PAPER 4: CORPORATE AND ECONOMIC LAWS

FINAL (NEW COURSE)

Part I – I : RELEVANT AMENDMENTS FOR NOVEMBER 2021 EXAMINATION

1. Amendments made through the enforcement of various sections of the Companies (Amendment) Act, 2020 through different Notifications.

Ministry of Law and Justice on 28th September 2020 enacted the Companies (Amendment) Act, 2020. This was an Act further to amend the Companies Act, 2013. According to this amendment Act, different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Notification	Amendment in Relevant Sections of the Companies Act, 2013
MCA vide Notification S.O. 4646(E) dated 21st December, 2020, the Central Government hereby appoints the 21st day of December, 2020 as the date on which the following provisions of the said Act shall come into force.	In **section 165** of the principal Act, for sub-section (*6*), the following sub-section shall be substituted, namely:— "(*6*) If a person accepts an appointment as a director in violation of this section, he shall be liable to a penalty of two thousand rupees for each day after the first during which such violation continues, subject to a maximum of two lakh rupees.". In **section 167** of the principal Act, in sub-section (*2*),— (a) the words "with imprisonment for a term which may extend to one year or" shall be omitted; (b) for the words "five lakh rupees, or with both", the words "five lakh rupees" shall be substituted. For **section 172** of the principal Act, the following section shall be substituted, namely:— "172. If a company is in default in complying with any of the provisions of this Chapter and for which no specific penalty or punishment is provided therein, the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees, and in case of continuing failure, with a further penalty of five hundred rupees for each day during which such failure continues, subject to a maximum of three lakh rupees in case of a company and one lakh rupees in case of an officer who is in default.".

	In **section 178** of the principal Act, in sub-section (*8*), for the words "punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both", the words "liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of one lakh rupees" shall be substituted. In **section 184** of the principal Act, in sub- section (4), for the words "punishable with imprisonment for a term which may extend to one year or with fine which may extend to one lakh rupees, or with both", the words "liable to a penalty of one lakh rupees" shall be substituted. In **section 187** of the principal Act, for sub-section (*4*), the following sub-section shall be substituted, namely:— "(*4*) If a company is in default in complying with the provisions of this section, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees." In **section 188** of the principal Act, in sub-section (*5*),— (a) in clause (*i*), for the words "punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both", the words "liable to a penalty of twenty-five lakh rupees" shall be substituted; (b) in clause (*ii*), 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 five lakh rupees" shall be substituted. **In section 204** of the principal Act, in sub-section (*4*), for the words "punishable section 204. with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees", the words "liable to a penalty of two lakh rupees" shall be substituted. In **section 232** of the principal Act, for sub-section (*8*), the following sub-section section 232. shall be substituted, namely:— "(*8*) If a company fails to comply with sub-section (*5*), the company and every officer of the company who is in default shall be liable to a penalty of twenty thousand rupees, and where the failure is a continuing one, with a further penalty of one thousand rupees for

	each day after the first during which such failure continues, subject to a maximum of three lakh rupees.". In **section 242** of the principal Act, in sub-section (*8*),— (a) the words "with imprisonment for a term which may extend to six months or" shall be omitted; (b) for the words "one lakh rupees, or with both", the words "one lakh rupees" shall be substituted. In **section 243** of the principal Act, in sub-section (*2*),— (a) the words "with imprisonment for a term which may extend to six months or" shall be omitted; (b) for the words "five lakh rupees, or with both", the words "five lakh rupees" shall be substituted. In **section 284** of the principal Act, for sub-section (*2*), the following sub-sections shall be substituted, namely:— "(*2*) If any person required to assist or cooperate with the Company Liquidator under sub-section (*1*) does not assist or cooperate, the Company Liquidator may make an application to the Tribunal for necessary directions. (*3*) On receiving an application under sub-section (*2*), the Tribunal shall, by an order, direct the person required to assist or cooperate with the Company Liquidator to comply with the instructions of the Company Liquidator and to cooperate with him in discharging his functions and duties.". In **section 302** of the principal Act,— (a) for sub-section (*3*), the following sub-section shall be substituted, namely:— "(*3*) The Tribunal shall, within a period of thirty days from the date of the order,— (a) forward a copy of the order to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company; and (b) direct the Company Liquidator to forward a copy of the order to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company."; (b) sub-section (*4*) shall be omitted. In **section 347** of the principal Act, in sub-section (*4*),— (a) the words "with imprisonment for a term which may extend to six months or" shall be omitted;

	(b) for the words "fifty thousand rupees, or with both", the words" fifty thousand rupees" shall be substituted. In **section 356** of the principal Act, for sub-section (*2*), the following sub-section shall be substituted, namely:— "(*2*) The Tribunal shall— (a) forward a copy of the order, within thirty days from the date thereof, to the Registrar who shall record the same; and (b) direct the Company Liquidator or the person on whose application the order was made, to file a certified copy of the order, within thirty days from the date thereof or such further period as allowed by the Tribunal, with the Registrar who shall record the same." In **section 392** of the principal Act,— (a)the words "with imprisonment for a term which may extend to six months or" shall be omitted; (b) for the words "five lakh rupees, or with both", the words "five lakh rupees" shall be substituted. **In section 450** of the principal Act, for the words "punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues", the words "liable to a penalty of ten thousand rupees, and in case of continuing contravention, with a further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person" shall be substituted.
MCA Vide Notification 325(E) dated 22nd January, 2021, the Central Government hereby appoints the 22nd day of January, 2021 as the date on	In **section 379** of the principal Act, in sub-section (*1*), the proviso shall be omitted. After **section 393** of the principal Act, the following section shall be inserted, namely:— "393A. The Central Government may, by notification, exempt any class of— (a) foreign companies; (b) Companies incorporated or to be incorporated outside India, whether the company has or has not established, or when formed may or may not establish, a place of business in India, as may be specified in the notification, from any of the provisions of this

which the mentioned provisions of the said Act shall come into force.	Chapter and a copy of every such notification shall, as soon as may be after it is made, be laid before both Houses of Parliament.". In **section 435** of the principal Act, in sub-section (1), for the words "offences under this Act, by notification", the words and figures "offences under this Act, except under section 452, by notification" shall be substituted. For **section 446B** of the principal Act, the following section shall be substituted, namely:— '446B. Notwithstanding anything contained in this Act, if penalty is payable for non-compliance of any of the provisions of this Act by a One Person Company, small company, start-up company or Producer Company, or by any of its officer in default, or any other person in respect of such company, then such company, its officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than one-half of the penalty specified in such provisions subject to a maximum of two lakh rupees in case of a company and one lakh rupees in case of an officer who is in default or any other person, as the case may be. *Explanation.*—For the purposes of this section,— (a)"Producer Company" means a company as defined in clause (*l*) of section 378A;(b)"start-up company" means a private company incorporated under thisAct or under the Companies Act, 1956 and recognised as start-up in accordance with the notification issued by the Central Government in the Department for Promotion of Industry and Internal Trade.'. In **section 454** of the principal Act, in sub-section (*3*), the following proviso shall be inserted, namely:— "Provided that in case the default relates to non-compliance of sub-section (*4*) of section 92 or sub-section (*1*) or sub-section (*2*) of section 137 and such default has been rectified either prior to, or within thirty days of, the issue of the notice by the adjudicating officer, no penalty shall be imposed in this regard and all proceedings under this section in respect of such default shall be deemed to be concluded.".
MCA Vide Notification S.O. 1303(E) dated 24th March 2021	In **section 247** 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 one lakh rupees", the words "liable to a penalty of fifty thousand rupees" shall be substituted.

the Central Government hereby appoints the 24th March, 2021 as the date on which the provisions of section 45 of the said Act shall come into force.	
MCA vide Notification S.O. 1255(E) Dated 18th March, 2021 the Central Government hereby appoints the 18th March, 2021 as the date on which the provisions of section 32 and section 40 of the said Act shall come into force.	In **section 149** of the principal Act, in sub-section (*9*), the following proviso shall be inserted, namely:— "Provided that if a company has no profits or its profits are inadequate, an independent director may receive remuneration, exclusive of any fees payable under sub-section (*5*) of section 197, in accordance with the provisions of Schedule V.". In **section 197** of the principal Act, in sub-section (*3*), after the words "whole-time director or manager,", the words "or any other non-executive director, including an independent director" shall be inserted

2. Ministry of Corporate Affairs vide Notification S.O. 1256(E), dated 18th March, 2021 hereby amends Schedule V of the Companies Act 2013, as follows:—

In Schedule V of the Companies Act, 2013, in PART II, under the heading — REMUNERATION

A. in Section I, in the first para, after the words —managerial person or persons, the words —or other director or directors shall be inserted;

B. in Section II,--

(i) after the words —managerial person, wherever occurred, the words —or other director shall be inserted;

(ii) for Table (A):, the following shall be substituted, namely.-

—(A):

	(1)	(2)	(3)
Sl. No.	**Where the effective capital (in rupees) is**	**Limit of yearly remuneration payable shall not exceed (in Rupees) in case of a managerial person**	**Limit of yearly remuneration payable shall not exceed (in rupees) in case of other director**
(i)	Negative or less than 5 crores.	60 lakhs	12 Lakhs
(ii)	5 crores and above but less than 100 crores.	84 lakhs	17 Lakhs
(iii)	100 crores and above but less than 250 crores.	120 lakhs	24 Lakhs
(iv)	250 crores and above.	120 lakhs plus 0.01% of the effective capital in excess of ₹250 crores:	24 Lakhs plus 0.01% of the effective capital in excess of ₹250 crores:

C. in Section III, –

(i) after the words —managerial person, wherever occurred, except in clause (i) of the proviso, the words —or other director shall be inserted;

(ii) after the words —managerial persons, wherever occurred, the words —or other directors shall be inserted;

(iii) following explanation shall be inserted at the end, namely:-

"Explanation.– For the purposes of Section I, Section II and Section III, the term —or other director shall mean a non-executive director or an independent director.

3. Amendment in Rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014 vide Notification dated G.S.R. 774(E) dated 18th December, 2020.

Said Rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014 was completely replaced by the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, vide Notification dated 22nd October 2019 w.e.f 1st day of December 2019. Further this rule was regularly amended through various notifications in following order :

Through series of Notifications i.e., the Companies (Appointment and Qualification of Directors) Amendment Rules, 2020, dated 28.02.2020, the Companies (Appointment and Qualification of Directors) Second Amendment Rules 2020,dated 29.04.2020, the Companies (Appointment and Qualification of Directors) Third Amendment Rules,2020,dated 23.06.2020, the Companies (Appointment and Qualification of Directors) Fourth Amendment Rules,2020, dated 28.09.2020, and through the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2020, w.e.f. 18.12.2020.

Revised Rule 6 in line with these amendments are as follows:

6. Compliances required by a person eligible and willing to be appointed as an independent director.

(1) Every individual –

(a) who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall within a period of thirteen months from such commencement; or

(b) who intends to get appointed as an independent director in a company after such commencement, shall before such appointment,

apply online to the institute for inclusion of his name in the data bank for a period of one year or five years or for his life-time, and from time to time take steps as specified in sub-rule (2), till he continues to hold the office of an independent director in any company:

Provided that any individual, including an individual not having DIN, may voluntarily apply to the institute for inclusion of his name in the data bank.

(2) Every individual whose name has been so included in the data bank shall file an application for renewal for a further period of one year or five years or for his life-time, within a period of thirty days from the date of expiry of the period upto which the name of the individual was applied for inclusion in the data bank, failing which, the name of such individual shall stand removed from the data bank of the institute:

Provided that no application for renewal shall be filed by an individual who has paid life-time fees for inclusion of his name in the data bank.

(3) Every independent director shall submit a declaration of compliance of sub-rule (1) and sub-rule (2) to the Board, each time he submits the declaration required under sub-section (7) of section 149 of the Act.

(4) Every individual whose name is so included in the data bank under sub-rule (1) shall pass an online proficiency self-assessment test conducted by the institute within a period

of Two years from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the institute:

Provided that an individual shall not be required to pass the online proficiency self-assessment test when he has served for a total period of not less than three years as on the date of inclusion of his name in the data bank,-

(A) as a director or key managerial personnel, as on the date of inclusion of his name in the databank, in one or more of the following, namely:-

(a) listed public company; or

(b) unlisted public company having a paid-up share capital of rupees ten crore or more; or

(c) body corporate listed on any recognized stock exchange or in a country which is a member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions; or

(d) bodies corporate incorporated outside India having a paid-up share capital of US$ 2 million or more; or

(e) statutory corporations set up under an Act of Parliament or any State Legislature carrying on commercial activities; or

(B) in the pay scale of Director or above in the Ministry of Corporate Affairs or the Ministry of Finance or Ministry of Commerce and Industry or the Ministry of Heavy Industries and Public Enterprises and having experience in handling the matters relating to corporate laws or securities laws or economic laws; or

(C) in the pay scale of Chief General Manager or above in the Securities and Exchange Board or the Reserve Bank of India or the Insurance Regulatory and Exchange Board or the Reserve Bank of India or the Insurance Regulatory and Development Authority of India or the Pension Fund Regulatory and Development Authority and having experience in handling the matters relating to corporate laws or securities laws or economic laws:

Provided further that for the purpose of calculation of the period of three years referred to in the first proviso, any period during which an individual was acting as a director or as a key managerial personnel in two or more companies or bodies corporate or statutory corporations at the same time shall be counted only once.

