-section (6)</b>,—</p> <p>(a) in clause (c), for the words "pecuniary relationship", the words "pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed," shall be substituted;</p> <p>(b) for clause (d), the following clause shall be substituted, namely:—</p> <p>"(d) none of whose relatives—</p> <p>(i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year: Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;</p> <p>(ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed during the two immediately preceding financial years or during the current financial year;</p> <p>(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed during the two immediately preceding financial years or during the current financial year; or</p> <p>(iv) has any other pecuniary transaction or relationship</p>
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	<p>with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);";</p> <p>(c) in clause (e), in sub-clause (i), the following proviso shall be inserted, namely:—</p> <p>"Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years."</p>
Amendment of Section 157 (Company to inform DIN to registrar)	<p>In section 157 of the principal Act,—</p> <p>(i) in <b>sub-section (1)</b>, the words and figures, "within the time specified under section 403" shall be omitted;</p> <p>(ii) in <b>sub-section (2)</b>, the words and figures, "before the expiry of the period specified under section 403 with additional fee", shall be omitted.</p>
Amendment of section 164 (Disqualifications for appointment of director)	<p>In section 164 of the principal Act,—</p> <p>(i) in <b>sub-section (2)</b>, the following proviso shall be inserted, namely:—</p> <p>"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.";</p> <p>(ii) in <b>sub-section (3)</b>, for the proviso, the following proviso shall be substituted, namely:—</p> <p>"Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification."</p>
Amendment of section 167 (Vacations of office of director).	<p>In section 167 of the principal Act, in <b>sub-section (1)</b>,—</p> <p>(i) in clause (a), the following proviso shall be inserted, namely:—</p> <p>"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.";</p> <p>(ii) in clause (f), for the proviso the following proviso shall be substituted, namely,—</p>

	<p>"Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)—</p> <p>(i) for thirty days from the date of conviction or order of disqualification;</p> <p>(ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or</p> <p>(iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of."</p>
Amendment of Section 168 (Resignation of Director)	In section 168 of the principal Act, in <b>sub-section (1)</b> , in the proviso, for the words, "director shall also forward", the words "director may also forward" shall be substituted.

7. **Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2<sup>nd</sup> November, 2018**

Relevant sections	Amendment
<b>Amendment of section 157.</b>	In section 157 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:— “(2) If any company fails to furnish the Director Identification Number under sub-section (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”
<b>Substitution of new section for section 159.</b>	For section 159 of the principal Act, the following Substitution of section shall be substituted, namely: <b>Penalty for default of certain provisions.</b> “159. If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with

	a further penalty which may extend to five hundred rupees for each day after the first during which such default continues.”
<b>Amendment of section 164.</b>	In section 164 of the principal Act, in sub-section (1), after clause (h), the following clause shall be inserted, namely:— “(i) he has not complied with the provisions of sub-section (1) of section 165.”
<b>Amendment of section 165.</b>	In section 165 of the principal Act, in sub-section (6), for the portion beginning with “punishable with fine” and ending with “contravention continues”, the words “liable to a penalty of five thousand rupees for each day after the first during which such contravention continues” shall be substituted.

#### CHAPTER 4: APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

##### 1. Enforcement of the *Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018* vide Notification G.S.R 875(E) dated 12th September 2018

The Central Government makes the *Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018* to amend the *Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014*. This amendment has omitted the requirement of approval of the Central Government for making payment of remuneration to the Managerial personnel (in case of inadequacy of profit) and accordingly e-form MR-2 has also been amended.

In *Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014*,

- (i) in **rule 6** which deals with the Parameters for consideration of remuneration, following are the amendments:
  - (a) for the heading ‘application to the Central Government’ the heading ‘Parameters for consideration of remuneration’ shall be substituted.
  - (b) the words ‘Central Government’ shall be omitted.
- (ii) in **rule 7** i.e., related to Fees, sub-rule (2) shall be omitted
- (iii) for form no.MR-2, a new form MR-2 shall be substituted.

##### 2. Amendment in Schedule V to the Companies Act, 2013

The Central Government vide Notification No. S.O. 4822(E) dated 12th September 2018 has amended the Schedule V to the Companies Act, 2013.

##### 3. Amendments through the Companies (Amendment) Act, 2017

Relevant Sections	Amendment
Amendment of section 196	In section 196 of the principal Act,—

(Appointment of MD, WTD, Manager)	<p>(a) in <b>sub-section (3)</b>, in clause (a), after the proviso, the following proviso shall be inserted, namely:—          “Provided further that where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.”;</p> <p>(b) in <b>sub-section (4)</b>, for the words “specified in that Schedule”, the words “specified in Part I of that Schedule” shall be substituted.</p>
Amendment of Section 197 (Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits)	<p>In section 197 of the principal Act,—</p> <p>(a) in <b>sub-section (1)</b>,—</p> <p>(i) in the first proviso, the words "with the approval of the Central Government," shall be omitted;</p> <p>(ii) in the second proviso, after the words "general meeting," the words "by a special resolution," shall be inserted;</p> <p>(iii) after the second proviso, the following proviso shall be inserted, namely:—          "Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.";</p> <p>(b) in <b>sub-section (3)</b>, the words "and if it is not able to comply with such provisions, with the previous approval of the Central Government" shall be omitted;</p> <p>(c) for <b>sub-section (9)</b>, the following sub-section shall be substituted, namely:—          "(9) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years or such lesser period as</p>

	<p>may be allowed by the company, and until such sum is refunded, hold it in trust for the company.";</p> <p>(d) in <b>sub-section (10)</b>,—</p> <p>(i) for the words "permitted by the Central Government", the words "approved by the company by special resolution within two years from the date the sum becomes refundable" shall be substituted;</p> <p>(ii) the following proviso shall be inserted, namely:— "Provided that where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining approval of such waiver.";</p> <p>(e) in <b>sub-section (11)</b>, the words "and if such conditions are not being complied, the approval of the Central Government had been obtained" shall be omitted;</p> <p>(f) after <b>sub-section (15)</b>, the following sub-sections shall be inserted, namely:— "(16) The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed. (17) On and from the commencement of the Companies (Amendment) Act, 2017, any application made to the Central Government under the provisions of this section [as it stood before such commencement], which is pending with that Government shall abate, and the company shall, within one year of such commencement, obtain the approval in accordance with the provisions of this section, as so amended."</p>
<p>Amendment of Section 198 (Calculations of Profits)</p>	<p>In section 198 of the principal Act,—</p> <p>(i) in <b>sub-section (3)</b>,—</p> <p>(a) in clause (a), after the words "sold by the company", the words, letter, brackets and figures "unless the</p>

	<p>company is an investment company as referred to in clause (a) of the Explanation to section 186" shall be inserted;</p> <p>(b) after clause (e), the following clause (f) shall be inserted, namely:—</p> <p>“(f) any amount representing unrealised gains, notional gains or revaluation of assets.”;</p> <p>(ii) in <b>sub-section (4)</b>, in clause (l), the words "which begins at or after the commencement of this Act" shall be omitted.</p>
Amendment of section 200 (Central Government or company to fix limit with regard to remuneration).	In section 200 of the principal Act, the words "the Central Government or" appearing at both the places shall be omitted.
Amendment of section 201 (Forms of, and procedure in relation to, certain applications).	<p>In section 201 of the principal Act,—</p> <p>(a) in <b>sub-section (1)</b>, for the words "this Chapter", the word and figures "section 196" shall be substituted;</p> <p>(b) in <b>sub-section (2)</b>, in clause (a), for the words "any of the sections aforesaid", the word and figures "section 196" shall be substituted.</p>

**4. Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2<sup>nd</sup> November, 2018**

Relevant sections	Amendment
<b>Amendment of section 197.</b>	<p>In section 197 of the principal Act,—</p> <p>(a) sub-section (7) shall be omitted;</p> <p>(b) for sub-section (15), the following sub-section shall be substituted, namely:—</p> <p>“(15) If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.”.</p>
<b>Amendment of section 203.</b>	<p>In section 203 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—</p> <p>“(5) If any company makes any default in complying with the provisions of this section, such company shall be liable to a</p>



	penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.”.
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## CHAPTER 5: MEETING OF BOARD AND ITS POWERS

### 1. Enforcement of the *Companies (Meetings of Board and its Powers) Amendment Rules, 2018* vide Notification G.S.R. 429 (E) dated 7th May, 2018

The Central Government makes the *Companies (Meetings of Board and its Powers) Amendment Rules, 2018* to amend the *Companies (Meetings of Board and its Powers) Rules, 2014*.

In *Companies (Meetings of Board and its Powers) Rules, 2014*,

- (i) in rule 4 i.e., **related the matters not to be dealt with in a meeting through video conferencing or other audio visual means**, the following proviso shall be inserted, namely:-

“Provided that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means.”

