

## PAPER 4: CORPORATE AND ECONOMIC LAWS

### PART –I: RELEVANT AMENDMENTS FOR NOVEMBER 2022 EXAMINATION

The October 2021 Edition of the Study Material on Final Paper 4: Corporate and Economic Laws [comprising of 3 Modules – Modules 1 – 2 on Part I: Corporate Laws and Module 3 on Part II: Economic Laws] contains amendments made upto 30<sup>th</sup> April, 2021. Besides, notifications, circulars and other legislative amendments made upto 30<sup>st</sup> April, 2022 shall also be relevant and applicable for November 2022 examination.

Here is the list of the relevant amendments made during the period of 1<sup>st</sup> May, 2021 to 30<sup>th</sup> April, 2022:

#### I. COMPANIES ACT, 2013

1. Ministry of Corporate Affairs Vide **Notification G.S.R. 409(E), dated 15<sup>th</sup> June, 2021** hereby amend the Companies (Meetings of Board and its Powers) Rules, 2014, through enforcement of **the Companies (Meetings of Board and its Powers) Amendment Rules, 2021**.

According to which, in the Companies (Meetings of Board and its Powers) Rules, 2014, Rule 4 shall be omitted. This Rule 4 dealt with the **“Matters not to be dealt with in a meeting through video conferencing or other audio visual means”**.

#### See Page no. 3.4 of the Study material

2. Ministry of Corporate Affairs Vide **Notification S.O. 3156(E), Dated 5<sup>th</sup> August, 2021**, in exercise of the powers conferred by section 393A of the Companies Act, 2013, **the Central Government hereby exempts, from the provisions of sections 387 to 392 (both inclusive), the following:-**

- (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, insofar as they relate to the offering for subscription in the securities, requirements related to the prospectus, and all matters incidental thereto in the International Financial Services Centres set up under section 18 of the Special Economic Zones Act, 2005.

#### See Page no. 9.17 of the Study material

3. Ministry of Corporate Affairs, Vide **Notification G.S.R. 538(E), dated 5<sup>th</sup> August, 2021**, in exercise of the powers conferred by clause (c) and clause (h) of sub-section (1) and sub-section (3) of section 380, clause (a) of sub-section (1) and sub-section (3) of section 381, section 385, clause (a) of section 386, section 389 and section 390, read with section 469 of the Companies Act, 2013, Central Government hereby enforces **the Companies**

**(Registration of Foreign Companies) Amendment Rules, 2021** to amend the Companies (Registration of Foreign Companies) Rules, 2014.

In the Companies (Registration of Foreign Companies) Rules, 2014, in clause (c) of sub-rule (1) of rule 2, the following explanation shall be inserted, namely:-

**“Explanation-** For the purposes of this clause, electronic based offering of securities, subscription thereof or listing of securities in the International Financial Services Centres set up under section 18 of the Special Economic Zones Act, 2005 (28 of 2005) shall not be construed as ‘electronic mode’ for the purpose of clause (42) of section 2 of the Act.”

**See Page no. 9.2 of the Study material.**

4. Ministry of Corporate Affairs Vide Notification **G.S.R. 579(E), Dated 19<sup>th</sup> August, 2021**, in exercise of the powers conferred by section 149 read with section 469 of the Companies Act, 2013, the Central Government hereby amends the Companies (Appointment and Qualification of Directors) Rules, 2014, through the enforcement of **the Companies (Appointment and Qualification of Directors) Amendment Rules, 2021**.

Accordingly, in the Companies (Appointment and Qualification of Directors) Rules, 2014, in rule 6, in sub-rule (4),— **(i) in the first proviso, for clause (B)**, the following clause shall be substituted, namely:—

“(B) in the pay scale of Director or equivalent or above in any Ministry or Department, of the Central Government or any State Government, and having experience in handling,—

- (i) the matters relating to commerce, corporate affairs, finance, industry or public enterprises; or
- (ii) the affairs related to Government companies or statutory corporations set up under an Act of Parliament or any State Act and carrying on commercial activities.”.
- (iii) after the second proviso, the following proviso shall be inserted, namely:— “Provided also that the following individuals, who are or have been, for at least ten years :—
  - (A) an advocate of a court; or
  - (B) in practice as a chartered accountant; or
  - (C) in practice as a cost accountant; or
  - (D) in practice as a company secretary, shall not be required to pass the online proficiency self-assessment test.”.