Explanation: For the purposes of this rule,-

(a) the expression “institute” means the ‘Indian Institute of Corporate Affairs at Manesar’ notified under sub-section (1) of section 150 of the Companies Act, 2013 as the institute for the creation and maintenance of data bank of Independent Directors;

(b) an individual who has obtained a score of not less than fifty percent in aggregate in the online proficiency self-assessment test shall be deemed to have passed such test;

(c) there shall be no limit on the number of attempts an individual may take for passing the online proficiency self-assessment test.

Securities Laws: SEBI ACT,1992

Through Finance Act, 2021 w.e.f 1st April, 2021, in section 12, the below provision has been added after 1(B):

(1C) No person shall sponsor or cause to be sponsored or carry on or cause to be carried on the activity of an alternative investment fund or a business trust as defined in clause (13A) of section 2 of the Income-tax Act, 1961, unless a certificate of registration is granted by the Board in accordance with the regulations made under this Act.

Economic Laws: FEMA, 1999

Vide Notification No. FEMA 23(R)/(4)/2021-RB , dated January 08, 2021, the Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021 has been enacted,

In exercise of the powers conferred by clause (a) of sub-section (1), sub-section (3) of section 7 and clause (b) of sub-section (2) of section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India makes the following amendments in the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015 through the enforcement of the Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021.

In the Principal Regulations, **in regulation 4, for sub-regulation (ea),** the following shall be substituted, namely:-

"(ea) re-export of leased aircraft/helicopter and/or engines/auxiliary power units (APUs), either completely or in partially knocked down condition repossessed by overseas lessor and duly de-registered by the Directorate General of Civil Aviation (DGCA) on the request of Irrevocable Deregistration and Export Request Authorisation (IDERA) holder under 'Cape Town Convention' or any other termination or cancellation of the lease agreement between the lessor and lessee subject to permission by DGCA/Ministry of Civil Aviation for such export/s."

PMLA, 2002

1. **Vide Notification G.S.R. 798(E) [F. NO. P-12011/14/2020-ES CELL-DOR]**, **Dated 28-12-2020,i**n exercise of the powers conferred by sub-clause (*iv*) of clause (*sa*) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 , the Central Government hereby rescinds the notification of the Government of India, Ministry of Finance, Department of Revenue, No. 8/2017, dated 15 November, 2017, published in the Gazette of India, Part II, Section 3, Sub-section (*ii*), extraordinary, *vide* GSR 1423 (E) dated the 16

November 2017, except as respects things done or omitted to done before such recession and notifies the "Real Estate Agents", as a person engaged in providing services in relation to sale or purchase of real estate and having annual turnover of Rupees twenty lakhs or above, as "persons carrying on designated businesses or professions".

2. **Vide Notification G.S.R. 799(E) [F. NO. P-12011/14/2020-ES CELL-DOR]**, **Dated 28-12-2020, i**n exercise of the powers conferred by sub-clause (*iv*) of clause (*sa*) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 , the Central Government hereby notifies the dealers in precious metals, precious stones as persons carrying on designated businesses or professions - if they engage in any cash transactions with a customer equal to or above Rupees ten lakhs, carried out in a single operation or in several operations that appear to be linked.

3. **Vide Notification G.S.R. 59(E) [F. NO. P-12011/24/2017-ES CELL-DOR-PART(1)]**, Dated **28-1-2021, i**n exercise of the powers conferred by sub-section (1) of section 11A of the Prevention of Money-laundering Act, 2002 , the Central Government on being satisfied that the reporting entities mentioned below comply with standards of privacy and security under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016) and it is necessary and expedient to do so, and after consultation with the Unique Identification Authority of India established under sub-section (1) of section 11 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 and the regulatory authority, namely the Reserve Bank of India, hereby notifies the reporting entity specified below to undertake Aadhaar authentication service of the Unique Identification Authority of India under section 11A of the Prevention of Money-laundering Act, 2002, namely:—

"National Payments Corporation of India."

FCRA, 2010

Vide Notification G.S.R. 695(E) [F. NO. II/21022/23(12)/2020-FCRA-III], dated **10-11-2020,** in exercise of the powers conferred by section 48 of the Foreign Contribution (Regulation) Act, 2010, the Central Government hereby makes the following rules further to amend the Foreign Contribution (Regulation) Rules, 2011, through the enforcement of the Foreign Contribution (Regulation) (Amendment) Rules, 2020 w.r.e.f 29.04.2011. Revised Rule is given here, made out of various amendments till 30th April, 2021.

3. **Guidelines for declaration of an organisation to be of a political nature, not being a political party.** – (1) The Central Government may specify any organisation as organisation of political nature on one or more of the following grounds: -

   (i) organisation having avowed political objectives in its Memorandum of Association or bylaws;

   (ii) any Trade Union whose objectives include activities for promoting political goals;

(iii) any voluntary action group with objectives of a political nature or which participates in political activities;

(iv) front or mass organisations like Students Unions, Workers' Unions, Youth Forums and Women's wing of a political party;

(v) organisation of farmers, workers, students, youth based on caste, community, religion, language or otherwise, which is not directly aligned to any political party, but whose objectives, as stated in the Memorandum of Association, or activities gathered through other material evidence, include steps towards advancement of Political interests of such groups;

(vi) any organisation, by whatever name called, which habitually engages itself in or employs common methods of political action like 'bandh' or 'hartal', 'rasta roko', 'rail roko' or 'jail bharo' in support of public causes.

(2) The organisations specified under clauses (v) and (vi) of sub-rule (1) shall be considered to be of political nature, if they participate in active politics or party politics, as the case may be.

4. Speculative activities. - (1) The following activities shall be treated as speculative activities:-

(a) any activity or investment that was an element of risk of appreciation or depreciation of the original investment, linked to market forces, including investment in mutual funds or in shares;

(b) participation in any scheme that promises high returns like investment in chits or land or similar assets not directly linked to the declared aims and objectives of the organisation or association.

(2) A debt-based secure investment shall not be treated as speculative investment.

(3) Every association shall maintain a separate register of investments.

(4) Every register of investments maintained under sub-rule (3) shall be submitted for audit.

5. Administrative expenses. - The following shall constitute administrative expenses:-

(i) salaries, wages, travel expenses or any remuneration realised by the Members of the Executive Committee or Governing Council of the person;

(ii) all expenses towards hiring of personnel for management of the activities of the person and salaries, wages or any kind of remuneration paid, including cost of travel, to such personnel;

(iii) all expenses related to consumables like electricity and water charges, telephone charges, postal charges, repairs to premise(s) from where the organisation or Association is functioning, stationery and printing charges transport and travel

charges by the Members of the Executive Committee or Governing Council and expenditure on office equipment;

(iv) cost of accounting for and administering funds;

(v) expenses towards running and maintenance of vehicles;

(vi) cost of writing and filing reports;

(vii) legal and professional charges; and

(viii) rent of premises, repairs to premises and expenses on other utilities:

Provided that the expenditure incurred on salaries or remuneration of personnel engaged in training or for collection or analysis of field data of an association primarily engaged in research or training shall not be counted towards administrative expenses:

Provided further that the expenses incurred directly in furtherance of the stated objectives of the welfare oriented organisation shall be excluded from the administrative expenses such as salaries to doctors of hospital, salaries to teachers of school etc.

6. Intimation of receiving foreign contribution from relatives. - Any person receiving foreign contribution in excess of one lakh rupees or equivalent thereto in a financial year from any of his relatives shall inform the Central Government [regarding the details of the foreign contribution received by him in electronic form] in Form FC-1 within thirty days from the date of receipt of such contribution.

[6A. When articles gifted for personal use do not amount to foreign contribution. - Any article gifted to a person for his personal use whose market value in India on the date of such gift does not exceed [one lakh rupees] shall not be a foreign contribution within the meaning of sub-clause (i) of clause (h) of sub-section (1) of section (2)].

7. Receiving foreign hospitality by specified categories of persons. - (1) Any person belonging to any of the categories specified in section 6 who wishes to avail of foreign hospitality shall apply [to the Central Government in electronic form] in Form FC-2 for prior permission to accept such foreign hospitality.

(2) Every application for acceptance of foreign hospitality shall be accompanied by an invitation letter from the host or the host country, as the case may be, and administrative clearance of the Ministry or department concerned in case of visits sponsored by a Ministry or department of the Government.

(3) The application for grant of permission to accept foreign hospitality must reach the appropriate authority ordinarily two weeks before the proposed date of onward journey.

(4) In case of emergent medical aid needed on account of sudden illness during a visit abroad, the acceptance of foreign hospitality shall be required to be intimated to the Central Government within [one month] of such receipt giving full details including the source, approximate value in Indian Rupees, and the purpose for which and the manner in which it was utilised.

Provided that no such intimation is required if the value of such hospitality in emergent medical aid is upto one lakh rupees or equivalent thereto.

8. **Action in respect of article, currency or security received in contravention of the Act.** - (1) The Central Government may issue a prohibitory order for contravention of the Act in respect of any article, currency or securities.

(2) The prohibitory order issued under sub-rule (1) shall be served on the person concerned in the following manner:-

(a) by delivering or tendering it to that person or to his duly authorised agent; or

(b) by sending it to him by 'registered post with acknowledgement due' or 'speed post' to the address of his last known place of residence or the place where he carries on, or is known to have last carried on, business or the place where he personally works for gain or is known to have last worked for gain and, in case the person is an organisation or an association, to the last known address of the office of such organisation or association; or

(c) if it cannot be served in any of the manner aforesaid, by affixing, it on the outer door or some other conspicuous part of the premises in which that person resides or carries on, or is known to have last carried on, business or personally works for gain or is known to have last worked personally for gain and, in case the person is an organisation or an association, on the outer door or some other conspicuous part of the premises in which the office of that organisation or association is located, or is known to have been last located, and the written report whereof should be witnessed by at least two persons.

9. **Application for obtaining 'registration' or 'prior permission' to receive foreign contribution.** - (1)[(a) An application for certificate of registration by a person under sub-section (1) of section 11, for acceptance of foreign contribution shall be made [in electronic form] in Form FC-3A [with an affidavit executed by each office bearer and key functionary and member in Proforma 'AA' appended to these rules] and an application for obtaining prior permission by a person under sub-section (2) of section 11, for acceptance of foreign contribution, shall be made [in electronic form] in Form FC-3B [with an affidavit executed by each office bearer and key functionary and member in Proforma 'AA' appended to these rules].]

[(b) The applicant shall upload the signed or digitally signed application along with scanned documents as specified by the Central Government from time to time;]

[(d) Any person making an application for registration under clause (a) of sub-rule (1) shall have an FCRA Account.]

(e) The person may open one or more accounts in one or more banks for the purpose of utilising the foreign contribution after it has been received and, in all such cases,

intimation [[in electronic form] in form [FC-6D]] shall be furnished to the Secretary, Ministry of Home Affairs, New Delhi within fifteen days of the opening of any account.

[(f) A person seeking registration under clause (b) of sub-section (4) of section 12 of the Act shall meet the following conditions, namely: -

(i) it shall be in existence for three years and have spent a minimum amount of rupees fifteen lakh on its core activities for the benefit of society during the last three financial years:

Provided that the Central Government, in exceptional cases or in cases where a person is controlled by the Central Government or a State Government may waive the conditions;

(ii) if the person wants inclusion of its existing capital investment in assets like land, building, other permanent structures, vehicles, equipment in the computation of its spending during last three years, then the chief functionary shall give an undertaking that the assets shall be vested henceforth with the person till the validity of the certificate and they shall be utilised only for the activities covered under the Act and the rules made thereunder and shall not be diverted for any other purpose till the validity of its certificate of registration remains valid.]

[(1A) Every application seeking registration under clause (a) of sub-rule (1), made before the commencement of these rules but not disposed of, shall be considered after furnishing the details of FCRA Account.]

(2) [* * *]

[(d) Any person making an application for obtaining prior permission under clause (a) of sub-rule (1) shall have an FCRA Account.]

(e) person seeking prior permission under this rule may open one or more accounts in one or more banks for the purpose of utilising the foreign contribution after it has been received and in all such cases intimation [[in electronic form] in form [FC-6D]] shall be furnished to the Secretary, Ministry of Home Affairs, New Delhi within fifteen days of the opening of any account.