- (ii) In the principal rules, in rule 6 related to the **Committees to the Board**, for the words “every listed company”, the words “every listed public company” shall be substituted.
- (iii) In the principal rules, for rule 13 i.e. related to the **Special Resolution**, the following rule shall be substituted, namely:-

“13. Special Resolution- A resolution passed at a general meeting in terms of sub-section (3) of section 186 to give any loan or guarantee or investment or providing any security or the acquisition under sub-section (2) of section 186 shall specify the total amount up to which the Board of Directors are authorised to give such loan or guarantee, to provide such security or make such acquisition:

Provided that the company shall disclose to the members in the financial statement the full particulars in accordance with the provisions of sub-section (4) of section 186.”

### 2. Amendments through the *Companies (Amendment) Act, 2017*

Relevant sections	Amendment
Amendment of section 173 (Meetings of Board)	In section 173 of the principal Act, in <b>sub-section (2)</b> , after the first proviso, the following proviso shall be inserted, namely:— "Provided further that where there is quorum in a meeting through physical presence of directors, any other director

	may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso."
Amendment of section 177 (Audit Committee).	<p>In section 177 of the principal Act,—</p> <p>(i) in <b>sub-section (1)</b>, for the words "every listed company", the words "every listed public company" shall be substituted;</p> <p>(ii) in <b>sub-section (4)</b>, in clause (iv), after the proviso, the following provisos shall be inserted, namely:—  "Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:  Provided also that in case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it:  Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company."</p>
Amendment of Section 178 (Nomination and Remuneration Committee and stake holders Relationship committee)	<p>In section 178 of the principal Act,—</p> <p>(i) in <b>sub-section (1)</b>, for the words "every listed company", the words "every listed public company" shall be substituted;</p> <p>(ii) in <b>sub-section (2)</b>, for the words "shall carry out evaluation of every director's performance", the words "shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration</p>

	<p>Committee or by an independent external agency and review its implementation and compliance" shall be substituted;</p> <p>(iii) in <b>sub-section (4)</b>, in clause (c), for the proviso, the following proviso shall be substituted, namely:— "Provided that such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report.";</p> <p>(iv) in <b>sub-section (8)</b>, in the proviso, for the words "non-consideration of resolution of any grievance", the words "inability to resolve or consider any grievance" shall be substituted.</p>
<p>Substitution of new section for section 185. (Loan to Directors)</p>	<p>For <b>section 185</b> of the principal Act, the following section shall be substituted, namely:—</p> <p>'185. (1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,—</p> <p>(a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or</p> <p>(b) any firm in which any such director or relative is a partner.</p> <p>(2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that—</p> <p>(a) a special resolution is passed by the company in general meeting: Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and</p>

	<p>(b) the loans are utilised by the borrowing company for its principal business activities.</p> <p><i>Explanation.</i>—For the purposes of this sub-section, the expression "any person in whom any of the director of the company is interested" means—</p> <p>(a) any private company of which any such director is a director or member;</p> <p>(b) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or</p> <p>(c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.</p> <p>(3) Nothing contained in sub-sections (1) and (2) shall apply to—</p> <p>(a) the giving of any loan to a managing or whole-time director—</p> <p>(i) as a part of the conditions of service extended by the company to all its employees; or</p> <p>(ii) pursuant to any scheme approved by the members by a special resolution; or</p> <p>(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or</p> <p>(c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or</p> <p>(d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company.</p>
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	<p>Provided that the loans made under clauses (c) and (d) are utilized by the subsidiary company for its principal business activities.</p> <p>(4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,—</p> <p>(i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees;</p> <p>(ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and</p> <p>(iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.'</p>
<p>Amendment of section 186 (Loan and investment by company).</p>	<p>In section 186 of the principal Act,—</p> <p>(i) in <b>sub-section (2)</b>, the following Explanation shall be inserted, namely:— '<i>Explanation.</i>—For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company.';</p> <p>(ii) for <b>sub-section (3)</b>, the following sub-section shall be substituted, namely:— '(3) 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:</p>

	<p>Provided that 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.</p> <p>Provided further that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (4).”.</p> <p>(iii) for <b>sub-section (11)</b>, the following sub-section shall be substituted, namely:—</p> <p>“(11) Nothing contained in this section, except sub-section (1), shall apply—</p> <p>(a) to any loan made, any guarantee given or any security provided or any investment made by a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities;</p> <p>(b) to any investment—</p> <p>(i) made by an investment company;</p> <p>(ii) made in shares allotted in pursuance of clause (a) of sub-section (1) of section 62 or in shares allotted in pursuance of rights issues made by a body corporate;</p> <p>(iii) made, in respect of investment or lending activities, by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities.”;</p>
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	(iv) <b>in the <i>Explanation</i></b> , in <b>clause (a)</b> , after the words "other securities" the following shall be inserted, namely:— "and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent. of its total assets, or if its income derived from investment business constitutes not less than fifty per cent. as a proportion of its gross income."
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**3. Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2<sup>nd</sup> November, 2018**

Relevant sections	Amendment
<b>Amendment of section 191</b>	In section 191 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:— “(5) If a director of the company makes any default in complying with the provisions of this section, such director shall be liable to a penalty of one lakh rupees.”.

**CHAPTER 7: COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS**

**Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2<sup>nd</sup> November, 2018**

Relevant sections	Amendment
<b>Amendment of section 238</b>	In section 238 of the principal Act, in sub-section (3), for the words “punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees”, the words “liable to a penalty of one lakh rupees” shall be substituted.

**CHAPTER 8: PREVENTION OF OPPRESSION AND MISMANAGEMENT**

**Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2<sup>nd</sup> November, 2018**

Relevant sections	Amendment
<b>Amendment of section 248</b>	In section 248 of the principal Act, in sub-section Amendment of (1),—

	<p>(a) in clause (c), for the word and figures "section 455," the words and figures "section 455; or" shall be substituted;</p> <p>(b) after clause (c) and before the long line, the following clauses shall be inserted, namely:—</p> <p>"(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or</p> <p>(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12."</p>
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## CHAPTER 16: SPECIAL COURTS

### Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment
Amendment of section 435. (Establishment of Special Courts)	<p>For section 435 of the principal Act, the following shall be substituted, namely:—</p> <p>435. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.</p> <p>(2) A Special Court shall consist of—</p> <p>(a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and</p> <p>(b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences, who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working."</p>
Amendment of section 438 (Application of Code to proceedings before Special court)	<p>In section 438 of the principal Act, for the words "deemed to be a Court of Session", the words "deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be," shall be substituted.</p>



Amendment of section 439 (Offences to be non cogizable).	In section 439 of the principal Act, in sub-section (2), after the words "a shareholder", the words "or a member" shall be inserted.
Amendment of section 440 (Transitional provisions).	In section 440 of the principal Act, for the words "Court of Session", at both the places, the words "Court of Session or the Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be" shall be substituted.

**Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2<sup>nd</sup> November, 2018**

Relevant sections	Amendment
<b>Amendment of section 446B.</b>	In section 446B of the principal Act, for the portion beginning with "punishable with fine" and ending with "specified in such sections", the words "liable to a penalty which shall not be more than one half of the penalty specified in such sections" shall be substituted.

**CHAPTER 17: MISCELLANEOUS PROVISIONS**

**1. Enforcement of the Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018 vide Notification G.S.R. 559(E) dated 13th June, 2018**

The Central Government makes the *Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018* to amend the *Companies (Registered Valuers and Valuation) Rules, 2017*.

In *Companies (Registered Valuers and Valuation) Rules, 2017*, in **rule 19** which relates to Committee to advise on valuation matters, in sub-rule 2, after clause (g), the following clause shall be inserted, namely:-

"(h) Presidents of, the Institute of Chartered Accountants of India, the Institute of Company Secretaries of India, the Institute of Cost Accountants of India as ex-officio members."

**2. Enforcement of the Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018 vide Notification G.S.R. G.S.R. 925(E) dated 25th September, 2018**

The Central Government makes the *Companies (Registered Valuers and Valuation) Third Amendment Rules, 2018* to amend the *Companies (Registered Valuers and Valuation) Rules, 2017*.

In the *Companies (Registered Valuers and Valuation) Rules, 2017*,

- (i) in **rule 11** i.e., related to **Transitional Arrangement**, for the figures, letters and word "30<sup>th</sup> September, 2018" occurring at both the places, the figures, letters and word "31<sup>st</sup> January, 2019" shall be substituted.

- (ii) In the said **rules, in rule 14** i.e., related to **Conditions of Recognition**, in clause (f), for the words “one year”, the words “two years” shall be substituted.