**See Page no. 1.45 of the Study material. For Clause (B), above clause shall be replaced with. Further after point (c) to explanation, second proviso is inserted.**

5. **Nidhi (Amendment) Rules, 2022 - Amendment in Rules 3, 4, 5, 6, 8, 9, 14, 15 and Substitution of Rule 18**

**Vide Notification G.S.R. 301(E) [F. NO. 5/28/2020-CL-VII], Dated 19-4-2022**, in exercise of the powers conferred by sub-section (1) of section 406, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013, the Central Government hereby makes the following rules, further to amend the Nidhi Rules, 2014, namely:-

**Short title and commencement.**

1. (1) These rules may be called the Nidhi (Amendment) Rules, 2022.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Nidhi rules, 2014 (hereinafter referred to as the said rules), in rule 3, in sub-rule (1), after clause (a), the following clause shall be inserted, namely:—

**"(aa) 'Branch' means a place other than the registered office of Nidhi",**

3. In rule 4 of the said rules, in sub-rule (1), —

(a)	for the words "five lakh rupees", the words <b>"ten lakh rupees"</b> shall be substituted;
(b)	the following proviso shall be inserted, namely: —
	<b>"Provided that every Nidhi existing as on the date of commencement of the Nidhi Amendment Rules, 2022, shall comply with this requirement within a period of eighteen months from the date of such commencement".</b>

4. In rule 5 of the said rules, the following sub-rule shall be inserted, namely: —

**"(5) The provisions of this rule shall not be applicable for the companies incorporated as Nidhi on or after the commencement of the Nidhi (Amendment) Rules, 2022".**

5. In rule 6, of the said rules,

(i)	for clause (d), the following clause shall be substituted, namely: —
	<b>"(d) acquire or purchase securities of any other company or control the composition of the Board of Directors of any other company in any manner whatsoever or enter into any arrangement for the change of its management";</b>
(ii)	after clause (k), the following clause shall be inserted, namely : —
	<b>"(l) raise loans from banks or financial institutions or any other source for the purpose of advancing loans to members of Nidhi".</b>

6. In rule 8, of the said rules, after sub-rule (3), the following sub-rule shall be inserted, namely: —

"(4) A member shall not transfer more than fifty percent of his shareholding (as on the date of availing of loan or making of deposit) during the subsistence of such loan or deposit, as the case may be.

**Provided that the member shall retain the minimum number of shares required under sub-rule (3) of rule 7 at all times".**

7. In the said rules, in rule 9,

(a)	for the words "ten lakh", the words " <b>twenty lakh</b> " shall be substituted;
(b)	the following proviso shall be inserted, namely: —
	<b>"Provided that every Nidhi existing as on the date of commencement of the Nidhi (Amendment) Rules, 2022 shall comply with this requirement within a period of eighteen months from the date of such commencement".</b>

8. In rule 14, of the said rules, in the proviso, after the words, "approval of the Regional Director", the words "**by making application in Form NDH- 2 along with fee specified in the Companies (the Registration Offices and Fees) Rules, 2014**" shall be inserted.
9. In rule 15, of the said rules, in sub-rule (1), the following proviso shall be inserted, namely:—
- "Provided that in case of joint shareholders, the loan shall be provided to the member whose name appears first in the Register of members".**
10. For rule 18 of the said rules, the following rule shall be substituted, namely: —
- "A Nidhi shall not declare dividend exceeding twenty five per cent in a financial year".**

**Page no. of the study material: Module 2: 10.19 - 10.28**

## **II. SEBI (LODR) Regulations, 2015**

The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021 w.e.f. 5th May, 2021, the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2021, w.e.f. 7-9-2021 and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2021, w.e.f. 1-1-2022.