[(f) A person seeking prior permission for receipt of specific amount from a specific donor for carrying out specific activities or projects mentioned in clause (c) of sub-section (4) of section 12 of the Act shall meet the following criteria, namely: -

(i) submit a specific commitment letter from the donor indicating the amount of foreign contribution and the purpose for which it is proposed to be given;

(ii) for the Indian recipient persons and foreign donor organisations having common members, prior permission shall be granted to the person subject to it satisfying the following conditions, namely: -

(A) the chief functionary of the recipient person shall not be a part of the donor organisation;

(B) seventy-five per cent. of the office-bearers or members of the governing body of the person shall not be members or employees of the foreign donor organisation;

(C) in case of foreign donor organisation being a single individual that individual shall not be the chief functionary or office bearer of the recipient person; and

(D) in case of a single foreign donor, seventy-five per cent. of the office bearers or members of the governing body of the recipient person shall not be the family members or close relatives of the donor.]

[(2A) Every application for obtaining prior permission under clause (a) of sub-rule (1) made before the commencement of these rules but not disposed of, shall be considered after furnishing the details of FCRA Account.]

(3) No person shall prefer a second application for registration or prior permission within a period of six months after submitting an application either for the grant of prior permission for the same project or for registration.

(4) [(a) An application made for the grant of prior permission shall be accompanied by a fee of rupees five thousand only, which shall be paid through the payment gateway specified by the Central Government.]

[(b) An application made for the grant of registration shall be accompanied by a fee of rupees ten thousand only, which shall be paid through the payment gateway specified by the Central Government.]

(c) The fee may be revised by the Central Government from time to time.

[***]

(5) Notwithstanding anything contained in sub-rules (1) to (4), every application made for registration or prior permission under the Foreign Contribution (Regulation) Act, 1976 (49 of 1976) but not disposed of before the date of commencement of these rules shall be deemed to be an application for registration or prior permission, as the case may be, under these rules, subject to the condition that the applicant furnishes the prescribed fees for such registration or prior permission, as the case may be.

[**9A. Permission for receipt of foreign contribution in application for obtaining prior permission.** – If the value of foreign contribution on the date of final disposal of an application for obtaining prior permission under clause (a) of sub-rule (1) of rule 9 is over rupees one crore, the Central Government may permit receipt of foreign contribution in such instalments, as it may deem fit:

Provided that the second and subsequent instalment shall be released after submission of proof of utilisation of seventy five per cent. of the foreign contribution received in the previous instalment and after field inquiry of the utilisation of foreign contribution.]

10. Validity of certificate. - [(1)] Every certificate or registration granted to a person under the Act shall be valid for a period of five years from the date of its issue.

[(2) The validity of certificate surrendered under section 14A of the Act shall be deemed to have expired on the date of acceptance of the request by the Central Government.]

11. Maintenance of accounts. - Every person who has been granted registration or prior permission under section 12 shall maintain a separate set of accounts and records, exclusively, for the foreign contribution received and utilized.

12. Renewal of registration certificate. - (1) Every certificate of registration issued to a person shall be liable to be renewed after the expiry of five years from the date of its issue on proper application.

[(2) An application for renewal of the certificate of registration shall be made to the Central Government in electronic before in Form FC-3C accompanied with an affidavit executed by each office bearer, key functionary and member in Proforma 'AA' appended to these rules within six months from the date of expiry of the certificate of registration.]

[(2A) Every person seeking renewal of the certificate of registration under section 16 of the Act shall open an FCRA Account and mention details of the account in his application for renewal of registration.

(2B) Every application for renewal of the certificate of registration made under sub-rule (2) before commencement of these rules, but not disposed of, shall be considered after furnishing the details of FCRA Account.]

[* * *]

[(4) An application made for renewal of the certificate of registration shall be accompanied by a fee of rupees five thousand only, which shall be paid through payment gateway specified by the Central Government.]

[(5) No person whose certificate of registration has ceased to exist shall either receive or utilise the foreign contribution until the certificate is renewed.]

[(6) If no application for renewal of registration is received or the application is not accompanied by requisite fee before the expiry of the validity of the certificate of registration, the validity of the certificate of registration shall be deemed to have ceased from the date of completion of the period of five years from the date of the grant of certificate of registration.

Note 1: A certificate of registration granted on the 1st January, 2012 shall be valid till the 31st December, 2016 and a request for renewal of certificate of registration shall be

submitted in electronic form accompanied by requisite fee after the 30th June, 2016 and within the 31st December, 2016.

Note 2: If no application is received or is not accompanied by renewal fee, the validity of the certificate of registration issued on the 1st January 2012 shall be deemed to have ceased after the 31st December, 2016 and the applicant shall neither receive nor utilise the foreign contribution until the certificate of registration is renewed.]

[(6A) The amount of foreign contribution lying unutilised in the FCRA Account and utilisation account of a person whose certificate of registration is deemed to have ceased under sub-rule (6) and assets, if any, created out of the foreign contribution, shall vest with the prescribed authority under the Act until the certificate is renewed or fresh registration is granted by the Central Government.]

(7) If the validity of the certificate of registration of a person has ceased in accordance with the provisions of these rules, a fresh request for the grant of a certificate of registration may be made by the person to the Centra1 Government as per the provisions of rule 9.

(8) In case a person provides sufficient grounds, in writing, explaining the reasons for not submitting the certificate of registration for renewal within the stipulated time, his application may be accepted for consideration along with the requisite fee [and with late fee of ₹5000/- (Five Thousand rupees only)], but not later than [one year] after the expiry of the original certificate of registration.

[13. Declaration of receipt of foreign contribution. - (a) A person who has been granted a certificate of registration or prior permission shall place the audited statement of accounts on receipts and utilisation of the foreign contribution, including income and expenditure statement, receipt and payment account and balance sheet for every financial year beginning on the first day of April within nine months of the closure of the financial year on its official website or on the website as specified by the Central Government.

(b) A person receiving foreign contribution in a quarter of the financial year shall place details of foreign contribution received on its official website or on the website as specified by the Central Government within fifteen days following the last day of the quarter in which it has been received clearly indicating the details of donors, amount received and date of receipt.]

14. Extent of amount that can be utilised in case of suspension of the certificate of registration. - The unspent amount that can be utilised in case of suspension of a certificate of registration may be as under -

(a) In case the certificate of registration is suspend under sub-section (1) of section 13 of the Act, up to twenty-five per cent of the unutilised amount may be spent, with the prior approval of the Central Government, for the declared aims and objects for which the foreign contribution was received.

(b) The remaining seventy-five per cent of the unutilised foreign contribution shall be utilised only after revocation of suspension of the certificate of registration.

[15. Custody of foreign contribution in respect of a person whose certificate has been cancelled. - If the certificate of registration of a person who has opened an FCRA Account under section 17 is cancelled, the amount of foreign contribution lying unutilised in that Account shall vest with the prescribed authority under the Act.]

[15A. Voluntary surrender of certificate. - Every person who has been granted certificate of registration under section 12 of the Act may make an application in electronic form in Form FC-7 for surrender of the certificate of registration in terms of section 14A of the Act.]

[16. Reporting by banks of receipt of foreign contribution. - The bank shall report to the Central Government within forty-eight hours any transaction in respect of receipt or utilisation of any foreign contribution by any person whether or not such person is registered or granted prior permission under the Act.]

17. Intimation of foreign contribution by the recipient. - [(1) Every person who receives foreign contribution under the Act, shall submit a signed or digitally signed report [in electronic form] in Form FC-4 with scanned copies of income and expenditure statement, receipt and payment account and balance sheet for every financial year beginning on the 1st day of April within nine months of the closure of the financial year.]

(2) The annual return in Form [FC-4] shall reflect the foreign contribution received in the exclusive bank account and include the details in respect of the funds transferred to other bank accounts for utilisation.

(3) If the foreign contribution relates only to articles, the intimation shall be submitted in Form [FC-1].

(4) If the foreign contribution relates to foreign securities, the intimation shall be submitted in Form [FC-1].

(5) Every report submitted under sub-rules (2) to (4) shall be duly certified by a chartered accountant.

(6) Every such return in Form [FC-4] shall also be accompanied by a copy of statement of account from the bank where the exclusive foreign contribution account is maintained by the person, duly certified by an officer of such bank.

(7) The accounting statements referred to above in the preceding sub-rule shall be preserved by the person for a period of six years.

(8) A 'Nil' report shall be furnished even if no foreign contribution is received during a financial year.

[Provided that where foreign contribution has not been received or utilised during a financial year, it shall not be required to enclose certificate from Chartered Accountant or

income and expenditure statement or receipt and payment account or balance sheet with Form FC-4.]

[17A. Change of designated bank account, name, address, aims, objectives or Key members of the association. - [A person who has been granted a certificate of registration under section 12 or prior permission under section 11 of the Act shall intimate in electronic form within fifteen days, of any change in the following, namely:] -

(i) name of the association or its address within the State for which registration/ prior permission has been granted under the Act [in Form FC-6A];

(ii) its nature, aims and objects and registration with local/relevant authorities [in Form FC-6B];

(iii) bank and/or branch of the bank and/or designated foreign contribution account number [in Form FC-6C]; [***]

[(iiia) bank and/or branch of the bank for the purpose of utilising the foreign contribution after it has been received in Form FC-6D; and]

[(iv) office bearers or key functionaries or members mentioned in the application for grant of registration or prior permission or renewal of registration, as the case may be, in Form FC-6E.]]

[Provided that the change shall be effective only after final approval by the Central Government.]

18. Foreign contribution received by a candidate for election. - Foreign contribution received by a candidate for election, referred to in section 21, shall be furnished in Form [FC-1] [in electronic form] within forty-five days from the date on which he is duly nominated as a candidate for election.

19. Limit to which a judicial officer, not below the rank of an Assistant Sessions Judge may make adjudication or order confiscation. - An officer referred in clause (b) of sub-section (1) of section 29 may adjudge confiscation in relation to any article or currency seized under section 25, if the value of such article or the amount of such currency seized does not exceed ₹ 10,000,000/- (Ten Lakh only).

[20. Revision. - An application for revision of an order passed by the competent authority under section 32 of the Act shall be made to the Secretary, Ministry of Home Affairs, Government of India, New Delhi on a plain paper and it shall be accompanied by a fee of rupees three thousand only, which shall be paid through the payment gateway specified by the Central Government.]

[21. Compounding of offence. - An application for compounding of an offence under section 41 may be made to the Secretary, Ministry of Home Affairs, New Delhi in electronic form and shall be accompanied by fee of rupees three thousand only, which shall be paid through the payment gateway specified by the Central Government.]

22. **Returns by the Investigating Agency to the Central Government.** - The Central Bureau of Investigation or any other Government investigating agency that conducts any investigation under the Act shall furnish reports to the Central Government on a quarterly basis, indicating the status of each case that was entrusted to it, including information regarding the case number, date of registration, date of filing charge sheet, court before which it has been filed, progress of trial, date of judgment and the conclusion of each case.

23. **Authority to whom an application or intimation to be sent.** - Any information or intimation about political or speculative activities of a person as mentioned in rule 3 or rule 4, shall be furnished to the Secretary to the Government of India in the Ministry of Home Affairs, New Delhi. Such information or intimation shall be sent by registered post [or in electronic form].

[24. *]**

Insolvency & Bankruptcy Code, 2016

1. The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021

The President promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 on 4th April 2021. The Cabinet had approved on 31st March 2021 the proposal to make amendments in the Insolvency and Bankruptcy Code, 2016 (Code), through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021.

The amendments aims to provide an efficient alternative insolvency resolution framework for corporate persons classified as micro, small and medium enterprises (MSMEs) under the Code, for ensuring quicker, cost-effective and value maximising outcomes for all the stakeholders, in a manner which is least disruptive to the continuity of MSMEs businesses and which preserves jobs. The initiative is based on a trust model and the amendments honour the honest MSME owners by trying to ensure that the resolution happens and the company remains with them.

It is expected that the incorporation of Pre-Packaged insolvency resolution process for MSMEs in the Code will alleviate the distress faced by MSMEs due to the impact of the pandemic & the unique nature of their business, duly recognizing their importance in the economy. It provides an efficient alternative insolvency resolution framework for corporate persons classified as MSMEs for timely, efficient & cost-effective resolution of distress thereby ensuring positive signal to debt market, employment preservation, ease of doing business and preservation of enterprise capital. Other expected impact and benefits of the amendment in Code are lesser burden on Adjudicating Authority, assured continuity of business operations for corporate debtor (CD), less process costs & maximum assets realization for financial creditors (FC) and assurance of continued business relation with CD and rights protection for operational Creditors (OC).