**3. Enforcement of the Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018 vide Notification G.S.R.1108(E) dated 13<sup>th</sup> November 2018**

The Central Government makes the *Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018* to amend the *Companies (Registered Valuers and Valuation) Rules, 2017*.

*In the Companies (Registered Valuers and Valuation) Rules, 2017* (hereinafter referred to as “the said rules”)

- (i) **in rule 1**, -
- (a) for the marginal heading, the following marginal heading shall be substituted, namely:-  
“Short title, commencement and application”;
- (b) after sub-rule (2), the following sub-rule shall be inserted, namely:-  
“(3) These rules shall apply for valuation in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provision of the Act or these rules.

**Explanation.-** It is hereby clarified that conduct of valuation under any other law other than the Act or these rules by any person shall not be affected by virtue of coming into effect of these rules.”.

- (ii) In the said rules, **in rule 3**, in sub-rule (2), -
- (a) in clause (a), the word “not” shall be omitted;
- (b) in clause (c), after the brackets and letter “(e)”, the brackets and letter “(f),” shall be inserted.
- (iii) In the said rules, **in rule 4**,-
- (a) in clause (c), the words, brackets and letters “and having qualification mentioned at clause (a) or (b)” shall be omitted;
- (b) in Explanation II, the words “and examination or training” shall be omitted;
- (c) after Explanation II, the following Explanation shall be inserted, namely :-  
“**Explanation III.**— For the purposes of this rule and Annexure IV, ‘equivalent’ shall mean professional and technical qualifications which are recognised by the Ministry of Human Resources and Development as equivalent to professional and technical degree.”.

- (iv) In the said rules, in **rule 10**, the words “and he may conduct valuation as per these rules if required under any other law or by any other regulatory authority” shall be omitted.
- (v) In the said rules, in **rule 11**, the Explanation shall be omitted.
- (vi) In the said rules, in **rule 12**, in sub-rule (1), in clause (ii), for the words “a professional institute”, the words “it is a professional institute” shall be substituted.

**4. Enforcement of the *Companies (Adjudication of Penalties) Amendment Rules, 2019* vide Notification G.S.R. 131(E) dated 19<sup>th</sup> February, 2019**

The Central Government makes the ***Companies (Adjudication of Penalties) Amendment Rules, 2019*** to amend the *Companies (Adjudication of Penalties) Rules, 2014*.

In the *Companies (Adjudication of Penalties) Rules, 2014*, for Rule 3, the following rule shall be substituted:

**“3. Adjudication of Penalties.** - (1) The Central Government may appoint any of its officers, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of the Act.

(2) Before adjudging penalty, the adjudicating officer shall issue a written notice in the specified manner, to the company, the officer who is in default or any other person, as the case may be, to show cause, within such period as may be specified in the notice (not being less than 15 days and more than 30 days from the date of service thereon), why the penalty should not be imposed on it or him.

(3) Every notice issued under sub-rule (2), shall clearly indicate the nature of non-compliance or default under the Act alleged to have been committed or made by such company, officer in default, or any other person, the company, and each of the officers in default, or the other person. as the case may be and also draw attention to the relevant penal provisions of the Act and the maximum penalty which can be imposed on the company, and each of the officers in default, or the other person.

(4) The reply to such notice shall be filed in electronic mode only within the period as specified in the notice.

However, the adjudicating officer may, for reasons to be recorded in writing, extend the period referred to above by a further period not exceeding 15 days, if the company or officer in default or any person as the case may be, satisfies the adjudicating officer that it or he has sufficient cause for not responding to the notice within the stipulated period or the adjudicating officer has reason to believe that the company or the officer or the person has received a shorter notice and did not have reasonable time to give reply.

(5) If, after considering the reply submitted by such company, its officer, or any other person, as the case may be, the adjudicating officer is of the opinion that physical

appearance is required, he shall issue a notice, within a period of 10 working days from the date of receipt of reply fixing a date for the appearance of such company, through its authorised representative, or officer of such company, or any other person, whether personally or through his authorised representative.

If any person, to whom a notice is issued under sub-rule (2), desires to make an oral representation, whether personally or through his authorised representative and has indicated the same while submitting his reply in electronic mode, the adjudicating officer shall allow such person to make such representation after fixing a date of appearance.

(6) On the date fixed for hearing and after giving a reasonable opportunity of being heard to the person concerned, the adjudicating officer may, subject to reasons to be recorded in writing, pass any order in writing as he thinks fit including an order for adjournment:

Provided that after hearing, adjudicating officer may require the concerned person to submit his reply in writing on certain other issues related to the notice under sub-rule (2), relevant for determination of the default.

(7) The adjudicating officer shall pass an order,-

- (a) within 30 days of the expiry of the period referred in sub-rule (2) or of such extended period as referred therein, where physical appearance was not required under sub-rule (5);
- (b) within 90 days of the date of issue of notice under sub-rule (2), where any person appeared before the adjudicating officer under sub-rule (5):

Provided that in case an order is passed after the aforementioned duration, the reasons of the delay shall be recorded by the adjudicating officer and no such order shall be invalid merely because of its passing after the expiry of such 30 days or 90 days as the case may be.

(8) Every order of the adjudicating officer shall be duly dated and signed by him and shall clearly state the reasons for requiring the physical appearance under sub-rule (5).

(9) The adjudicating officer shall send a copy of the order passed by him to the concerned company, officer who is in default or any other person or all of them and to the Central Government and a copy of the order shall also be uploaded on the website.

(10) For the purposes of this rule, the adjudicating officer shall exercise the following powers, namely:-

- (a) to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case after recording reasons in writing;
- (b) to order for evidence or to produce any document, which in the opinion of the adjudicating officer, may be relevant to the subject matter.

(11) If any person fails to reply or neglects or refuses to appear as required under sub-rule (5) or sub-rule (10) before the adjudicating officer, the adjudicating officer may pass an order imposing the penalty, in the absence of such person after recording the reasons for doing so.

(12) While adjudging quantum of penalty, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) size of the company;
- (b) nature of business carried on by the company;
- (c) injury to public interest;
- (d) nature of the default;
- (e) repetition of the default;
- (f) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; and
- (g) the amount of loss caused to an investor or group of investors or creditors as a result of the default:

However, in no case, the penalty imposed shall be less than the minimum penalty prescribed, if any, under the relevant section of the Act.

(13) In case a fixed sum of penalty is provided for default of a provision, the adjudicating officer shall impose that fixed sum, in case of any default therein.

(14) Penalty shall be paid through Ministry of Corporate Affairs portal only.

(15) All sums realised by way of penalties under the Act shall be credited to the Consolidated Fund of India.

**4. Amendments through the Companies (Amendment) Second Ordinance, 2019 w.e.f. 2<sup>nd</sup> November, 2018**

Relevant sections	Amendment
<b>Amendment of section 447.</b>	In section 447 of the principal Act, in the second proviso, for the words “twenty lakh rupees”, the words “fifty lakh rupees” shall be substituted.
<b>Amendment of section 454</b>	In section 454 of the principal Act, — (i) for sub-section (3), the following sub-section shall be substituted, namely: — “(3) The adjudicating officer may, by an order

	<p>(a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and</p> <p>(b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.”;</p> <p>(ii) in sub-section (4), for the words “such company and the officer who is in default”, the words “such company, the officer who is in default or any other person” shall be substituted;</p> <p>(iii) in sub-section (8),—</p> <p>(a) in clause (i), for the words “does not pay the penalty imposed by the adjudicating officer or the Regional Director”, the words, brackets and figures “fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be,” shall be substituted;</p> <p>(b) in clause (ii)—</p> <p>(i) for the words “Where an officer of a company”, the words “Where an officer of a company or any other person” shall be substituted;</p> <p>(ii) for the words “does not pay the penalty”, the words, brackets and figures “fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be,” shall be substituted.</p>
<p><b>Insertion of new section 454A.</b></p>	<p>After section 454 of the principal Act, the following section shall be inserted, namely:</p> <p><b>Penalty for repeated default.</b></p> <p>“454A. Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act.”.</p>

**CHAPTER 19: INSOLVENCY AND BANKRUPTCY CODE, 2016****(1) The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018**

Vide Notification dated 17<sup>th</sup> August, 2018, Ministry of Law and Justice here by amended the Insolvency and Bankruptcy Code, 2016 through the enforcement of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018. With the enforcement of this Amendment Act, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 have been repealed. This amendment Act is effective from **6<sup>th</sup> June, 2018**.