Through the enforcement of all the above mentioned Regulations i.e., the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021 w.e.f. 5<sup>th</sup> May, 2021, the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2021, w.e.f. 7-9-2021, and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2021, w.e.f. 1-1-2022, further amendments were made in the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Following are the relevant amendments in the principal regulation made vide the notification of the above mentioned amendments regulations:

**(A) In regulation 3**

- i. the existing provision under regulation 3 shall be numbered as sub-regulation (1).
- ii. under the newly numbered sub-regulation (1), the word “the” appearing after the word “to” and before the word “listed” shall be substituted with the word “a” and the word “who” shall be substituted with the word “which”.
- iii. under the newly numbered sub-regulation (1), under clause (a), the words “Institutional Trading Platform” shall be substituted with the words “Innovators Growth Platform”.
- iv. after the newly numbered sub-regulation (1), a new sub-regulation (2) shall be inserted,
- v. Substituted clause (b) of sub-regulation (1), with the following:  
 [(b) non-convertible debt securities, non-convertible redeemable preference shares, perpetual debt instrument, perpetual non-cumulative preference shares;” with the “non-convertible securities]
- vi. Inserted the following Sub-regulation (3):  
 [(3) The provisions of these regulations which become applicable to listed entities on the basis of the criterion of the value of outstanding listed debt securities shall continue to apply to such entities even if they fall below such thresholds as mentioned in sub-regulation (1A) of regulation 15.]

**Amended Regulation 3**

[3.(1) Unless otherwise provided, these regulations shall apply to a listed entity **which** has listed any of the following designated securities on recognised stock exchange(s):

- (a) specified securities listed on main board or SME Exchange or **Innovators Growth Platform**;
- (b) non-convertible securities;

- (c) Indian depository receipts;
  - (d) securitised debt instruments;
  - (da) security receipts
  - (e) units issued by mutual funds;
  - (f) any other securities as may be specified by the Board.
- (2) **The provisions of these regulations which become applicable to listed entities on the basis of market capitalisation criteria shall continue to apply to such entities even if they fall below such thresholds.**
- (3) **The provisions of these regulations which become applicable to listed entities on the basis of the criterion of the value of outstanding listed debt securities shall continue to apply to such entities even if they fall below such thresholds as mentioned in sub-regulation (1A) of regulation 15]**

**See Page no. 2.51 –Module 2 of the Study material. Replace Para under heading “Applicability” with this amended Regulation.**

**(B) In regulation 6**

In regulation 6, in the heading, the symbol and word “/her” shall be inserted after the word “his”.

**Amended Regulation heading**

[Compliance Officer and *his /her* Obligations]

**See Page no. 2.57 –Module 2 of the Study material. Heading of Regulation 6.**

**(C) In regulation 17A**

The paragraph after clause (2) shall be converted as “Explanation” and the word “sub-regulation” in the paragraph shall be substituted with the word “regulation”.

**Amended Regulation**

**[Explanation:** For the purpose of this **regulation**, the count for the number of listed entities on which a person is a director/independent director shall be only those whose equity shares are listed on a stock exchange.]

**See Page no. 2.53 –Module 2 of the Study material.**

**(D) In regulation 18(1)(b) and 18(1)(d)**

In regulation 18, in sub-regulation (1), in clause (b), the word “At least” is inserted by the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2021, w.e.f. 1-1-2022.

**Amended Regulation**

**[At least** two-thirds of the members of audit committee shall be independent directors].

In regulation 18, in sub-regulation (1), in clause (d), the symbol and word “/she” shall be inserted after the word “he”.

**Amended Regulation**

[(d) The chairperson of the audit committee shall be an independent director and **he/she** shall be present at Annual general meeting to answer shareholder queries.]

**See Page no.2.62-point A-sub-point (b) and on 2.63 –sub-point (d) –Module 2 of the Study material.**

**(E) In regulation 19(1)**

In the sub-regulation (1) word "fifty percent" is substituted with “two-thirds” by the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2021, w.e.f. **1-1-2022**.

**Amended Regulation**

[At least **two-thirds** of the directors shall be independent directors]

**See Page no. 2.64 –point B –Module 2 of the Study material.**

**(F) In regulation 21**

(i) The existing sub-regulation (2) shall be substituted with the following -

[The Risk Management Committee shall have minimum three members with majority of them being members of the board of directors, including at least one independent director and in case of a listed entity having outstanding SR equity shares, at least two thirds of the Risk Management Committee shall comprise independent directors.]