The Amendment Ordinance seeks to amend sections such as 4, 5, 11, 33, 34, 61, 65, 77, 208, 239, 240 & insert new sections such as 11A, 67A, 77A and a new chapter as IIIA on

Pre-Packaged insolvency resolution process for MSMEs in the Code based on recommendations made by the Insolvency Law Committee (ILC).

Details of the amendments are given at under:

1. This Ordinance may be called the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021. It shall come into force at once.

2. Amendment of Section 4- Application of this Part II of the Code

After the given proviso in the said section, the following proviso shall be inserted, namely:—

"Provided further that the Central Government may, by notification, specify such minimum amount of default of higher value, which shall not be more than one crore rupees, for matters relating to the prepackaged insolvency resolution process of corporate debtors under Chapter III-A.".

3. Amendment of Section 5- Definitions covered under this part of the Code.

(i) after clause (2), the following clause shall be inserted, namely: —

'(2A) **"base resolution plan"** means a resolution plan provided by the corporate debtor under clause (c) of ub-section (4) of section 54A;';

(ii) in clause (5), in sub-clause (b), after the words "corporate insolvency resolution process", the words "or the pre-packaged insolvency resolution process, as the case may be," shall be inserted;

(iii) in clause (11), after the words "corporate insolvency resolution process", the words "or prepackaged insolvency resolution process, as the case may be" shall be inserted;

(iv) in clause (15), after the words, "process period", the words "or by the corporate debtor during the pre-packaged insolvency resolution process period, as the case may be," shall be inserted;

(v) in clause (19), after the words "for the purposes of", the words and figures "Chapter VI and" shall be inserted;

(vi) after clause (23), the following clauses shall be inserted, namely: —

(23A) "preliminary information memrandum" means a memorandum submitted by the corporate debtor under clause (b) of sub-section (1) of section 54G;

(23B)"pre-packaged insolvency commencement date" means the date of admission of an application for initiating the pre-packaged insolvency resolution process by the Adjudicating Authority under clause (a) of sub-section (4) of section 54C;

(23C) "pre-packaged insolvency resolution process costs" means—

(a) the amount of any interim finance and the costs incurred in raising such finance;

(b) the fees payable to any person acting as a resolution professional and any expenses incurred by him for conducting the pre-packaged insolvency resolution process during the prepackaged insolvency resolution process period, subject to sub-section (6) of section 54F;

(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern pursuant to an order under sub-section (2) of section 54J;

(d) any costs incurred at the expense of the Government to facilitate the pre-packaged insolvency resolution process; and

(e) any other costs as may be specified;

(23D) "pre-packaged insolvency resolution process period" means the period beginning from the pre-packaged insolvency commencement date and ending on the date on which an order under sub-section (1) of section 54L, or sub-section (1) of section 54N, or sub-section (2) of section 54-O, as the case may be, is passed by the Adjudicating Authority;';

(vii) in clause (25), after the words, brackets and figures "of sub-section (2) of section 25", the words, figures and letter "or pursuant to section 54K, as the case may be" shall be inserted;

(viii) in clause (27), after the words "corporate insolvency resolution process", the words "or the prepackaged insolvency resolution process (PPIRP), as the case may be," shall be inserted.

4. Amendment of section 11- Persons not entitled to make application.

(i) in clause (a), after the words "corporate insolvency resolution process", the words "or a prepackaged insolvency resolution process" shall be inserted;

(ii) after clause (a), the following clause shall be inserted, namely:—

"(aa) a financial creditor or an operational creditor of a corporate debtor undergoing a prepackaged insolvency resolution process; or";

(iii) after clause (b), the following clause shall be inserted, namely:—

"(ba) a corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A, twelve months preceding the date of making of the application; or".

5. After section 11 of the principal Act, following new **section 11A shall be inserted,.**

"**11A.** (1) Where an application filed under section 54C is pending, the Adjudicating Authority shall pass applications under section an order to admit or reject such application, before 54C and under considering any application filed under section 7 or section 7 or section 9 or section 10 during the pendency of such section 9 or application under section 54C, in respect of the same section 10. corporate debtor.

(2) Where an application under section 54C is filed within fourteen days of filing of any application under section 7 or section 9 or section 10, which is pending, in respect of the same corporate debtor, then, notwithstanding anything contained in sections 7, 9 and 10, the Adjudicating Authority shall first dispose of the application under section 54C.

(3) Where an application under section 54C is filed after fourteen days of the filing of any application under section 7 or section 9 or section 10, in respect of the same corporate debtor, the Adjudicating Authority shall first dispose of the application under sections 7, 9 or 10.

(4) The provisions of this section shall not apply where an application under section 7 or section 9 or section 10 is filed and pending as on the date of the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021.".

6. **In section 33** of the principal Act, which deals with the **initiation of liquidation**, in sub-section (3), after the words, "approved by the Adjudicating Authority", the words, figures, brackets and letter "under section 31 or under sub-section (1) of section 54L," shall be inserted.

7. **Amendment of section 34- Appointment of liquidator and fee to be paid.**

In section 34 of the principal Act, in sub-section (1), after the words and figures, "under Chapter II", the words, figures and letter "or for the pre-packaged insolvency resolution process under Chapter III-A" shall be inserted.

8. After Chapter III of the principal Act, the following **Chapter III-A**, shall be inserted, namely:—

'CHAPTER III-A

PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS

Corporate debtors eligible for pre-packaged insolvency resolution process.

54 A.(1) An application for initiating pre-packaged insolvency resolution process may be made in respect of a corporate debtor classified as a micro, small or medium enterprise under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development 27 of 2006. Act, 2006.

(2) Without prejudice to sub-section (1), an application for initiating pre-packaged insolvency resolution process may be made in respect of a corporate debtor, who commits a default referred to in section 4, subject to the following conditions, that—

(a) it has not undergone pre-packaged insolvency resolution process or completed corporate insolvency resolution process, as the case may be, during the period of three years preceding the initiation date;

(b) it is not undergoing a corporate insolvency resolution process;

(c) no order requiring it to be liquidated is passed under section 33;

(d) it is eligible to submit a resolution plan under section 29A;

(e) the financial creditors of the corporate debtor, not being its related parties, representing such number and such manner as may be specified, have proposed the name of the insolvency professional to be appointed as resolution professional for conducting the pre-packaged insolvency resolution process of the corporate debtor, and the financial creditors of the corporate debtor, not being its related parties, representing not less than sixty-six per cent. in value of the financial debt due to such creditors, have approved such proposal in such form as may be specified:

Provided that where a corporate debtor does not have any financial creditors, not being its related parties, the proposal and approval under this clause shall be provided by such persons as may be specified;

(f) the majority of the directors or partners of the corporate debtor, as the case may be, have made a declaration, in such form as may be specified, stating, *inter alia,* —

i that the corporate debtor shall file an application for initiating pre-packaged insolvency resolution process within a definite time period not exceeding ninety days;

ii that the pre-packaged insolvency resolution process is not being initiated to defraud any person; and

iii the name of the insolvency professional proposed and approved to be appointed as resolution professional under clause (e);

(g) the members of the corporate debtor have passed a special resolution, or at least three-fourth of the total number of partners, as the case may be, of the corporate debtor have passed a resolution, approving the filing of an application for initiating pre-packaged insolvency resolution process.

(3) The corporate debtor shall obtain an approval from its financial creditors, not being its related parties, representing not less than sixty-six per cent. in value of the financial debt due to such creditors, for the filing of an application for initiating pre-packaged insolvency resolution process, in such form as may be specified:

Provided that where a corporate debtor does not have any financial creditors, not being its related parties, the approval under this sub-section shall be provided by such persons as may be specified.

(4) Prior to seeking approval from financial creditors under sub-section (3), the corporate debtor shall provide such financial creditors with —

(a) the declaration referred to in clause (f) of sub- section (2);

(b) the special resolution or resolution referred to in clause (g) of sub-section (2);

(c) a base resolution plan which conforms to the requirements referred to in section 54K, and such other conditions as may be specified; and

(d) such other information and documents as may be specified.

Duties of resolution professional before initiation of pre-packaged insolvency resolution process.

54B. (1) The insolvency professional, proposed to be appointed as the resolution professional, shall have the following duties commencing from the date of the approval under clause (e) of sub-section (2) of section 54A, namely:—

(a) prepare a report in such form as may be specified, confirming whether the corporate debtor meets the requirements of section 54A, and the base resolution plan conforms to the requirements referred to in clause (c) of sub-section (4) of section 54A;

(b) file such reports and other documents, with the Board, as may be specified; and

(c) perform such other duties as may be specified.

(2) The duties of the insolvency professional under sub-section (1) shall cease, if, —

(a) the corporate debtor fails to file an application for initiating pre-packaged insolvency resolution process within the time period as stated under the declaration referred to in clause (f) of subsection (2) of section 54A; or

(b) the application for initiating pre-packaged insolvency resolution process is admitted or rejected by the Adjudicating Authority, as the case may be.

(3) The fees payable to the insolvency professional in relation to the duties performed under sub-section (1) shall be determined and borne in such manner as may be specified and such fees shall form part of the prepackaged insolvency resolution process costs, if the application for initiation of pre-packaged insolvency resolution process is admitted.

Application to initiate pre-packaged insolvency resolution process.

54C. (1) Where a corporate debtor meets the requirements of section 54A, a corporate applicant thereof may file an application with the Adjudicating insolvency Authority for initiating pre-packaged insolvency resolution resolution process.

(2) The application under sub-section (1) shall be filed in such form, containing such particulars, in such manner and accompanied with such fee as may be prescribed.

(3) The corporate applicant shall, along with the application, furnish—

(a) the declaration, special resolution or resolution, as the case may be, and the approval of financial creditors for initiating pre-packaged insolvency resolution process in terms of section 54A;

(b) the name and written consent, in such form as may be specified, of the insolvency professional proposed to be appointed as resolution professional, as approved under clause (e) of sub-section (2) of section 54A, and his report as referred to in clause (a) of sub-section (1) of section 54B;

(c) a declaration regarding the existence of any transactions of the corporate debtor that may be within the scope of provisions in respect of avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, in such form as may be specified;

(d) information relating to books of account of the corporate debtor and such other documents relating to such period as may be specified.

(4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order,—

(a) admit the application, if it is complete; or

(b) reject the application, if it is incomplete:

Provided that the Adjudicating Authority shall, before rejecting an application, give notice to the applicant to rectify the defect in the application within seven days from the date of receipt of such notice from the Adjudicating Authority.

(5) The pre-packaged insolvency resolution process shall commence from the date of admission of the application under clause (a) of sub-section (4).

Time-limit for completion of pre-packaged insolvency resolution process.

54D. (1) The pre-packaged insolvency resolution process shall be completed within a period of one hundred and twenty days from the pre-packaged insolvency commencement date.

(2) Without prejudice to sub-section (1), the resolution professional shall submit the resolution plan, as approved by the committee of creditors, to the Adjudicating Authority under sub-section (4) or subsection (12), as the case may be, of section 54K, within a period of ninety days from the pre-packaged insolvency commencement date.

(3) Where no resolution plan is approved by the committee of creditors within the time period referred to in sub-section (2), the resolution professional shall, on the day after the expiry of such time period, file an application with the Adjudicating Authority for termination of the pre-packaged insolvency resolution process in such form and manner as may be

specified.

Declaration of moratorium and public announcement during prepackaged insolvency resolution process

54E. (1) The Adjudicating Authority shall, on the pre-packaged insolvency commencement date, along with the order of admission under section 54C —

(a) declare a moratorium for the purposes referred to in sub-section (1) read with sub-section (3) of section 14, which shall, *mutatis mutandis* apply, to the proceedings under this Chapter;

(b) appoint a resolution professional —

(i) as named in the application, if no disciplinary proceeding is pending against him; or

(ii) based on the recommendation made by the Board, if any disciplinary proceeding is pending against the insolvency professional named in the application.

(c) cause a public announcement of the initiation of the pre-packaged insolvency resolution process to be made by the resolution professional, in such form and manner as may be specified, immediately after his appointment.

(2) The order of moratorium shall have effect from the date of such order till the date on which the prepackaged insolvency resolution process period comes to an end.

Duties and powers of resolution professional during pre-packaged insolvency resolution process.

54F. (1) The resolution professional shall conduct the pre-packaged insolvency resolution process of a corporate debtor during the pre-packaged insolvency resolution process period.

(2) The resolution professional shall perform the following duties, namely:—

(a) confirm the list of claims submitted by the corporate debtor under section 54G, in such manner as may be specified;

(b) inform creditors regarding their claims as confirmed under clause (a), in such manner as may be specified;

(c) maintain an updated list of claims, in such manner as may be specified;

(d) monitor management of the affairs of the corporate debtor;

(e) inform the committee of creditors in the event of breach of any of the obligations of the Board of Directors or partners, as the case may be, of the corporate debtor, under the provisions of this Chapter and the rules and regulations made thereunder;

(f) constitute the committee of creditors and convene and attend all its meetings;

(g) prepare the information memorandum on the basis of the preliminary information memorandum submitted under section 54G and any other relevant information, in such form and manner as may be specified;

(h) file applications for avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, if any; and

(i) such other duties as may be specified.