**Following are the relevant amendments:**

- (1) In **section 3(12)**, in the Insolvency and Bankruptcy Code, 2016 (Principal Act), for the word "repaid", the word "paid" shall be substituted.
- (2) In **section 5** of the principal Act,
  - (i) after clause (5) i.e., after the definition of Corporate applicant, the following **clause 5A** shall be inserted, namely:—  
'(5A) "corporate guarantor" means a corporate person who is the surety in a contract of guarantee to a corporate debtor;'
  - (ii) in **clause (8)** prescribing the term "**Financial Debt**" in the Code, in sub-clause (f), the following Explanation shall be inserted, namely:—  
'Explanation.—For the purposes of this sub-clause,—
    - (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and
    - (ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;
  - (iii) in **clause (12)** i.e., as to the "**Insolvency commencement date**", the following proviso shall be inserted, namely:—  
"Provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or section 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority;"
  - (iv) **after clause (24)**, the following clause shall be inserted, namely:—  
'(24A) "**related party**", in relation to an individual, means—
    - (a) a person who is a relative of the individual or a relative of the spouse of the individual;
    - (b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;

- (c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;
- (d) a private company in which the individual is a director and holds along with his relatives, more than two per cent. of its share capital;
- (e) a public company in which the individual is a director and holds along with relatives, more than two per cent. of its paid-up share capital;
- (f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;
- (g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;
- (h) a person on whose advice, directions or instructions, the individual is accustomed to act;
- (i) a company, where the individual or the individual along with its related party, own more than fifty per cent. of the share capital of the company or controls the appointment of the board of directors of the company.

Explanation.—For the purposes of this clause,—

- (a) "relative", with reference to any person, means anyone who is related to another, in the following manner, namely:—
  - (i) members of a Hindu Undivided Family,
  - (ii) husband,
  - (iii) wife,
  - (iv) father,
  - (v) mother,
  - (vi) son,
  - (vii) daughter,
  - (viii) son's daughter and son,
  - (ix) daughter's daughter and son,
  - (x) grandson's daughter and son,
  - (xi) granddaughter's daughter and son,
  - (xii) brother,
  - (xiii) sister,



- (xiv) brother's son and daughter,
  - (xv) sister's son and daughter,
  - (xvi) father's father and mother,
  - (xvii) mother's father and mother,
  - (xviii) father's brother and sister,
  - (xix) mother's brother and sister, and
- (b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included;'
- (3) In **section 7(1)** of the principal Act which deals with the initiation of CIRP by financial creditor, for the words "other financial creditors", the words "other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government," shall be substituted.
- (4) In **section 8(2)** of the principal Act which deals with the Insolvency resolution by operational creditor, following are the amendments—
- (i) in **clause (a)**, for the words "if any, and", the words "if any, or" shall be substituted;
  - (ii) in **clause (b)**, for the word "repayment", the word "payment" shall be substituted; In the Explanation, for the word "repayment", the word "payment" shall be substituted.
- (5) In **section 9(3)** of the principal Act, which states of the provision related to the filing of an application for initiation of corporate insolvency resolution process by operational creditor—
- (i) in **clause (c)**, for the words "by the corporate debtor; and", the words "by the corporate debtor, if available;" shall be substituted;
  - (ii) for **clause (d)**, the following clauses shall be substituted, namely:—
    - "(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and
    - (e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.";
- (6) in **section 9(5)** of the principle Code which deals with the provision related to the filing of an application for initiation of corporate insolvency resolution process by operational creditor —
- (a) in **clause (i), in sub-clause (b)**, for the word "repayment", the word "payment" shall be substituted;

- (b) in **clause (ii), in sub-clause (b)**, for the word "repayment", the word "payment" shall be substituted.
- (7) **Section 10 (3)** of the principal Act, deals with the initiation of corporate insolvency resolution process by corporate applicant, shall be substituted with the following—
- "(3) The corporate applicant shall, along with the application, furnish—
- (a) the information relating to its books of account and such other documents for such period as may be specified;
  - (b) the information relating to the resolution professional proposed to be appointed as an interim resolution professional; and
  - (c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.";
- (8) In **Section 10 (4)** related to the initiation of corporate insolvency resolution process by corporate applicant, following amendments have been made—
- (i) in **clause (a)**, after the words "if it is complete", the words "and no disciplinary proceeding is pending against the proposed resolution professional" shall be inserted;
  - (ii) in **clause (b)**, after the words "if it is incomplete", the words "or any disciplinary proceeding is pending against the proposed resolution professional" shall be inserted.
- (9) In **section 12(2)** of the principal Act, related to the time limit for completion of corporate insolvency resolution process, for the word "seventy-five", the word "sixty-six" shall be substituted.
- (10) **After section 12** of the principal Act, the section 12A shall be inserted—
- "12A. Withdrawal of application admitted under section 7, 9, or 10:** The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified."
- (11) **Section 14(3)** of the principal Act which deals with the moratorium, shall be substituted, with the following—
- "(3) The provisions of **sub-section (1)** shall not apply to—
- (a) such transaction as may be notified by the Central Government in consultation with any financial regulator;
  - (b) a surety in a contract of guarantee to a corporate debtor."

- (12) In **section 15(1)(c)** of the principal Act which deals with the provisions related to the public announcement, for the word "claims", the words "claims, as may be specified" shall be substituted.
- (13) In **section 16(5)** of the principal Act which is related to the appointment and tenure of interim resolution professional, for the words "shall not exceed thirty days from date of his appointment", the words and figures "shall continue till the date of appointment of the resolution professional under section 22" shall be substituted.
- (14) In **section 17(2)(d)** of the principal Act which deals with the management of affairs of corporate debtor by IRP, for the words "may be specified.", the words "may be specified; and" shall be substituted;
- (15) **After section 17(2)(d)** which deals with the management of affairs of corporate debtor by IRP, the following **section 17(2)(e)**, shall be inserted,  
 "(e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor."
- (16) In **section 21** of the principal Act, which deals with the committee of creditors, following are the relevant amendments —
- (i) **in sub-section (2), — in the proviso**, for the words "related party to whom a corporate debtor owes a financial debt", the words, brackets, figures and letter "financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor," shall be substituted;
- (ii) after this proviso under sub-section (2), the following **proviso is inserted-**  
 "Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.";
- (iii) **Insertion of new sub-section 6(A) & 6(B)** after sub-section (6)-  
 "(6A) Where a financial debt—  
 (a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;  
 (b) is owed to a class of creditors exceeding the number as maybe specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be

appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;

- (c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors, and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.
- (6B) The remuneration payable to the authorised representative—
- (i) under clauses (a) and (c) of sub-section (6A), if any, shall be as per the terms of the financial debt or the relevant documentation; and
- (ii) under clause (b) of sub-section (6A) shall be as specified which shall form part of the insolvency resolution process costs.”;
- (iv) for **sub-sections (7) and (8)**, the following sub-sections shall be substituted, namely:—
- “(7) The Board may specify the manner of voting and the determining of the voting share in respect of financial debts covered under sub-sections (6) and (6A).
- (8) Save as otherwise provided in this Code, all decisions of the committee of creditors shall be taken by a vote of not less than fifty-one per cent. of voting share of the financial creditors:
- Provided that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and shall comprise of such persons to exercise such functions in such manner as may be specified.”
- (17) In **section 22(2)** of the principal Act, for the word, "seventy-five", the word "sixty-six" shall be substituted;
- (18) In **section 23(1)** of the principal Act, the following proviso shall be inserted-
- "Provided that the resolution professional shall, if the resolution plan under sub-section (6) of section 30 has been submitted, continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period until an order is passed by the Adjudicating Authority under section 31."
- (19) In **section 24(3)** of the principal Act, in clause (a), for the words "Committee of creditors", the words, brackets, figures and letter "committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5)" shall be substituted;
- (20) **Insertion of new section 25A** which deals with the Rights and duties of authorised representative of financial creditors.

'25A. (1) **Right to participate and Vote on behalf of FC:** The authorised representative (AR) under section 21(6) & 21(6A) or section 24(5) shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor (FC) he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.

**Duty of AR to circulate agenda & minutes to FC:** It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.

**AR to act on instruction of FC:** The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:

Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.

(2) **To ensure recording of instruction by IRP/RP:** The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.

- (21) **Amendment in section 27(2)** of the principal Act which deals with the Replacement of Resolution Professional (RP) by Committee of creditors (CoC): This sub-section is substituted with the following provision-

"The committee of creditors 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."

- (22) Amendment in **section 28(3)** of the principal Act which deals with the approval of committee of creditors for certain actions, for the word, "seventy-five", the word "sixty-six" shall be substituted.

- (23) **Amendment in Section 29 A**, dealt with the persons not eligible to be resolution applicant came into enforcement on 23rd day of November 2017 through the enforcement of Insolvency and Bankruptcy Code (Amendment) Act, 2018 vide notification dated 19th January, 2018.