(ii) In sub-regulation (3A), the word “once” shall be substituted with the following word *[twice]*

(iii) after sub-regulation (3A) and before sub-regulation (4), the following new sub-regulations (3B) and (3C) shall be inserted –

[(3B) The quorum for a meeting of the Risk Management Committee shall be either two members or one third of the members of the committee, whichever is higher, including at least one member of the board of directors in attendance.

(3C) The meetings of the risk management committee shall be conducted in such a manner that on a continuous basis not more than one hundred and eighty days shall elapse between any two consecutive meetings.]

(iv) after sub-regulation (4), the following new proviso shall be inserted--

[Provided that the role and responsibilities of the Risk Management Committee shall mandatorily include the performance of functions specified in Part D of Schedule II.]

- (v) in sub-regulation (5), the number “500” shall be substituted with [“1000”]
- (vi) after sub-regulation (5), the following new sub-regulation (6) shall be inserted.

#### **Amended regulation**

##### **Risk Management Committee.**

21. (1) The board of directors shall constitute a Risk Management Committee.
- (2) **The Risk Management Committee shall have minimum three members with majority of them being members of the board of directors, including at least one independent director and in case of a listed entity having outstanding SR equity shares, at least two thirds of the Risk Management Committee shall comprise independent directors.**
- (3) The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.
- (3A) The risk management committee shall meet at least [**twice**] in a year.
- (3B) The quorum for a meeting of the Risk Management Committee shall be either two members or one third of the members of the committee, whichever is higher, including at least one member of the board of directors in attendance.
- (3C) The meetings of the risk management committee shall be conducted in such a manner that on a continuous basis not more than one hundred and eighty days shall elapse between any two consecutive meetings.
- (4) The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit such function shall specifically cover cyber security:

**Provided that the role and responsibilities of the Risk Management Committee shall mandatorily include the performance of functions specified in Part D of Schedule II.**

- (5) The provisions of this regulation shall be applicable to:
- i. the top **1000** listed entities, determined on the basis of market capitalization as at the end of the immediate preceding financial year; and,
  - ii. a ‘high value debt listed entity’.
- (6) The Risk Management Committee shall have powers to seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.

**See Page no. 2.65 –Module 2 of the Study material.**



**(G) Regulation 24(5)**

In regulation 24, in sub-regulation (5), the words “or equal to” shall be inserted after the words “less than” and before the words “fifty percent”.

**Amended Regulation**

[(5) A listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than **[or equal to]** fifty per cent or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal , or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event is disclosed to the recognized stock exchanges within one day of the resolution plan being approved]

**See Page no. 2.54 –Module 2 of the Study material.**

**(H) Regulation 26**

- i. in sub-regulation (1), the symbol and word “/she” shall be inserted after the word “he”.
- ii. In Sub-regulation (1)(a), the word “high value debt listed entities” has been added after the word “foreign companies”.

**Amended Regulation**

**26.** (1) A director shall not be a member in more than ten committees or act as chairperson of more than five committees across all listed entities in which **he /she** is a director which shall be determined as follows:

- (a) the limit of the committees on which a director may serve in all public limited companies, whether listed or not, shall be included and all other companies including private limited companies, foreign companies **['high value debt listed entities']** and companies under Section 8 of the Companies Act, 2013 shall be excluded;

**See Page no. 2.53 –Module 2 of the Study material.**

**[I] Regulation 27(2)**

Substituted for word "fifteen" and inserted the word “the end of each” before the quarter.

(2) (a) The listed entity shall submit a quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognised stock exchange(s) within [twenty one] days from [the end of each] the quarter.

**See Page no. 2.57 –Module 2 of the Study material.**

**[J] Regulation 29(1)(f)**

Words "where such proposal is communicated to the board of directors of the listed entity as part of the agenda papers." is omitted.