(3) The resolution professional shall exercise the following powers, namely:—

(a) access all books of accounts, records and information available with the corporate debtor;

(b) access the electronic records of the corporate

debtor from an information utility having financial information of the corporate debtor;

(c) access the books of accounts, records and

other relevant documents of the corporate debtor available with Government authorities, statutory auditors, accountants and such other persons as may be specified;

(d) attend meetings of members, Board of

Directors and committee of directors, or partners, as the case may be, of the corporate debtor;

(e) appoint accountants, legal or other professionals in such manner as may be specified;

(f) collect all information relating to the assets,

finances and operations of the corporate debtor for determining the financial position of the corporate debtor and the existence of any transactions that may be within the scope of provisions relating to avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, including information relating to —

(i) business operations for the previous two

years from the date of pre-packaged insolvency commencement date;

(ii) financial and operational payments for the previous two years from the date of prepackaged insolvency commencement date;

(iii) list of assets and liabilities as on the initiation date; and

(iv) such other matters as may be specified;

(g) take such other actions in such manner as may be specified.

(4) From the date of appointment of the resolution professional, the financial institutions maintaining accounts of the corporate debtor shall furnish all information relating to the corporate debtor available with them to the resolution professional, as and when required by him.

(5) The personnel of the corporate debtor, its promoters and any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the resolution professional as may be required by him to perform his duties and exercise his powers, and for such purposes, the provisions of sub-sections (2) and (3) of section 19 shall, *mutatis mutandis* apply, in relation to the proceedings under this Chapter.

(6) The fees of the resolution professional and any expenses incurred by him for conducting the prepackaged insolvency resolution process shall be determined in such manner as may be specified:

Provided that the committee of creditors may impose limits and conditions on such fees and expenses:

Provided further that the fees and expenses for the period prior to the constitution of the committee of creditors shall be subject to ratification by it.

(7) The fees and expenses referred to in sub-section (6) shall be borne in such manner as may be specified.

List of claims and preliminary information memorandum.

54G. (1) The corporate debtor shall, within two days of the pre-packaged insolvency commencement date, submit to the resolution professional the following information, updated as on that date, in such form and manner as may be specified, namely:—

(a) a list of claims, along with details of the respective creditors, their security interests and guarantees, if any; and

(b) a preliminary information memorandum containing information relevant for formulating a resolution plan.

(2) Where any person has sustained any loss or damage as a consequence of the omission of any material information or inclusion of any misleading information in the list of claims or the preliminary information memorandum submitted by the corporate debtor, every person who—

(a) is a promoter or director or partner of the corporate debtor, as the case may be, at the time of submission of the list of claims or the preliminary information memorandum by the corporate debtor; or

(b) has authorised the submission of the list of claims or the preliminary information memorandum by the corporate debtor,

shall, without prejudice to section 77A, be liable to pay compensation to every person who has sustained such loss or damage.

(3) No person shall be liable under sub-section (2), if the list of claims or the preliminary information memorandum was submitted by the corporate debtor without his knowledge or consent.

(4) Subject to section 54E, any person, who sustained any loss or damage as a consequence of omission of material information or inclusion of any misleading information in the list of claims or the preliminary information memorandum shall be entitled to move a court having jurisdiction for seeking compensation for such loss or damage.

Management of affairs of corporate debtor

54H. During the pre-packaged insolvency resolution process period,—

(a) the management of the affairs of the corporate debtor shall continue to vest in the Board of Directors or the partners, as the case may be, of the corporate debtor, subject to such conditions as may be specified;

(b) the Board of Directors or the partners, as the case may be, of the corporate debtor, shall make every endeavour to protect and preserve the value of the property of the corporate debtor, and manage its operations as a going concern; and

(c) the promoters, members, personnel and partners, as the case may be, of the corporate debtor, shall exercise and discharge their contractual or statutory rights and obligations in relation to the corporate debtor, subject to the provisions of this Chapter and such other conditions and restrictions as may be prescribed.

Committee of creditors

54-I. (1) The resolution professional shall, within seven days of the pre-packaged insolvency commencement date, constitute a committee of creditors, based on the list of claims confirmed under clause (a) of sub-section (2) of section 54F:

Provided that the composition of the committee of creditors shall be altered on the basis of the updated list of claims, in such manner as may be specified, and any such alteration shall not affect the validity of any past decision of the committee of creditors.

(2) The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

(3) Provisions of section 21, except sub-section (1) thereof, shall, *mutatis mutandis* apply, in relation to the committee of creditors under this Chapter:

Provided that for the purposes of this sub-section, references to the "resolution professional" under subsections (9) and (10) of section 21, shall be construed as references to "corporate debtor or the resolution professional".

Vesting management of corporate debtor with resolution professional

54J. (1) Where the committee of creditors, at any time during the pre-packaged insolvency resolution corporate process, by a vote of not less than sixty-six per cent. of the voting shares, resolves to vest the management of the corporate debtor with the resolution professional, the resolution professional shall make an application for this purpose to the Adjudicating Authority, in such form and manner as may be specified.

(2) On an application made under sub-section (1), if the Adjudicating Authority is of the opinion that

during the pre-packaged insolvency resolution process—

(a) the affairs of the corporate debtor have been conducted in a fraudulent manner; or

(b) there has been gross mismanagement of the affairs of the corporate debtor,

it shall pass an order vesting the management of the corporate debtor with the resolution professional.

(3) Notwithstanding anything to the contrary contained in this Chapter, the provisions of —

(a) sub-sections (2) and (2A) of section 14;

(b) section 17;

(c) clauses (e) to (g) of section 18;

(d) sections 19 and 20;

(e) sub-section (1) of section 25;

(f) clauses (a) to (c) and clause (k) of sub- section (2) of section 25; and

(g) section 28,

shall, *mutatis mutandis* apply, to the proceedings under this Chapter, from the date of the order under subsection (2), until the pre-packaged insolvency resolution process period comes to an end.

Consideration and approval of resolution plan

54K. (1) The corporate debtor shall submit the base resolution plan, referred to in clause (c) of sub-section (4) of section 54A, to the resolution professional within two days of the pre-packaged insolvency commencement date, and the resolution professional shall present it to the committee of creditors.

(2) The committee of creditors may provide the corporate debtor an opportunity to revise the base resolution plan prior to its approval under sub-section (4) or invitation of prospective resolution applicants under sub-section (5), as the case may be.

(3) The resolution plans and the base resolution plan, submitted under this section shall conform to the requirements referred to in sub-sections (1) and (2) of section 30, and the provisions of sub-sections (1), (2) and (5) of section 30 shall, *mutatis mutandis* apply, to the proceedings under this Chapter.

(4) The committee of creditors may approve the base resolution plan for submission to the Adjudicating Authority if it does not impair any claims owed by the corporate debtor to the operational creditors.

(5) Where —

(a) the committee of creditors does not approve the base resolution plan under sub-section (4); or

(b) the base resolution plan impairs any claims owed by the corporate debtor to the operational creditors, the resolution professional shall invite prospective

resolution applicants to submit a resolution plan or plans, to compete with the base resolution plan, in such manner as may be specified.

(6) The resolution applicants submitting resolution plans pursuant to invitation under sub-section (5), shall fulfil such criteria as may be laid down by the resolution professional with the approval of the committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified.

(7) The resolution professional shall provide to the resolution applicants, —

(a) the basis for evaluation of resolution plans

for the purposes of sub-section (9), as approved by the committee of creditors subject to such conditions as may be specified; and

(b) the relevant information referred to in section 29, which shall, *mutatis mutandis* apply, to the proceedings under this Chapter, in such manner as may be specified.

(8) The resolution professional shall present to the committee of creditors, for its evaluation, resolution plans which conform to the requirements referred to in sub-section (2) of section 30.

(9) The committee of creditors shall evaluate the resolution plans presented by the resolution professional and select a resolution plan from amongst them.

(10) Where, on the basis of such criteria as may be laid down by it, the committee of creditors decides that the resolution plan selected under sub-section (9) is significantly better than the base resolution plan, such resolution plan may be selected for approval under subsection (12):

Provided that the criteria laid down by the committee of creditors under this sub-section shall be subject to such conditions as may be specified.

(11) Where the resolution plan selected under sub-section (9) is not considered for approval or does not fulfil the requirements of sub-section (10), it shall compete with the base resolution plan, in such manner and subject to such conditions as may be specified, and one of them shall be selected for approval under subsection (12).

(12) The resolution plan selected for approval under sub-section (10) or sub-section (11), as the case may be, may be approved by the committee of creditors for submission to the Adjudicating Authority:

Provided that where the resolution plan selected for approval under sub-section (11) is not approved by the committee of creditors, the resolution professional shall file an application for termination of the pre-packaged insolvency resolution process in such form and manner as may be specified.

(13) The approval of the resolution plan under sub-section (4) or sub-section (12), as the case may be, by the committee of creditors, shall be by a vote of not less than sixty-six per cent. of the voting shares, after considering its feasibility and viability, the manner of distribution proposed, taking into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified.

(14) While considering the feasibility and viability of a resolution plan, where the resolution plan submitted by the corporate debtor provides for impairment of any claims owed by the corporate debtor, the committee of creditors may require the promoters of the corporate debtor to dilute their shareholding or voting or control rights in the corporate debtor:

Provided that where the resolution plan does not provide for such dilution, the committee of creditors shall, prior to the approval of such resolution plan under sub-section (4) or sub-section (12), as the case may be, record reasons for its approval.

(15) The resolution professional shall submit the resolution plan as approved by the committee of creditors under sub-section (4) or sub-section (12), as the case may be, to the Adjudicating Authority.

Explanation I.—For the removal of doubts, it is hereby clarified that, the corporate debtor being a resolution applicant under clause (25) of section 5, may submit the base resolution plan either individually or jointly with any other person.

Explanation II.—For the purposes of sub- sections (4) and (14), claims shall be considered to be impaired where the resolution plan does not provide for the full payment of the confirmed claims as per the updated list of claims maintained by the resolution professional.

Approval of resolution plan

54L. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) or sub-section (12) of section 54K, as the case may be, subject to the conditions provided therein, meets the requirements as referred to in sub-section (2) of section 30, it shall, within thirty days of the receipt of such resolution plan, by order approve the resolution plan:

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

(2) The order of approval under sub-section (1) shall have such effect as provided under sub-sections (1), (3) and (4) of section 31, which shall, *mutatis mutandis* apply, to the proceedings under this Chapter.

(3) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, within thirty days of the receipt of such resolution plan, by an order, reject the resolution plan and pass an order under section 54N.

(4) Notwithstanding anything to the contrary contained in this section, where the Adjudicating Authority has passed an order under sub-section (2) of section 54J and the resolution plan approved by the committee of creditors under sub-section (4) or subsection (12), as the case may be, of section 54K, does not result in the change in the management or control of the corporate debtor to a person who was not a promoter or in the management or control of the corporate debtor, the Adjudicating Authority shall pass an order —

(a) rejecting such resolution plan;

(b) terminating the pre-packaged insolvency resolution process and passing a liquidation order in respect of the corporate debtor as referred to in sub clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of section 33; and

(c) declaring that the pre-packaged insolvency resolution process costs, if any, shall be included as part of the liquidation costs for the purposes of liquidation of the corporate debtor.

Appeal against order under section 54L

54M. Any appeal from an order approving the resolution plan under sub-section (1) of section 54L, shall be on the grounds laid down in sub-section (3) of section 61.

Termination of pre-packaged insolvency resolution process.

54N. (1) Where the resolution professional files an application with the Adjudicating Authority,—

(a) under the proviso to sub-section (12) of section 54K; or

(b) under sub-section (3) of section 54D, the Adjudicating Authority shall, within thirty days of the date of such application, by an order, —

(i) terminate the pre-packaged insolvency resolution process; and

(ii) provide for the manner of continuation of proceedings initiated for avoidance of transactions under Chapter III or proceedings initiated under section 66 and section 67A, if any.

(2) Where the resolution professional, at any time after the pre-packaged insolvency commencement date, but before the approval of resolution plan under subsection (4) or sub-section (12), as the case may be, of section 54K, intimates the Adjudicating Authority of the decision of the committee of creditors, approved by a vote of sixty-six per cent. of the voting shares, to terminate the pre-packaged insolvency resolution process, the Adjudicating Authority shall pass an order under sub-section (1).

(3) Where the Adjudicating Authority passes an order under sub-section (1), the corporate debtor shall bear the pre-packaged insolvency resolution process costs, if any.