**(i) in clause (c), —**

- (a) for the words "has an account," the words "at the time of submission of the resolution plan has an account," shall be substituted;
- (b) after the words and figures "the Banking Regulation Act, 1949", the words "or the guidelines of a financial sector regulator issued under any other law for the time being in force," shall be inserted;
- (c) after the proviso, the following shall be inserted, namely:— 'Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

The expression "**related party**" here shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;

**(ii) for clause (d), the following clause shall be substituted, namely:—**

- "(d) has been convicted for any offence punishable with imprisonment—
- (i) for two years or more under any Act specified under the Twelfth Schedule; or
  - (ii) for seven years or more under any other law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;"

**(iii) in clause (e), the following proviso shall be inserted, namely:—**

"Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;"

**(iv) in clause (g), the following proviso shall be inserted, namely:—**

"Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;"

**(v) in clause (h), —**

- (a) for the words "an enforceable guarantee", the words "a guarantee" shall be substituted;
- (b) after the words "under this Code", the words "and such guarantee has been invoked by the creditor and remains unpaid in full or part" shall be inserted;

**(vi) in clause (i), for the words "has been", the word "is" shall be substituted;**

**(vii) the Explanation occurring after clause (j) shall be numbered as *Explanation I*, and in *Explanation I* as so numbered, for the proviso, the following provisos shall be substituted, namely:—**

'Provided that nothing in clause (iii) of *Explanation I* shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;';

**(viii) after *Explanation I* as so numbered, the following Explanation shall be inserted, namely:—**

'Explanation II—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely:—

- (a) a scheduled bank;
- (b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;
- (c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the

terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999.

- (d) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (e) an Alternate Investment Fund registered with the Securities and Exchange Board of India;
- (f) such categories of persons as may be notified by the Central Government.'.

(24) **Amendment in section 30:** The said section deals with the submission of resolution plan. Following are the amendments-

- (i) in **sub-section (1)**, after the words "resolution plan", the words, figures and letter "along with an affidavit stating that he is eligible under section 29A" shall be inserted;
- (ii) in **sub-section (2)**,—
  - (a) in clauses (a) and (b), for the word "repayment" at both the places where it occurs, the word "payment" shall be substituted;
  - (b) after clause (f), the following *Explanation* shall be inserted, namely:—
 

*Explanation.*—For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law."
- (iii) in **sub-section (4)**,—
  - (a) for the word "seventy-five", the word "sixty-six" shall be substituted;
  - (b) after the third proviso, the following proviso shall be inserted, namely:—
 

"Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018."

25. **Amendment in section 31** of the principal Act, which deals with the approval of resolution plan—

- (a) in **sub-section (1)**, the following proviso shall be inserted, namely:—



"Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation."

(b) after **sub-section (3)**, the following sub-section shall be inserted namely:—

"(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors."

26. Amendment made in **section 33(2)** of the principal Act. This section deals with the initiation of liquidation process. Amendments made is that after the words "decision of the committee of creditors", the words "approved by not less than sixty-six per cent. of the voting share" shall be inserted.
27. In **section 34** of the principal Act, which states of appointment of liquidator and fee to be paid, following amendments are made—
- a. in **sub-section (1)**, for the words and figures "Chapter II shall", the words and figures "Chapter II shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form," shall be substituted;
  - b. in **sub-section (4)**,—
    - i. in clause (b), for the words "in writing", the words "in writing; or" shall be substituted;
    - ii. after clause (b), the following clause shall be inserted, namely:—  
"(c) the resolution professional fails to submit written consent under sub-section (1).";
  - c. in **sub-section (5)**, for the word, brackets and letter "clause (a)", the words, brackets and letters "clauses (a) and (c)" shall be substituted;
  - d. in **sub-section (6)**, after the words "another insolvency professional", the words "along with written consent from the insolvency professional in the specified form," shall be inserted.
28. In **section 42** of the principal Act, which deals with the provisions related to the appeal against the decision of liquidator, after the words "of the liquidator", the words "accepting or" shall be inserted.

29. In **section 45(1)** of the principal Act, which deals with the Avoidance of undervalued transactions, the words and figures "of section 43" shall be omitted.

**Important Note:** With respect to amendments as covered above under Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, only those amendments may be taken into consideration which are pertaining to the provisions covered in the study material. Also, the newly inserted sections i.e. 24A, 12A, 21 (6)(A), 21(6)(B) and 25A of the said amendment are also applicable.

2. Usage of the word "any other person on behalf of the financial creditor, as may be notified by the Central Government" under section 7(1) of the IBC has been clarified by notification issued by Ministry of Corporate Affairs. **Vide Notification S.O. 1091(E), dated 27th February, 2019**, the Central Government hereby notifies following persons who may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority, on behalf of the financial creditor: -

- (i) a guardian;
- (ii) an executor or administrator of an estate of a financial creditor;
- (iii) a trustee (including a debenture trustee); and
- (v) a person duly authorised by the Board of Directors of a Company.

## SECTION B: ALLIED LAWS

### CHAPTER 20: SEBI ACT, 1992

#### Enforcement of the Banning of Unregulated Deposit Schemes Ordinance, 2019

Banning of Unregulated Deposit Schemes Ordinance, 2019 dated **21<sup>st</sup> February, 2019** has substituted Clause (e) of sub-section (4) of Section 11 of the SEBI Act, 1992 which is as follows:

(e) attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply.

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached.

### CHAPTER 21: The Securities Contract (Regulation) Act, 1956

Vide Finance Act, 2018, w.e.f 8.3.2019 following Changes are made in the SCRA-

- (i) In the Securities Contracts (Regulation) Act, 1956 (hereafter in this Part referred to as the principal Act), section 12A shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:-  
"(2) Without prejudice to the provisions of sub-section (1) and section 23-I, the Securities and Exchange Board of India may, by an order, for reasons to be recorded in writing, levy penalty under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G, 23GA and 23H after holding an inquiry in the prescribed manner."
- (ii) In section 23 of the principal Act, in sub-section (1), in the long line, after the words "Adjudicating officer", the words "or the Securities and Exchange Board of India" shall be inserted.
- (iii) In section 23A of the principal Act, in sub-clause (a), after the words "bye-laws of the recognised stock exchange", the words "or who furnishes false, incorrect or incomplete information, document, books, return or report" shall be inserted.
- (iv) In section 23E of the principal Act, after the words "mutual fund", the words "or real estate investment trust or infrastructure investment trust or alternative investment fund", shall be inserted.
- (v) In section 23G of the principal Act, after the words "periodical returns", the words "or furnishes false, incorrect or incomplete periodical returns" shall be inserted.
- (vi) After section 23G of the principal Act, the following section shall be inserted, namely:-  
"23GA. Where a stock exchange or a clearing corporation fails to conduct its business with its members or any issuer or its agent or any person associated with the securities markets in accordance with the rules or regulations made by the Securities and Exchange Board of India and the directions issued by it under this Act, the stock exchange or the clearing corporations, as the case may be, shall be liable to penalty which shall not be less than five crore rupees but which may extend to twenty-five crore rupees or three times the amount of gains made out of such failure, whichever is higher."
- (vii) In section 23-I of the principal Act, in sub-section (1), for the word "shall", the word "may" shall be substituted.
- (viii) In section 23J of the principal Act,-  
(a) for the marginal heading, the following marginal heading shall be substituted, namely:- "Factors to be taken into account while adjudging quantum of penalty";  
(b) for the word, figures and letter "section 23-I" the words, figures and letters "section 12A or section 23-I" shall be substituted.  
(c) for the words "the adjudicating officer", the words "the Securities and Exchange Board of India or the adjudicating officer" shall be substituted.
- (ix) In section 23JA of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:-

"(5) All settlement amounts, excluding the disgorgement amount and legal costs, realised under this Act shall be credited to the Consolidated Fund of India."

- (x) In section 23JB of the principal Act, in sub-section (1), for the words "by the adjudicating officer", the words "under this Act" shall be substituted.
- (xi) After section 23JB of the principal Act, the following section shall be inserted, namely:-
- '23JC. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased: Provided that, in case of any penalty payable under this Act, a legal representative shall be liable only in case the penalty has been imposed before the death of the deceased person.
- (2) For the purposes of sub-section (1),- (a) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, initiated against the deceased before his death shall be deemed to have been initiated against the legal representative, and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased and all the provisions of this Act shall apply accordingly; (b) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, which could have been initiated against the deceased if he had survived, may be initiated against the legal representative and all the provisions of this Act shall apply accordingly.
- (3) Every legal representative shall be personally liable for any sum payable by him in his capacity as legal representative if, while his liability for such sum remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.
- (4) The liability of a legal representative under this section shall, be limited to the extent to which the estate of the deceased is capable of meeting the liability. Explanation.-For the purposes of this section "Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.'
- (xii) In section 23M of the principal Act,-
- (1) after the words "adjudicating officer" at both the places where they occur, the words "or the Securities and Exchange Board of India" shall be inserted;
- (2) in sub-section (2), for the words, "any of his direction or orders" the words "the direction or order" shall be substituted.