See Page no. 2.65- bullet point 5- –Module 2 of the Study material.
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**[k] In Schedule V,**

- i. In Paragraph C, clause (5), "Shareholders Grievance Committee" shall be substituted with the following, namely, -

**“(5) Stakeholders’ relationship committee**

- (a) name of the non-executive director heading the committee;
- (b) name and designation of the compliance officer;
- (c) number of shareholders’ complaints received during the financial year;
- (d) number of complaints not solved to the satisfaction of shareholders;
- (e) number of pending complaints.”

- ii. In Paragraph C, after clause (5) a new clause shall be inserted, namely, -

**“(5A) Risk management committee:**

- (a) brief description of terms of reference;
- (b) composition, name of members and chairperson;
- (c) meetings and attendance during the year;”

See Page no. 2.56 –point 5 -Module 2 of the Study material.
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**III. FOREIGN EXCHANGE MANAGEMENT ACT, 1999**

- (1) The Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021

Reserve Bank of India, Vide Notification No. FEMA 23(R)/(5)/2021-RB, Dated September 08, 2021 through the enforcement of the **Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021** the following amendments in the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 [Notification No. FEMA 23(R)/2015- RB dated January 12, 2016] (hereinafter referred to as 'the Principal Regulations') has been amended:

In the Principal Regulations, in Regulation 15, in sub-regulation 1, for clause (ii), the following shall be substituted, namely: -

(“ii) the rate of interest, if any, payable on the advance payment shall not exceed 100 basis points above the London Inter-Bank Offered Rate (LIBOR) or other applicable benchmark as may be directed by the Reserve Bank, as the case may be; and”.

See Page no. 1.58 of the Study material.

(2) **External Commercial Borrowings (ECB's) - Changes Due To Libor Transition**

**Vide A.P. (Dir Series 2021-22) Circular No. 19, Dated 8-12-2021**, the following changes have been made in the Master Direction No. 5 dated March 26, 2019, on "External Commercial Borrowings, Trade Credits and Structured Obligations", prescribing the benchmark rates and the maximum spread over benchmark for calculating the all-in-cost for foreign currency (FCY) ECBs and TCs.

“In view of the imminent discontinuance of LIBOR as a benchmark rate, the following changes to the all-in-cost benchmark and ceiling for FCY ECBs:

i.	<b>Redefining Benchmark Rate for FCY ECBs:</b> Currently, the benchmark rate is defined in paragraph 1.5 of the master direction as "benchmark rate in case of FCY ECB/TC refers to 6-months LIBOR rate of different currencies or any other 6-month interbank interest rate applicable to the currency of borrowing, e.g., EURIBOR". Henceforth, benchmark rate in case of FCY ECB/TC shall refer to any widely accepted interbank rate or alternative reference rate (ARR) of 6-month tenor, applicable to the currency of borrowing.
ii.	<b>Change in all-in-cost ceiling for new ECBs/TCs:</b> To take into account differences in credit risk and term premia between LIBOR and the ARRs, the all-in-cost ceiling for new FCY ECBs and TCs has been increased by 50 bps to 500 bps and 300 bps, respectively, over the benchmark rates.
iii.	<b>One Time Adjustment in all-in-cost ceiling for existing ECBs/TCs:</b> To enable smooth transition of existing ECBs/TCs linked to LIBOR whose benchmarks are changed to ARRs, the all-in cost ceiling for such ECBs/TCs has been revised upwards by 100 basis points to 550 bps and 350 bps, respectively, over the ARR. AD Category-I banks must ensure that any such revision in ceiling is only on account of transition from LIBOR to alternative benchmarks.

See Page no. 1.34 –point vi and the footnote-Module 3 of the Study material.

**IV. The Insolvency and Bankruptcy Code, 2016**

**Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2022 - Substitution of Regulations 18**

**Vide NOTIFICATION F. NO. IBBI/2021-22/GN/REG/080, DATED 9-2-2022**, the Insolvency and Bankruptcy Board of India hereby makes the following regulations further

to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, by enforcement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2022 w.e.f. 9-2-2022.

Prior to its substitution Rule 18, read as under:

"18. Meetings of the committee. A resolution professional may convene a meeting of the committee as and when he considers necessary, and shall convene a meeting if a request to that effect is made by members of the committee representing thirty three per cent of the voting rights."