(4) Notwithstanding anything to the contrary contained in this section, where the Adjudicating Authority has passed an order under sub-section (2) of section 54J and the pre-packaged insolvency resolution process is required to be terminated under sub-section (1), the Adjudicating Authority shall pass an order —

(a) of liquidation in respect of the corporate debtor as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of section 33; and

(b) declare that the pre-packaged insolvency resolution process costs, if any, shall be included as part of the liquidation costs for the purposes of liquidation of the corporate debtor.

Initiation of corporate insolvency resolution process.

54-O. (1) The committee of creditors, at any time after the pre-packaged insolvency commencement date but before the approval of resolution plan under sub- section (4) or sub-section (12), as the case may be, of section 54K, by a vote of sixty-six per cent. of the voting shares, may resolve to initiate a corporate insolvency resolution process in respect of the

corporate debtor, if such corporate debtor is eligible for corporate insolvency resolution process under Chapter II.

(2) Notwithstanding anything to the contrary contained in Chapter II, where the resolution professional intimates the Adjudicating Authority of the decision of the committee of creditors under sub-section (1), the Adjudicating Authority shall, within thirty days of the date of such intimation, pass an order to —

a. terminate the pre-packaged insolvency resolution process and initiate corporate insolvency resolution process under Chapter II in respect of the corporate debtor;

b. appoint the resolution professional referred to in under clause (b) of sub-section (1) of section 54E as the interim resolution professional, subject to submission of written consent by such resolution professional to the Adjudicatory Authority in such form as may be specified; and

c. declare that the pre-packaged insolvency resolution process costs, if any, shall be included as part of insolvency resolution process costs for the purposes of the corporate insolvency resolution process of the corporate debtor.

(3) Where the resolution professional fails to submit written consent under clause (b) of sub-section (2), the Adjudicating Authority shall appoint an interim resolution professional by making a reference to the Board for recommendation, in the manner as provided under section 16.

(4) Where the Adjudicating Authority passes an order under sub-section (2) —

(a) such order shall be deemed to be an order of admission of an application under section 7 and shall have the same effect;

(b) the corporate insolvency resolution process shall commence from the date of such order;

(c) the proceedings initiated for avoidance of transactions under Chapter III or proceedings initiated under section 66 and section 67A, if any, shall continue during the corporate insolvency resolution process;

(d) for the purposes of sections 43, 46 and 50, references to "insolvency commencement date" shall mean "pre-packaged insolvency commencement date"; and

(e) in computing the relevant time or the period for avoidable transactions, the time-period for the duration of the pre-packaged insolvency resolution process shall also be included, notwithstanding anything to the contrary contained in sections 43, 46 and 50.

Application of provisions of Chapters II, III, VI, and VII to this Chapter

54P. (1) Save as provided under this Chapter, sections 24, 25A, 26, 27, 28, 29A, 32A, 43 to 51, and the provisions of Chapters VI and VII of this VI, and VII to Part shall, *mutatis mutandis* apply, to the pre-packaged insolvency resolution process, subject to the following, namely: —

(a) reference to "members of the suspended Board of Directors or the partners" under clause (b) of sub-section (3) of section 24 shall be construed as reference to "members of the

Board of Directors or the partners, unless an order has been passed by the Adjudicating Authority under section 54J";

(b) reference to "clause (j) of sub-section (2) of section 25" under section 26 shall be construed as reference to "clause (h) of sub-section (2) of section 54F";

(c) reference to "section 16" under section 27 shall be construed as reference to "section 54E";

(d) reference to "resolution professional" in sub-sections (1) and (4) of section 28 shall be construed as "corporate debtor";

(e) reference to "section 31" under sub-section (3) of section 61 shall be construed as reference to "sub-section (1) of section 54L";

(f) reference to "section 14" in sub-sections (1) and (2) of section 74 shall be construed as reference to "clause (a) of sub-section (1) of section 54E";

(g) reference to "section 31" in sub-section (3) of section 74 shall be construed as" reference to "sub-section (1) of section 54L".

(2) Without prejudice to the provisions of this Chapter and unless the context otherwise requires, where the provisions of Chapters II, III, VI and VII are applied to the proceedings under this Chapter, references to —

(a) "insolvency commencement date" shall be construed as references to "pre-packaged insolvency commencement date";

(b) "resolution professional" or "interim resolution professional", as the case may be, shall be construed as references to the resolution professional appointed under this Chapter;

(c) "corporate insolvency resolution process" shall be construed as references to "pre-packaged insolvency resolution process"; and

(d) "insolvency resolution process period" shall be construed as references to "pre-packaged insolvency resolution process period.".'.

2. Vide Notification S.O. 4638 (E) [F. NO. 30/33/2020-INSOLVENCY], dated **22-12-2020**

In exercise of the powers conferred by section 10A of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby extended the period of suspension of insolvency proceedings by further period of three months from the 25th December, 2020, for the purposes of the said section.

3. Vide MCA Notification S.O.1543(E) dated 9th April, 2021, in exercise of the powers conferred by the second proviso to section 4 of the Insolvency and

Bankruptcy Code, 2016 (31 of 2016), as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021, the Central Government hereby specifies ten lakh rupees as the minimum amount of default for the matters relating to the pre-packaged insolvency resolution process of corporate debtor under Chapter III-A of the Code.

PART – II : QUESTIONS AND ANSWERS

QUESTIONS

CASE SCENARIO/ MULTIPLE CHOICE QUESTIONS

Case Scenario-1

Sukesh Web Developers Ltd. (for short SWD) is a public company, incorporated in December, 2018. Sukesh is the Managing Director of the company. The company is engaged in the business of developing Websites, Mobile App, providing of On-line Platform for conducting Business Meetings, Class Room Teachings and providing of pre-filled educational Tablets as per syllabus prescribed by the respective Central / State Boards, of Classes 6th to 12th.

At the time of incorporation, the company was formed by 7 members, who were actually classmates when they all were doing B.Tech (Electronics) from IIT, Mumbai. Initially they contributed the capital from their own resources and the paid up capital at the time of incorporation was ₹ 50 crore. Among the 7 members, 3 members occupied the position of director in the company. In addition to this, 2 other persons were also appointed as Independent Directors. One is a Professor (Finance) in IIM, Ahmedabad and another is an Advocate on Record at Supreme Court.

The popularity and user friendly features of On-Line Products, increased the demand, and the turnover of the company dramatically increased from ₹ 100 crore in March 2019 to ₹ 350 crore by the end of March 2020.

The Company Secretary in full time employment of the company, apprised the Board that, company should now appoint at least one woman director on the Board. The Board agreed and the name of Sudha (the wife of Sukesh) was proposed and approved in the General Meeting of the company. Sudha was appointed as woman director in the Board of the Company with effect from 10th April, 2020.

Now, the Board of SWD consists of the following persons:

S. No.	Name	Designation	Group
1.	Sukesh	Managing Director	Promoter
2.	Rahul	Director	Promoter
3.	Parmeshwar	Director	Promoter
4.	Kamal	Independent Director	Professor (Finance)
5.	Damodar	Independent Director	Advocate on Record at Supreme Court
6.	Sudha	Woman Director	Wife of MD

During this pandemic situation, Rahul, one of the member and director in the company passed away due to Corona in March 2021. Rahul was the key person in procuring new business

relations and was having good connections with various schools, in which the company's pre-loaded educational Tablets were being supplied. It was a great set-back to the company.

However, the company went on doing business inspite of the fact that the minimum requirement of members in SWD reduced from 7 to 6. The Company Secretary apprised to the Board that Arundhati (the wife of deceased Rahul) has applied for transmission of shares in her name, which were held in the name of Rahul. The Board accepted the transmission request, and the Board Secretariat of the company entered the name of Arundhati as member of the company. Now again the minimum requirement of seven members of this public company fulfilled.

During the Financial Year 2020-21 the five meetings of the Board of Directors were held, but Sudha, being a woman director, never ever attended any meeting of the Board of Directors due to her shy nature and always sought leave of absence of the Board. The Company Secretary apprised in the Board Meeting held in April 2021, about the vacation of the post of woman director on account of continuous absence of Sudha in the Board Meetings held during the FY 2020-21 and requested the Board to again propose for the appointment of new woman director and also other director (in replacement of the demise of Rahul, Ex-Director). The Board accepted the recommendation of the Company Secretary and was advised to move ahead to complete the legal formalities.

Based on the above scenario, answer the following questions in the light of the Companies Act, 2013:

1. State the legal position w.r.t. appointment of woman director in the Board by the SWD:
   (a) It is not required to appoint any woman director, since the company is not a listed entity.
   (b) It is not required to appoint woman director, since the paid-up capital of the company is only ₹ 50 crore, which is below the threshold limit of ₹ 100 crore.
   (c) It is required to appoint at least one woman director, since the turnover of the company has crossed ₹ 300 crore, which is actually ₹ 350 crore as on 31st March, 2020.
   (d) If both the conditions i.e. paid-up capital of ₹ 100 crore or more; and turnover of ₹ 300 crore or more, are fulfilled, then SWD is required to have at least one woman director.
2. The company is not a listed entity, even then it has appointed two Independent Directors. Why?
   (a) By appointing independent director(s), the company is benefitted of their expertise and wisdom.
   (b) The company was required to appoint independent directors since its paid-up capital is ₹ 50 crore, (at the time of incorporation) which is above the threshold limit of ₹ 10 crore.

(c) Appointing of Advocate on Records at Supreme Court as Independent director is beneficial to address the legal issues.

(d) The company was used to get the financial advice, hence it appointed a Financial Professional as an Independent Director.

3. In the above case, Sudha (the wife of Sukesh, Managing Director) was appointed to fill up the vacancy of woman director. Whether appointment of relative of Managing Director to fill up the vacancy of woman director is permissible?

(a) Sudha is the wife of MD, and hence cannot be considered to be appointed as woman director. So her appointment is not valid.

(b) There is no prohibition/ restriction in the Companies Act, 2013 to appoint any woman to fill up the vacancy of woman director even she is a relative of any of the director.

(c) Woman director should be chosen only from the Databank maintained by the Indian Institute of Company Affairs (IICA), New Delhi.

(d) Sudha should immediately break the relationship with her husband, who is MD in the company, if she want to continue as woman director, in order to maintain the independent status.

4. Sudha being a woman director did not attended any meeting during FY 2020-21. However she always sought leave of absence of the Board. Sudha argued that when leave of absence have been sought, she may continue to be on Board by holding the Office of Woman Director. What is your opinion?

(a) No, a woman director is given a special treatment under the Law, so the post of woman director shall not be treated as vacant.

(b) Since in the given she has sought leave of absence of the Board, so the office of woman director shall not be treated as vacant.

(c) The office of a director shall become vacant in case he absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board.

(d) In option (c) above, words used are 'he' and 'himself', which are used for a male person, so the intention of the law makers are very clear and the office of woman director cannot be treated as vacant. If the intention of the law maker would have been to include a woman director, the words in the above sentence [Option C] should have been used as 'she' and 'herself'.

Case scenario 2

Vivaan Contractors Limited, a public company incorporated under the Companies Act, 2013 is engaged in engineering and construction business. Over the past 2 years, the company has been struggling to pay dues to its various stakeholders such as lenders of working capital, suppliers of material, subcontractors, etc. The amount lend by the lenders for working capital is

secured by first charge over current assets including receivables and stock and fixed assets are provided as collaterals. Mr. Ravi, CFO being an authorized person to make an application, files for Corporate Insolvency Resolution Process (CIRP) to the Adjudicating Authority at Mumbai on 29th March 2020. The Adjudicating Authority admitted the application and passed an order for initiating CIRP under section 10 of the Insolvency and Bankruptcy Code (IBC) and accordingly declared moratorium under section 14 of the Code. The order passed by the Adjudicating Authority did not provide for the appointment of Interim Resolution Professional (IRP) and thus, Mr. Rahul was appointed as IRP by a separate order dated 30th April 2020. The said order copy was however received to Mr. Ravi on 3rd May 2020 and on the very same day Mr. Rahul was informed regarding his appointment. Subsequently, Mr. Rahul made a public announcement and took over the control of the assets of the Corporate Debtor.