(xiii) In section 24 of the principal Act,-

- (a) for the marginal heading, the following marginal heading shall be substituted:-  
"Contravention by companies;"
- (b) in sub-section (1), for the words "an offence", the words "a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder" shall be substituted;
- (c) in sub-section (2), for the words "an offence under this Act", the words "a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder" shall be substituted;
- (d) for the word "offence", wherever it occurs, the word "contravention" shall be substituted.

#### **CHAPTER 22: FEMA, 1999**

##### **Foreign Exchange Management (Permissible Capital Account Transactions) (Amendment) Regulations, 2019**

Reserve Bank of India makes the amendment in the FEM (Permissible Capital Account Transactions) Regulations, 2000 through the enforcement of the Foreign Exchange Management (Permissible Capital Account Transactions) (Amendment) Regulations, 2019 w.e.f. 26-2-2019. Following are the relevant amendments -

- (i) In the Para 2 (Definitions) – After the clause (d), clause (da) is added:  
“(da) 'Derivative' means a financial contract, to be settled at a future date, whose value is derived from one or more financial, or non-financial variables.”
- (ii) In schedule I (classes of capital account transactions of persons resident in India) of FEM (Permissible Capital Account Transactions) Regulations, 2000, for the existing clause (k), the following shall be substituted:  
“(k) Undertake derivative contracts”
- (iii) In the schedule II ((classes of capital account transactions of persons resident outside India) of FEM (Permissible Capital Account Transactions) Regulations, 2000, after the existing clause (g), the following shall be added:  
“(h) Undertake derivative contracts”

#### **(B) Non-Applicability of the following chapter of the Study material**

Chapter 9 of the study material (June 18 edition) covering provisions relating to Revival and Rehabilitation of Sick-Industrial Companies, is omitted by the Ministry of Corporate Affairs.

**PART – II: QUESTIONS AND ANSWERS****QUESTIONS****Multiple Choice Questions**

1. Mr. Ram gave two of his friends' cash amount of ₹ Two lakh each for their business purposes. Later at the time of return, he asked both of them, in lieu of the same, to buy his product via credit card and online transfers in installments through next couple of months' time for which he issued bills to adjust the amount in his account books.  
Does this payment system through credit card and online transfer mode are covered under Money Laundering Act?
  - (a) No, because payments are made through credit cards & being an online transfer, it's a genuine transaction.
  - (b) Yes, money laundering transactions done via credit card and online payments comes under the Prevention of Money Laundering Act.
  - (c) No, it is not money laundering as none of Mr. Ram friends are benefiting from this transaction.
  - (d) No, because the transactions are not done with shell companies.
2. Amazon Limited was incorporated on 23<sup>rd</sup> March, 2019. You are one of the promoter and Director of the Company. You are explaining the other promoters that we need to appoint First Auditor within 30 days from the date of Incorporation of the Company. How will you guide them and appoint first auditor for the Company?
  - (a) You will ask other shareholders to have a meeting and appoint first auditor until the conclusion of first annual general meeting;
  - (b) You will ask other shareholders to have a meeting and appoint first auditor for the period of 5 years;
  - (c) You will ask Board of Directors to have a meeting and appoint first auditor for the period of 5 years;
  - (d) You will ask Board of Directors to have a meeting and appoint first auditor until the conclusion of first annual general meeting.
3. Mr. Satya, file a petition for default of non –payment of the debt against Mr. X. The amount in default claimed by petitioner was ₹ 30 lakh. Mr. X (Respondent) pleaded before the adjudicating authority that the amount of claim was not belonging to the applicant/petitioner. Mr. Satya, asserted that he himself with his son owns ₹ 26 Lakh to the respondent. Though nowhere in the petition he admitted that he himself with his Son owns ₹ 26 Lakh to the respondent. Considering the above facts in the light of the Insolvency and Bankruptcy Code, state the action to be taken by the Adjudicating Authority-

- (a) NCLT will admit the application of Mr. Satya, as he jointly with his son owned the debt to Mr. X, so he is a valid petitioner.
  - (b) NCLT will admit the application filed by Mr. Satya on behalf of his son.
  - (c) NCLT will reject the application considering that no default has occurred against Mr. Satya, and his stand as a financial creditor is not proved in the petition.
  - (d) NCLT will dismiss the application on the ground of non-clarity as to existence of dispute in favour of Mr. Satya.
4. How many times Corporate Insolvency Resolution Process period can be extended?
- (a) shall not be granted more than once
  - (b) shall be granted more than once
  - (c) shall be granted more than twice on the reasonable cause
  - (d) cannot be granted at all
5. Mr. Z was appointed as representative of ABC Company for a corporate programme organized in USA. During the said period in USA, he was diagnosed with the severe kidney disease, so decided to have a kidney transplant done in USA. State the maximum amount that can be drawn by Mr. Z as foreign exchange for the medical treatment abroad.
- (a) USD 1,25,000
  - (b) USD 2,25,000
  - (c) USD 2,50,000
  - (d) As estimated by a medical institute offering treatment
6. Beauti Fashion Garments Limited has three independent directors besides eight others of its own. Due to the urgency of transacting certain important business, a Board Meeting was called by giving a shorter notice than the legally required. However, none of the independent directors was present at the Meeting to deliberate upon the motion related to that business. Despite absence of all the independent directors, a board resolution was passed for operationalizing the business by the directors personally present at that Meeting who were much more than the required quorum. Advise, whether the resolution passed at the Board Meeting called at a shorter notice was valid.
- (a) The resolution so passed is valid, for it was passed at the Board Meeting where the required quorum was present.
  - (b) To be valid the resolution so passed needs to be circulated to all the directors and further, it is required to be ratified by all the three independent directors.
  - (c) To be valid the resolution so passed needs to be circulated to all the directors and further, it is required to be ratified by at least two independent directors.

- (d) To be valid the resolution so passed needs to be circulated to all the directors and further, it is required to be ratified by at least one independent director.
7. Sunila Interior Decorators and Furnishers Limited which has not accessed the primary market so far, is required to appoint whole-time Key Managerial Personnel (KMPs) in view of the fact that it has surpassed the threshold limit which necessitates such appointment. Out of the three whole-time KMPs which it is obligated to keep on roll, it has already appointed a Managing Director (MD) and a Company Secretary. From the given options, choose the third KMP which needs to be appointed by the company under the given circumstances.
- (a) Chief Executive Officer (CEO)
  - (b) Chief Financial Officer (CFO)
  - (c) Whole-time Director (WTD)
  - (d) Chief Manager (CM)
8. X Ltd. amalgamated with Y Ltd. The transferee company decided to dispose of the books and papers of the X Ltd. in order to come up with maintenance of revised book and papers under the name of the transferee company to bring all the financial details of the amalgamated company also in the records. State the correct statement as to decision of the transferee company on the disposal of the Books and papers of the X Ltd.
- (a) Decision of transferee company is invalid, as books and papers of the amalgamated company shall be maintained for atleast three years.
  - (b) Decision of transferee company is invalid, as books and papers of amalgamated company shall be maintained for at least eight years.
  - (c) Decision of transferee company will be valid only on the sanction of the prior permission of the Central Government.
  - (d) Decision of transferee company will be valid only after seeking prior permission of the requisite number of the creditors/shareholders of the amalgamated company.

**Descriptive Questions:**

9. Draft a Specimen Board Resolution passed in the meeting of the Board of Directors of a recently incorporated BLM Limited for obtaining Goods and Service Tax (GST) Registration in the GST System Portal.
10. Dragon Copper Limited was facing acute financial difficulty as operations were continuously disrupted due to (a) non-availability of raw material (b) successive drought in its marketing areas and loss of demand and (c) frequent breakdown due to non-replacement of old plant and machinery. On the verge of liquidation, the Management proposes one last Arrangement between creditors and the company, whereby the creditors have to forego 50% of their dues to the company. This has evoked strong protest from some of the creditors who may block the arrangement. Examine the arrangement in the



light of the Companies Act, 2013 and advise the course of action/procedure to be adopted by the company to implement the same.

11. Clarks Limited, has made default in filing financial statements and annual returns for a continuous period of 4 financial years ending on 31<sup>st</sup> March, 2019. The Registrar of Companies having jurisdiction approached the Central Government to accord sanction to present a petition to Tribunal (NCLT) for the winding up of the company as per the above ground under Section 272 of the Companies Act, 2013.

Examine the validity of the RoC move, explaining the relevant provisions of the Companies Act, 2013. State the time limit for passing an order by the Tribunal under Section 273 of the Companies Act, 2013?

12. Popular Limited defaulted in the repayment of term loan taken from a Bank against security created as a first charge on some of its assets. The bank issued notice pursuant to Section 13 of the SARFAESI Act, 2002 to the Company to discharge its liabilities within a period of 60 days from the date of the notice. The company failed to discharge its liabilities within the time limit specified.

Explain the measures to be taken by the Bank to enforce its security interest under the said Act.

13. Mr. Daksh, an Indian National desires to obtain foreign exchange for the following purposes:
- (i) Payment to be made for securing health insurance from a company abroad.
  - (ii) Payment of commission on exports under Rupee State Credit Route.

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

14. Creative India Limited owes a sum of ₹ 2,80,000 to S, who assigns this debt to his two creditors, Mr. R—to the extent of ₹ 1,40,000 and Mr. M- to the extent of ₹ 1,40,000. Mr. M makes a demand for his money from the company by giving a legal notice. The company could not meet Mr. M's demand or otherwise satisfy him till the expiry of four weeks from the date of notice. Mr. M, therefore, moves to NCLT with an application for initiation of Insolvency and Bankruptcy Code, 2016, decide whether an application filed by Mr. M can be accepted by NCLT.

15. Poly Ltd., (hereinafter referred to as "Seller"), manufacturer of footwears entered into an agreement with City Traders (hereinafter referred to as "purchaser"), for sale of its products. The agreement includes, among others, the following clauses:

- (i) That the Purchaser shall not deal with goods, products, articles, by whatever name called, manufactured by any person other than the Seller.
- (ii) That the Purchaser shall not sell the goods manufactured by the Seller outside the municipal limits of the city of Secunderabad.

- (iii) That the Purchaser shall sell the goods manufactured by the Seller at the price as embossed on the price label of the footwear. However, the purchaser is allowed to sell the footwear at prices lower than those embossed on the price label.

You are required to examine with relevant provisions of the Competition Act 2002, the validity of the above clauses.

16. Mr. Zubin (Member of SEBI) was adjudged as an insolvent by the Adjudicating authority. As of that, a group of complainants have alleged that Mr. Zubin while rendering of his services in office may be biased in the performance of his duties. Working in such a state of position, may be detrimental to the public interest and so should be removed from his office. Advise in the given situation, the tenability of maintenance of complaint against Mr. Zubin.
17. The Board of Directors of XYZ Company Limited at its meeting declared a dividend on its paid-up equity share capital which was later on approved by the company's Annual General Meeting. In the meantime, the directors at another meeting of the Board decided by passing a resolution to divert the total dividend to be paid to shareholders for purchase of investments for the company. As a result, dividend was paid to shareholders after 45 days. Examining the provisions of the Companies Act, 2013, state:
- (i) Whether the act of directors is in violation of the provisions of the Act and also the consequences that shall follow for the above act of directors?
- (ii) What would be your answer in case the amount of dividend to a shareholder is adjusted by the company against certain dues to the company from the shareholder?
18. Referring to the provisions of the Securities Contracts (Regulation) Act, 1956 state how a recognized stock exchange may delist the securities and how an appeal may be filed by an aggrieved investor against the decision of stock exchange for delisting of securities.
19. Neeraj was given an offer by a company vendor to disclose him the lowest bid quoted by other vendors. Neeraj accessed the computer of his Executive Director and passed on the lowest quotation to the vendor and thus helped him in quoting the lowest among all the bids. Examine and analyse the situation and conclude how Neeraj will be held liable under Prevention of Money Laundering Act, 2002?
20. Broadway Infrastructure Limited entered into a contract with Royal forgings (a partnership firm), in which wife of Mr. Patrick, a director of the Broadway Infrastructure Limited is a partner. The contract is for supply of certain components by the firm for a period of three years with effect from 1<sup>st</sup> September, 2018 on credit basis. Explain the requirements under the Companies Act, 2013, which should have been complied with by Broadway Infrastructure Limited before entering into contract with Royal forgings.
- What would be your answer in case Royal forgings is a private Limited company in which wife of Mr. Patrick is holding shares?

21. 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 Aravalli Manufacturing 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 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.
22. Gaurav Textile Company Limited has entered into a contract with a Company. You are invited to read and interpret the document of contract. What rules of interpretation of deeds and documents would you apply while doing so?

#### SUGGESTED ANSWERS/HINTS

1. (b)
2. (d)
3. (c)
4. (a)
5. (d)
6. (d)
7. (b)
8. (c)
9. Resolution passed at the meeting of Board of Directors of BLM Limited held at its registered office situated ----- on -----, 2019 at ----- AM.  
RESOLVED THAT the Board do hereby appoint Mr. ----- Director of the company as Authorized Signatory for enrolment of the Company on the Goods and Service Tax (GST) System Portal and to sign (physically or digitally as and when required) and submit various documents electronically and/or physically and to make applications, communications, representations, modifications or alterations and to give explanations on behalf of the Company before the Central GST and/or the concerned State GST authorities as and when required.  
FURTHER RESOLVED THAT Mr. \_\_\_\_\_, Director of the company be and is hereby authorized to represent the Company and to take necessary actions on all issues related to goods and service tax including but not limited to presenting documents/records etc. on behalf of the Company representing for registration of the Company and also to make any

alterations, additions, corrections, to the documents, papers, forms, etc., filed with tax authorities and to provide explanations as and when required.

FURTHER RESOLVED THAT Mr. -----, Director of the company be and is hereby authorized on behalf of the company to sign the returns, documents, letters, correspondences etc. physically/digitally and to represent on behalf of the company, for assessments, appeals or otherwise before the goods and service tax authorities as and when required.

- 10. Scheme of Compromise or arrangement (Section 230 of the Companies Act, 2013):** The scheme provides for sacrifice on the part of creditors as they have to forego 50% of their dues to the company. The company is sick and therefore it can be considered as a company liable to be wound up within the meaning of Section 230(a) of the Companies Act, 2013. The proposed scheme involves as a compromise or arrangement with creditors and it attracts section 230.

While the company or any creditor or member can make application to the Tribunal under section 230 (6)(1), it is usual for the company to make an application. On such application, the Tribunal may order that a meeting of creditors and/or members be called and held as per directions of the Tribunal.

Company must arrange to send notice of meeting to every creditor containing a statement setting forth the terms of compromise or arrangement explaining its effect. Material interest of directors, Managing Director, or manager of the company in the scheme and the effect of scheme on their interest should be fully disclosed [Section 230(1)(a)]. Advertisement issued by the company must comply with the requirements of section 230(2). At the meetings convened, as per directions of the Tribunal, majority in number representing at least ninety percent in value of creditors present and voting (either in person or by proxy if allowed) must agree to compromise or arrangement.

Thereafter the company must present a petition to the Tribunal for confirmation of the compromise or arrangement. The notice of application made by the company will be served on the Central Government and the Tribunal will take into consideration representation, if any made by the Central Government. The Tribunal will sanction the scheme, if it is satisfied that the company has disclosed all material facts relating to the company e.g. latest financial position, auditors report on accounts of the company, pendency of investigation of company, etc.

Copy of Tribunal order must be filed with the Registrar of Companies and then only the order will come into effect. Copy of Tribunal order must be annexed to every Memorandum of Association issued thereafter.

If the Tribunal sanctions the scheme, it will be binding on all members and creditors even those who were dissenting.

- 11. Validity of RoC's action:** According to Section 271(d) of the Companies Act, 2013, a Company may, on a petition under Section 272, be wound up by the Tribunal, if the

Company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years.

In the instant case, the move by RoC to present a petition to Tribunal for the winding up of Clarks Limited is not valid as the Company has made default in filing financial statements and annual returns for a continuous period of 4 financial years ending on 31st March, 2019.

**Time limit for passing of an Order under section 273:** An order under section 273 of the Act shall be made within ninety days from the date of presentation of the petition.

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

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

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

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

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

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

13. Any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction. However, the Central Government may in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000.