5. As per the given facts in the case scenario, in which category the lenders for working capital would fall for the constitution of Committee of Creditors?
   (a) Financial Creditors
   (b) Secured Creditors
   (c) Either (a) or (b)
   (d) Both (a) and (b)
6. What amongst the following is necessary for filing an application for CIRP by the authorized representative of Vivaan Contractors Limited?
   (a) Resolution passed by all the directors approving the filing of application.
   (b) Special resolution passed by shareholders of Corporate Debtor approving the filing of application.
   (c) Resolution passed by all the directors followed by approval through special resolution of shareholders of the Corporate Debtor.
   (d) Ordinary resolution passed by shareholders of Corporate Debtor approving the filing of application.
7. Which date shall be considered as the insolvency commencement date for the purpose of computing the time period for Corporate Insolvency Resolution Process?
   (a) 29th March 2020
   (b) 30th April 2020
   (c) 3rd May 2020
   (d) 6th May 2020
8. Which date shall be the last date of the completion of the Corporate Insolvency Resolution Process including any extension granted under section 12 of the Code.
   (a) 21st February 2021

(b) 25th March 2021

(c) 24th September 2020

(d) 28th March 2020

9. Under the case scenario, by which date Mr. Rahul, Interim Resolution Professional should have the made the public announcement under section 15 of the Code

(a) 3rd May 2020

(b) 30th April 2020

(c) 6th May 2020

(d) 5th May 2020

Independent MCQs

10. Pankaj Nidhi Limited, incorporated under section 406 of the Companies Act, 2013. Pankaj Nidhi Limited wants to enter into an agreement for acquiring another company by purchase of its securities. Now the management of the Pankaj Nidhi Limited is in dilemma with respect to the requirment of entering into such an agreement. Pankaj Nidhi Limited approached you to provide with the best course of action considering the provisions of the Companies Act, 2013.

(a) As per the Nidhi Rules, 2014, Nidhi company can enter into an agreement for acquiring other company by purchase of its securities provided the Nidhi company has passed a special resolution in its general meeting or have obtained the previous approval of the Regional Director having jurisdiction over such Nidhi.

(b) As per the Nidhi Rules, 2014, Nidhi company can enter into an agreement for acquiring other company by purchase of its securities provided the Nidhi company has passed a special resolution in its general meeting and also obtained the previous approval of the Regional Director having jurisdiction over such Nidhi.

(c) As per the Nidhi Rules, 2014, Nidhi company can enter into an agreement for acquiring other company by purchase of its securities provided the Nidhi company has passed a special resolution in its general meeting and have obtained the previous approval of the Registrar of Companies (Roc) having jurisdiction over such Nidhi.

(d) As per the Nidhi Rules, 2014, Nidhi company can enter into an agreement for acquiring other company by purchase of its securities provided the Nidhi company has passed a special resolution in its general meeting or have obtained the previous approval of the Registrar of Companies (Roc) having jurisdiction over such Nidhi.

11. Adheera Limited, a company incorporated under the Companies Act, 2013, has not entered into significant accounting transaction during the last one financial year. Accordingly, the management of the company was thinking to obtain the status of the dormant company under section 455 of the Companies Act, 2013. The Registrar on the filings made during the last financial year found some irregularities and ordered inspection of the books of

accounts under section 207 of the Companies Act, 2013. Now the management of the Company consults you, to advise on the application to be made to Registrar for obtaining the status of the dormant company considering the provisions of the Companies Act, 2013.

(1) The company shall be able to obtain the status of the dormant company after passing special resolution to this effect in the general meeting of the company.

(2) The company shall not be able to obtain the status of the dormant company as company shall be inactive i.e. not carrying significant accounting transactions during the last 2 financial years.

(3) The company shall be able to obtain the status of the dormant company after issuing notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders in value.

(4) The company shall not be able to obtain the status of the dormant company as inspection u/s 207 of the Act is going on against the Company.

(a) Only (3)

(b) Either (2) or (4)

(c) Either (1) or (3)

(d) Both (2) and (4)

12. Kiara Limited holds 77% of the shares of Sunny Limited. Kiara Limited makes an application for merger of Holding and Subsidiary Company under section 233 – Fast Track Merger of the Companies Act, 2013. The legal counsel of Kiara Limited states that company cannot apply for merger under section 233 of the said Act. He further stated that company shall have to apply for merger as per section 232 of the Act i.e. Merger and Amalgamation of Companies. State the correct statement in terms of the validity of the difference in the opinion of the legal counsel.

(a) Opinion of the legal counsel of Kiara Limited is valid as the provisions given for fast track merger in section 233 can be made between only small companies.

(b) Opinion of the legal counsel of Kiara Limited is invalid as merger shall be possible only as per section 233 between Holding and Subsidiary Company.

(c) Opinion of the legal counsel of Kiara Limited is valid as the provisions given for fast track merger in section 233 can be made between Holding and wholly owned subsidiary.

(d) Opinion of the legal counsel of Kiara Limited is invalid as merger of Holding and Subsidiary company is possible under both section 232 and section 233.

13. Under which circumstances the arbitration process comes to an end as per the Arbitration and Conciliation Act, 1996:

(a) When Arbitrator denies to pass final award

(b) When arbitrator fails to pass the award within 12 months

(c) When the parties decide to no longer continue with issue.

(d) Where the parties decide to refer the matter before the court.

14. A meeting of committee of creditors shall quorate if members of the CoC representing ----------are present either in person or by video/audio means:

(a) at least thirty three percent of the voting rights

(b) at least Fifty one percent of the voting rights

(c) at least sixty six percent of the voting rights

(d) at least seventy five percent of the voting rights

15. Anna, a foreign citizen has made donated variety of articles in kind, to various individuals of Indian residence for their personal use. When shall such donation of articles in kind be excluded from the definition of Foreign Contribution considering the provisions of Foreign Contribution (Regulation) Act, 2010.

(a) If the market value, in India, of such article, on the date of such gift, is more than ₹ 1,00,000 but less than 5,00,000.

(b) If the market value, in India, of such article, on the date of such gift, is more than ₹ 500,000 but less than 10,00,000.

(c) Any donation in kind given for personal use is always excluded.

(d) If the market value, in India, of such article given for personal use, on the date of such gift, is not more than ₹ 1,00,000.

16. The Committee of Creditors (CoC) of Ashoka Cement Limited under the Corporate Insolvency Resolution Process (CIRP) have passed a resolution allowing the Resolution Professional (RP) of Company for initiating the process of liquidation before NCLT under section 33 of the Insolvency and Bankruptcy (Amendment) Code, 2019. Accordingly, the RP was appointed as liquidator of the Ashoka Cement Limited. While forming the liquidation estate, the liquidator was in dilemma regarding the inclusion and exclusion of the assets forming part of the liquidation estate. You as a Qualified Chartered Accountant are required to advise the liquidator regarding the issues faced by him with respect to the exclusion to be made in the liquidation estate of Ashoka Cement Limited as per the provisions of the Code.

1. Assets in security collateral held by financial service providers.

2. Any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest.

3. Assets owned by a third party which are in the possession of the corporate debtor.

4. Assets subject to the determination of ownership by the court or authority.

(a) Only (3)

(b) Both (2) and (4)

(c) Only (1)

(d) (1) and (3)

Descriptive Questions

17. ABC Ltd. is incorporated in December, 2010 under the Companies Act, 1956. For the year ended on 31st March, 2020 and 31st March, 2021, the financial and other relevant information of the company were as under:

		(₹ in crores)
Particulars	**31.03.2020**	**31.03.2021**
(a) Paid-up capital	8	18#
(b) Reserves	16	6
(c) Turnover	75	98
(d) Borrowings from Banks /FIs (The sanctioned limit is 60 crores rupees)	50	45
(e) No. of directors	10	10
# Part amount of the Reserves was capitalised, by issue of Bonus shares during the FY 2020-21		

The Company Secretary apprised the Board, of requirement of appointment of Independent Director (ID). Few candidates were shortlisted, out of which 2 candidate were nominated and got approval of the shareholders in the General Meeting. The appointment of both the IDs were approved for a tenure of one year only.

Enumerate in the given situation, the following issues in the light of the Companies Act, 2013:

(A) Whether ABC Ltd. was required to appoint Independent Director (ID) based on the information as on 31st March, 2020.

(B) In the given case, the tenure of the appointment of both the IDs is for one year only. Comment upon the validity of the term of appointment of the Independent Directors.

18. Atlantic Garments Ltd., is a company engaged in the business of manufacturing of garments for all seasons. The company have in all 14 directors.

The first meeting of the Board was held on 15th February, 2020. Thereafter, the subsequent meetings of the Board were held on 29th February, 2020, 25th March, 2020, 30th August, 2020 and 25th December, 2020.

In these meetings, the full strength of the Board was present except in the meeting of 25th March, 2020. In this meeting only 4 persons were present.

Decide whether the Board meeting held on 25th March 2020 is valid in compliance with the legal requirements under the Companies Act, 2013. What shall be date of the meeting in case where if meeting could not be held because of quorum.

19. Surya Ltd., wants to reorganise the company' share capital by the consolidation of shares of different classes and passed a resolution to this effect in the Board meeting and thereafter made an application to the Tribunal. The Tribunal ordered that a meeting of the members be called. The company sent notices to all the members.

In the meeting, some of the members made objections to such arrangements. However, the majority of the members were interested in the resolution proposed by the company. Tribunal after scrutinising the minutes of the meeting, sanctioned the proposed arrangement.

Examine in the light of the given facts, that in order to give effect to the arrangement which prescribes the reorganisation of company' share capital by the consolidation of shares of different classes, mention the requirements on the execution of the said arrangement under the Companies Act, 2013.

20. Perfect Tyres Ltd. was incorporated in January, 2019 and came out with its first IPO in the month of May 2020. The company's shares were listed on the BSE and NSE after successful completion of the IPO and allotment of equity shares made to the investors.

The Chairperson of the Board of Directors is a non-executive director. There are 13 directors, out of which one is woman director.

Based on the stated facts in the light of the relevant law, advise on the following issues:

(i) where if after listing of the shares, the total number of directors on the board are 13. Out of which, one is woman director. What shall be the required number of independent directors in the company.

(ii) If the Board of directors do not have regular non-executive director, then what shall be the required number of independent directors in the Board in the said case.

21. Jewar Ltd., a diamond manufacturing company, is undergoing Corporate Insolvency Resolution Process (CIRP). The CIRP had initiated on 1st January 2020. Mr. Shubh was acting as the Interim Resolution Professional who was later appointed as Resolution Professional by the Committee of Creditor. Mr. Shubh has been working hard since day 1 to get a resolution plan approved before the last day of the CIRP. However, due to external factors, as on 31st May, 2020, he realized that he is unable to decide as to which resolution plan can be taken to the committee of creditors for approval and also that he will need another 3 months to get a resolution plan approved. You are his partner in an Insolvency Professional Entity. Advise as to:

1. The factors that need to be considered before taking the resolution plan to the committee of creditors
2. Whether Mr. Shubh can seek an extension for completion of the CIRP?

22. Sudip of Jaipur was posted as Tehsildar in a Tehsil Headquarter near Jaipur. After a year of his joining he purchased a ready built house in Jaipur in the name of his wife. He ostensibly shown the business income of his wife and availed loan of 90% of the value of house from a bank and also gave a guarantee of house loan.

    The Bank in this case, did not ensured the business activity of his wife, (address of business place, Income tax Return filed, how long she is doing business etc.) and solely relying that Sudip is giving the guarantee, it sanctioned the loan.

    After availing the loan, he continued to deposit some amount in the house loan account of his wife, regularly (apart from the EMI) and within a year, liquidated the loan account. One of the employee in his office made compliant to ED of taking of bribe/commission by him on regular basis and so liquidating the account in just a year.

    Examine whether Sudip was involved in the money laundering activity in the light of the given facts.

23. Amol Open University of Languages, a private university established under a State Act was meant to provide degree/ diploma/ certificate course to the students, through an online leaning platform of various foreign languages. The examination was also decided to be held online through their PC/Laptop.

    Several Foreign Governments intend to offer donations / contributions for the development of their language. Mr. Bhupendra, the Registrar applied for the registration of the university and was granted certificate to receive foreign exchange for the purpose of preparing the educational material (print or soft copy), paying of honorarium to teachers and IT related infrastructure for online classes only. Mr. Bhupendra faced financial problems for building the infrastructure of the University Campus. Advise Mr. Bhupendra, whether foreign contribution received for language development, can be used by him for building the infrastructure of the University Campus.

24. John is a writer. He entered into an agreement with Mumbai Publishing House (MPH). It contains various clauses such as time limit within which the manuscript is to be given, payment of royalty of 10% of amount received by the publisher, recovery of royalty amount in case of sales return, revision in the material, etc. The agreement also contains a clause that in case of dispute, the matter may be referred to arbitration, at the sole discretion of the publisher.

    For the FY 2017-18, John received the royalty amount of ₹ 2.50 lakh. During the FY 2018-19 the syllabus of management subject was changed and the author wrote manuscript for 2nd edition.

The statement of royalty payment for the **FY 2018-19** was given by the publisher as under:

1.	Royalty payable @ 10% of amount received by the publisher	1,85,000
2.	Less: Sales return of 1st edition of the book	(-) 95,000
3.	Less: Future Sales return expected for during FY 2019-20	(-) 45,000
4.	Gross amount payable	45,000
5.	Less: TDS @10%	(-) 4,500
6.	Net amount paid	**40,500**

When John compared the amount of royalty which he received in previous FY which was ₹ 2.50 lakh, whereas in the next year the publisher paid the amount for FY 2018-19 only of ₹ 40.5 thousand.