The Rules stipulate some prohibitions and restrictions on drawal of foreign exchange for certain purposes. In the light of provisions of these rules, the answer to the given problem is as follows:

- (i) Drawl of foreign exchange for securing health insurance from a company abroad does not fall under any of the Schedules I, II or III. Therefore, such a transaction is permitted without any restriction or condition.
  - (ii) Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibits payment of commission on exports under Rupees State Credit Route (except commission upto 10% of invoice value of exports of tea and tobacco). Therefore, payment of commission on exports under Rupee State Credit Route is prohibited unless such commission is paid for export of tea and tobacco, and the commission does not exceed 10% of invoice value of exports.
- 14.** Financial creditor can initiate corporate insolvency resolution process himself or jointly with other financial creditors against corporate debtor on default of payment of debt of ₹ 1,00,000 or more. Assignee of financial debt is also financial creditor as per section 5 (7) of the IBC, 2016. Mr. M's application can be accepted by NCLT if company fails to pay debt within stipulated time. Application should be supported with a copy of the assignment or transfer agreement and other relevant documents as may be required to demonstrate the assignment or transfer.
- 15. Provisions of section 3(1) of the Competition Act, 2002 prohibit any agreement for goods and/or services that may have an appreciable adverse effect on competition in India.**

Provisions of section 3(2) of the said Act state that any agreement entered into in contravention of provision of section 3(1) of the said Act shall be void.

Sections 3(3) and 3(4) of the said Act enumerate the types of the agreements which are to be treated as contravening the provisions of the said section 3(1). According to section 3(4) of the said Act, any agreement among enterprises or persons at different stages of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services including the following shall be treated as agreements in contravention of the said section 3(1):

- (a) tie-in-arrangement;
- (b) exclusive supply agreement;
- (c) exclusive distribution agreement;
- (d) refusal to deal
- (e) re-sale price maintenance

The clauses of the agreement given in the question are covered by above mentioned provisions Clause at Sr. No.(i) comes under exclusive supply agreement; Clause at Sr. No.(ii) comes under exclusive distribution agreement and Clause at Sr. No.(iii) is covered by re-sale price maintenance.

Explanations to said section 3(4) explains the above terms.

According to Explanation (b), exclusive supply agreement includes any agreement restricting in any manner, the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person.

According to Explanation (c), exclusive distribution agreement includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods.

According to Explanation (e), "resale price maintenance" includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the price stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

In view of the above provisions of the Competition Act, 2002, validity of the clauses of the agreement as given in the question can be determined as follows:

Clause (i) restricts the purchaser to deal in the goods of manufacturers other than the seller. Hence this is in contravention of the provisions of section 3(1) of the said Act.

Clause (ii) restricts the purchaser to sell the goods within a specified area. Hence this is in contravention of the provisions of section 3(1) of the said Act

Clause (iii) stipulates the resale price, but it allows the purchaser to sell the goods at lower prices than the stipulated prices. Hence this is a valid clause.

But, the law states that any such agreement containing any of the prohibited clause shall be void. Therefore, even if the agreement contains some valid clauses, it shall still be termed as void if it contains even one prohibited clause.

**16. Removal of Member of the SEBI (Section 6 of the Securities and Exchange Board of India Act, 1992)**

According to section 6 of the Securities and Exchange Board of India Act, 1992, the Central Government shall have the power to remove a member appointed to the Board, if he:

- (i) is, or at any time has been adjudicated as insolvent;
- (ii) is of unsound mind and stands so declared by a competent court;
- (iii) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude.
- (iv) has, in the opinion of the Central Government so abused his position as to render his continuance in office detrimental to the public interest.

Before removing a member, he will be given a reasonable opportunity of being heard in the matter.

In the present case, a group of complainants have alleged that Mr. Zubin, a member of the SEBI is being adjudicated as an insolvent. His state of position may effect on rendering of

his services in a biased manner. This may be unfavorable to the public interest and so should be removed from his office.

Here, above complainants may approach the Central Government for removal of Mr. Zubin, and if the Central Government is of the opinion that Mr. Zubin was not competent in rendering of his services/duties in a office as a member of the Board, the Central Government may remove Mr. Zubin from his office in compliance with the said provision.

17. According to section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.

Further, according to section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, is liable for the punishment under the said section.

In the present case, the Board of Directors of XYZ Company Limited at its meeting declared a dividend on its paid-up equity share capital which was later on approved by the company's Annual General Meeting. In the meantime, the directors at another meeting of the Board decided by passing a resolution to divert the total dividend to be paid to shareholders for purchase of investment for the company. As a result, dividend was paid to shareholders after 45 days.

- (i) 1. Since, declared dividend has not been paid or claimed within 30 days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.
2. The Board of Directors of XYZ Company Limited is in violation of section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to their decision to divert the total dividend to be paid to shareholders for purchase of investment for the company.

Consequences: The following are the consequences for the violation of above provisions:

- (a) Every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and shall also be liable for a fine which shall not be less than one thousand rupees for every day during which such default continues.



- (b) The company shall also be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.
- (ii) If the amount of dividend to a shareholder is adjusted by the company against certain dues to the company from the shareholder, then failure to pay dividend within 30 days shall not be deemed to be an offence under Proviso to section 127 of the Companies Act, 2013.
18. According to section 21A of the Securities Contracts (Regulation) Act, 1956 the delisting of securities may take place in the following manner:-
- (1) A recognized stock exchange may delist the securities, after recording the reasons therefore, from any recognized stock exchange on any of the ground/s as may be prescribed under this Act.
- Provided that the securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard,
- (2) A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognized stock exchange delisting the securities within fifteen days from the date of the decision of the recognized stock exchange delisting the securities and the Provisions of section 22B to 22E of this Act, shall apply as far as may be, to such appeals.
- Provided that the Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding one month.
19. Neeraj has contravened the Prevention of Money Laundering Act under Part A Para 22 of Schedule. Section 72 of Information of Technology Act 2000, provides the punishment for the person who breached the confidentiality and privacy without the consent of the person concerned.
- Neeraj in the give case, acted without the consent of his Executive Director accessed the electronic records and passed on the official information to the vendor without permission. This information can produce large profits and legitimize the ill-gotten gains through money laundering. Hence, Mr. Neeraj is punishable under section 3 and section 4 of the Prevention of Money Laundering Act, 2002 which provides rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven years and shall also be liable to fine.
20. The contract for supply of components entered into between Broadway Infrastructure Limited and Royal forgings, a partnership firm (in which wife of Mr. Patrick, a director of the Broadway Infrastructure Limited is a partner) attracts Section 184, 188 and 189 of the Companies Act, 2013.
- As per Section 188, company cannot enter into contract with firm for supply or purchase of goods or material where director of company or his relative is partner of firm without

approval of Board of directors at board meeting. As per Section 184, interested directors must disclose his interest at board meeting at which said business is to be discussed. Interested directors should not take part in the discussion or voting at board meeting. If he does vote, his vote shall not be counted. In case of Private limited Company interested director can participate in the board meeting after disclosure of interest.

As per Section 189, prescribed particulars of the contract must be entered into the Register of Contract in which directors are interested in Form MBP-4. Every entry made in Register should be authenticated by Company Secretary of company or any other person authorized by Board. After each entry in the register, it shall be placed before the next board meeting and shall be signed by all the directors present thereat.

Based upon discussion of the above provisions:

If the value of the contract or transaction is exceeded than limit specified, prior approval of shareholders is required to be obtained. Question does not suggest value of transaction. Assuming that it is within limits specified under the Act, consent of shareholders is not required.

**If Royal forgings is a private limited company:** The provision of Section 188 are applicable to it. As the directors wife (i.e Patrick's wife) is member of Royal forgings private limited.

Section 184 is not applicable as Mr. Patrick, director of Broadway Infrastructure Limited is neither director or holding any shares in Royal Forgings Private Limited. Shares held by Mr. Patrick's wife are not to be considered. Hence the provisions of Section 184 are not attracted.

21. 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:

- (i) 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.
- (ii) 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 and 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. Similarly, the failure to declare dividend or payment of low dividends also does not amount to oppression.

**22.** The rules regarding interpretation of deeds and documents are as follows:

First and the foremost point that has to be borne in mind is that one has to find out what reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.

It is inexpedient to construe the terms of one deed by reference to the terms of another. Further, it is well established that the same word cannot have two different meanings in the same documents, unless the context compels the adoption of such a rule.

The Golden Rule is to ascertain the intention of the parties of the instrument after considering all the words in the documents/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole. The circumstances in which the particular words have been used have also to be taken into account. Very often, the status and training of the parties using the words have also to be taken into account as the same words may be used by an ordinary person in one sense and by a trained person or a specialist in quite another sense and a special sense. It has also to be considered that very many words are used in more than one sense. It may happen that the same word understood in one sense will give effect to all the clauses in the deed while taken in another sense might render one or more of the clauses ineffective. In such a case the word should be understood in the former and not in the latter sense.

It may also happen that there is a conflict between two or more clauses of the same documents. An effect must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect. If, however, it is not possible to give effect of all of them, then it is the earlier clause that will override the latter one.