John's arguments were:

- Future sale return and royalty deduction cannot be made.
- The retail book seller cannot return the book after 3 months, then why the publisher has allowed / accepted the sale return even after the lapse of 3 months. This resulted in big deduction of sales return.

In the light of the provided facts, answer the following questions as per the Arbitrating and Conciliation Act, 1996:

(i) In the absence of separate arbitration agreement, whether the matter can be referred to the Arbitration?

(ii) In the contract agreement, it was mentioned that in case of dispute, the matter may be referred to arbitration, at the sole discretion of the publisher. Whether the arbitration clause, as written in the contract agreement is perfect? Give your comments.

25. Tokushia Motors Ltd. was incorporated in Japan. Its share capital is held by the following persons-

Citizens of India – 10%

Indian Companies– 40%

The company has opened its representative office in Mumbai on 15th January, 2021, in order to receive orders from the Indian Market and make available the delivery of Japanese luxury cars to the Indian purchasers.

The company was not aware of the Indian Company Law, hence could not file the required documents to the Registrar. The company could file all the required documents only on 28th February, 2021.

Based on the above facts, answer the following questions:

(i) Whether the provisions of Chapter XXII of the Companies Act, 2013 are applicable on Tokushia Motors Ltd?

(ii) What documents are required to be filed by Tokushia Motors Ltd to the Registrar of Companies?

(iii) By what time all the requisite documents shall be filed?

26. Amar is a branch manager in Kismat Bank Ltd. During the course of recovery drive initiated by the Bank, Amar collected around 50 lakh rupees from the defaulters / non-performing accounts. He did not credited the amount so recovered, in the respective borrower's loan account, but kept with himself. Later he absconded along with amount so collected. A FIR was lodged by the Bank and the police, after making intensive search, caught and arrested him. Chargesheet was issued and case was submitted in the court.

Give the following answers in reference to the Companies Act, 2013:

(i) In which category, cognizance or non-cognizance, the embezzlement of cash by Amar shall be treated?

(ii) Non-cognizable offences are less serious than that of the cognizable offences. Do you agree? Substantiate your plea by differentiating between these two.

(iii) Which offences, Special Court cannot deal with? Whether the said case can be dealt by the Special court.

SUGGESTED ANSWERS

Case Scenario-1

1. (c)

2. (b)

3. (b)

4. (c)

Case scenario 2

5. (d)

6. (b)

7. (b)

8. (b)

9. (c)

Independent MCQs

10. (b)

11. (c)

12. (c)

13. (b)

14. (a)

15. (d)

16. (d)

Descriptive Questions

17. (A) As per Section 149 read with the Rule 4(1)(iii) of the Companies (Appointment and Qualifications of Directors) Rules, 2014, which provides that the following class or classes of companies shall have at least two directors as independent directors –

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

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

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

Here, the words used in the law is 'exceeding 50 crore rupees', whereas the banks borrowings in the given case is **only ₹ 50 crore** and **not exceeding ₹ 50 crore**. Hence, no need to appoint ID on the basis of information as on 31st March, 2020.

Further, the words used in the said Rule is '**Outstanding Loans' and not the 'Sanctioned limit'**. The limit is ₹ 60 crore, but the outstanding loans is only ₹ 50 crore.

Therefore, in line with the stated legal provision, there is no need to appoint Independent Directors as on 31/3/2020.

(B) According to Section 149(10) read as 'Subject to the provisions of section 152, an independent director shall hold office for a **term up to five consecutive years** on the Board of a company, and shall be eligible for re-appointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

Further, Vide MCA General Circular No. 14/ 2014 dated 9th June, 2014, under Para (iii) Section 149(10), it has been clarified that section 149(10) of the Act provides for a term of "**upto five consecutive years"** for an ID. As such while appointment of an ID for a term of less than five years would be permissible, appointment for any term (whether for five years or less) is to be treated as a one term under section 149(10).

Therefore, the tenure of the appointment of both the IDs for one year only, will be considered as valid.

18. As per given section 174(1) of the Companies Act, 2013 the quorum for a meeting of the Board of Directors of a company shall be **one third of its total strength or two directors, whichever is higher**, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.

Section 174(4) provides that where a meeting of the Board could not be held for want of quorum, then, unless the articles of the company otherwise provide, **the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.**

Further explanation to section 174(4) provides that for the purposes of this section, (i) **any fraction of a number shall be rounded off as one;** (ii) "total strength" shall not include directors whose places are vacant.

Total Strength of directors =14

One-third of 14 = 4.67

Rounded off to = 5 (Five)

As in the meeting scheduled on 25th March 2020, only 4 persons were present, hence due to want of required minimum quorum, the meeting shall have to be adjourned to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.

The meeting of the Board was not valid as the required quorum was not present in the meeting. In this case, the adjourned meeting was to be held on 1st April, 2020.

19. **Section 230(1) of the Companies Act, 2013 provides that w**here a compromise or arrangement is proposed—

(a) between a **company** and its creditors or any class of them; or

(b) between a **company** and its **members** or any class of them,

The **Tribunal may, on the application of the company** or of any creditor or **member** of the company, or in the case of a **company** which is being wound up, of the liquidator, "appointed under this Act or under the **Insolvency and Bankruptcy Code, 2016**, as the case may be," **order a meeting** of the creditors or class of creditors, or of the **members** or **class** of **members,** as the case may be, to be called, held and conducted in such manner as the **Tribunal** directs.

Here the term, **arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes** or by the division of shares into shares of different classes, or by both of those methods.

Any compromise or arrangement needs the order of sanction by the Tribunal and the Tribunal may on an application made by the company, order the company to call the meeting of the shareholders, pass such resolution in the meetings and then forward the minutes to the Tribunal for its order.

The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order.

The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent. value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.

20. (i) As per **Regulation 17** of the SEBI(LODR) Regulations, 2015, the composition of board of directors of the listed entity shall be as follows:

(a) board of directors shall have an optimum combination of executive and nonexecutive directors **with at least one woman director** and not less than fifty per cent. of the board of directors shall comprise of non-executive directors;

(b) where the chairperson of the board of directors is a **non-executive director**, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors.

Any fraction in number, shall be rounded off to the nearest number.

So one-third of 13 comes to 4.33, rounded off to 5. So at least 5 independent directors should be there.

(ii) In line with above clause (b) of part (i), where the listed entity does not have a **regular non-executive chairperson**, at least half of the board of directors shall comprise of independent directors.

So one-half of 13 comes to 6.5, rounded off to 7. So at least 7 independent directors should be there.

21. 1. Mr. Shubh, the resolution profession will have to consider the following factors while examining the resolution plan before taking it to the Committee of Creditors for approval:

a. Whether the resolution plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor

b. Whether the resolution plan provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than higher of:

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

c. Whether the resolution plan provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

d. Whether the resolution plan provides for the implementation and supervision of the resolution plan

e. Whether the resolution plan contravene any of the provisions of the law for the time being in force

f. Whether the resolution plan confirms to such other requirements as may be specified by the Board.

2. Relevant Provision of the Insolvency and Bankruptcy Code for extension of period for completion of CIRP

As per Section 12, the corporate insolvency resolution process shall be completed within a period of 180 days from the date of admission of the application to initiate such process.

The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond 180 days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of 66% of the voting shares.

On receipt of the application, if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within 180 days, it may by order extend the duration of such process beyond 180 days by such further period as it thinks fit, but not exceeding 90 days.

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

Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of 330 days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor.

In the given case, Mr. Shubh can seek an extension of maximum 90 days by making an application of the National Company Law Tribunal i.e. till 29th August, 2020.

22. As per the Section 3 of the Prevention of Money Laundering Act -

Whosoever **directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime** including its concealment, possession, acquisition or use and

projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

The process or activity connected with **proceeds of crime** is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

Section 2(1)(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a **scheduled offence** or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;

Section 2(1)(y) of the PML Act provides that –

"scheduled offence" means— (i) the offences specified under Part A of the Schedule;

Under Schedule -Part A - Paragraph 8: Offences under the Prevention of Corruption Act, 1988 specifies Section 7- Offence relating to public servant being bribed.

In the light of the above mentioned sections, act of Sudip is a case of money laundering i.e. converting of black income earned through bribe and efforts in converting it into white money and raising the house loan in the name of wife.

23. Section 8(1) of the FCRA, 2010 provides that every person, who is registered and granted a certificate or given prior permission under this Act and receives any foreign contribution,—

(a) shall **utilise such contribution for the purposes for which the contribution has been received**.

Provided that any foreign contribution or any income arising out of it shall not be used for speculative business.

(b) shall **not defray as far as possible such sum, not exceeding twenty per cent. of such contribution**, received in a financial year, to meet administrative expenses:

Provided that administrative expenses exceeding twenty per cent. of such contribution may be defrayed with prior approval of the Central Government.

(2) The Central Government may prescribe the elements which shall be included in the administrative expenses and the manner in which the administrative expenses referred to in sub-section (1) shall be calculated.

Accordingly, the purpose for which the Certificate of Registration has been granted, cannot be diverted. The end use of the funds has to ensured to utilise in that purpose only. Therefore, Mr. Bhupendra, the registrar of Amol Open University cannot use the foreign contribution for building the infrastructure of the University Campus.

24. (i) Section 7(2) of the Arbitration and Conciliation Act, 1996 provides that an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

Further section 7(5) states that the reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

In the given case, the arbitration clause was there in the contract agreement. There is no need to have a separate arbitration clause. It is sufficient, if it have a clause in the contract agreement itself.

(ii) Section 7(1) of the Arbitration and Conciliation Act, 1996, provides that "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

In the contract agreement the words written were "the matter may be referred to arbitration, at the sole discretion of the publisher".

Here the matter "may be referred to" have been used and further "at the sole discretion of the publisher". It means that referring of the matter to the arbitration was at the sole discretion of the publisher and was not mutually agreed on. Although the author would have signed the contract agreement, but the matter of referring was arbitrary i.e. at the sole discretion of the publisher itself. If the publisher do not want to refer the matter to the arbitration, then no recourse is available to the author, except to move to the civil court.

25. (i) Section 379(2) of the Companies Act, 2013, provides that where not less than fifty per cent of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

In the given case, although the company was incorporated in Japan, however its share capital of not less than 50% is held by the Indian citizens and Indian companies, hence in terms of section 379(2) all the provisions pertaining to Chapter XXII of the Companies Act, 2013, shall be applicable on it.

(ii) In terms of section 380(1) every foreign company shall, within **thirty days** of the establishment of its place of business in India, deliver to the Registrar for registration—

(a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;

(b) the full address of the registered or principal office of the company;

(c) a list of the directors and secretary of the company containing such particulars as may be prescribed;

(d) the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;

(e) the full address of the office of the company in India which is deemed to be its principal place of business in India;

(f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;

(g) declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and

(h) any other information as may be prescribed.

Further its sub-section (3) provides that where any alteration is made or occurs in the documents delivered to the Registrar under this section, the foreign company shall, within thirty days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form.

(iii) In the given, case the company had established its representative office in India on 15.01.2021, it was required to file the documents latest by 14.02.2021 with the Registrar.

26. (i) Embezzlement of the cash and absconding is a cognizable offence which means a police officer can arrest such person without the warrant of the magistrate.

(ii) Cognizable Offence:

"Cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.

Non- Cognizable Offence:

"Non-cognizable offence" means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant.

Cognizable offences are heinous crimes, whereas non-**cognizable offences** are not so serious. **Cognizable** offences encompasses murder, rape, theft, kidnapping, counterfeiting, etc. whereas the, non-**cognizable offences** include **offences** like forgery, cheating, assault, defamation and so forth.

By having an overview of the definitions of cognizable and non-cognizable offences as stated above, it is clear that in the matter of cognizable offences, a police officer have authority to arrest any person without warrant, but in case of non-cognizable offences, policy office do not have such authority. Therefore non-cognizable offences are less serious than that of the cognizable offences.

(iii) **Section 435** (1) provides that the Central Government may, for the purpose of providing speedy trial of offences under this Act, **except under section 452,** by notification, establish or designate as many Special Courts as may be necessary.

Section 452 of the Companies Act, 2013 provides that

If any officer or employee of a company—

(a) wrongfully obtains possession of any property, including cash of the company; or

(b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act,

he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Hence, as per the provisions of the Companies Act, 2013, the Special Court cannot deal with the matters on which section 452 applies. In the given case, since the branch manager, after collecting the money from the borrowers, absconded [as defined as per section 452(1)(a) & (b)], which comes under the purview of section 452, hence this matter shall not be dealt with by the Special Court.