**Said regulation shall be substituted with the following:**

**"18. Meetings of the committee.**

(1)	<b>A resolution professional may convene a meeting of the committee as and when he considers necessary.</b>
(2)	<b>A resolution professional may convene a meeting, if he considers it necessary, on a request received from members of the committee and shall convene a meeting if the same is made by members of the committee representing at least thirty three per cent of the voting rights.</b>
(3)	<b>A resolution professional may place a proposal received from members of the committee in a meeting, if he considers it necessary and shall place the proposal if the same is made by members of the committee representing at least thirty three per cent of the voting rights."</b>

**See Page no. 6.49 -Module 3 of the Study material.**

## PART – II : QUESTIONS AND ANSWERS

### QUESTIONS: DIVISION A: MULTIPLE CHOICE QUESTIONS

#### Case Scenario-1

DS Jewellers Ltd., a recent launched showroom, have taken a loan of amount 4 crore from ABC Bank Ltd. It defaulted in repaying the dues and so, the ABC Bank initiated application for Corporate Insolvency Resolution Process (CIRP) in NCLT. The NCLT accepted the application for initiation of CIRP. It appointed Ms. Nimmi as Resolution Professional (RP) and the moratorium was declared.

The RP, after collation of all claims received against DS Jewellers Ltd, (the corporate debtor) and determination of the financial position of the corporate debtor, constituted a Committee of Creditors (CoC). There were 6 members.

The first meeting of the CoC was held within 7 days of the constitution of the CoC. The Quorum of the meeting was present throughout the meeting and the Chairperson presided over the meeting.

The Chairperson of the meeting of the CoC drafted the minutes and circulated to all the participants. The RP appointed two registered valuers to find out the fair value and liquidation value of the company.

**Based on the above scenario, answer the following questions:**

1. Ms. Nimmi, a Resolution Professional (RP) wants to convene CoC Meeting. State the requirement for valid holding of meeting of the Creditors:
  - (a) RP shall convene a meeting of the Creditors as and when she considers necessary and if requested by the members of the committee representing 33% of the voting rights
  - (b) RP shall convene a meeting of the Creditors if requested by the members of the committee representing 66% of the voting rights
  - (c) RP shall convene a meeting of the Creditors by the members representing 75% of the voting rights
  - (d) RP shall convene a meeting of the Creditors if requested by all of the members of the committee
2. What shall be the quorum of the meeting of creditors convened by the RP in the given scenario?
  - (a) At least 33% of the total number of creditors are present
  - (b) At least 33% of the voting right are present
  - (c) At least 66% of the total number of creditors are present
  - (d) At least 66% of the voting right are present
3. Who will act as Chairperson of the Committee of Creditors :
  - (a) The Managing Director of the DS Jewellers Ltd
  - (b) The Company Secretary of the DS Jewellers Ltd.
  - (c) The Financial Creditor having the highest voting rights
  - (d) Ms. Nimmi
4. What shall be notice period for calling of the CoC Meeting by Ms. Nimmi in the given case:
  - (a) three days' notice in writing.
  - (b) not less than five days' notice in writing.

- (c) seven days' notice in writing.
  - (d) within 48 hours of the scheduled meeting.
5. For conduct of the CoC meeting, whom amongst the following shall be served the notice of the CoC meeting :
- (a) members of Committee of creditors, including the authorized representatives
  - (b) members of the Board of Directors of the corporate persons,
  - (c) operational creditors or their representatives if the amount of their aggregate dues is less than ten per cent of the debt.
  - (d) Financial and Operational creditors both

### Case Scenario 2

Toy Steel Limited (TSL), a famous steel manufacturing company sharing good ethical values with good clientele in the market. Following were the financial position as on March 31, 2017, the company had a paid-up share capital of ₹ 20 crores with 1150 shareholders and after-tax net profit to the tune of ₹10.25 crores. However, a shocking event took place in May 2017 which led to the downfall of the company. It so happened that, Mr. Pratap, the owner of the company was diagnosed with serious disease due to which he was unable to manage the rising business and consequently, the reins of the business slipped into the hands of his two young but inexperienced sons V and S.

In an attempt to raise the company to further heights, the Gen-Next management took a heavy loan of ₹ 70 crores from National Bank Limited. The funds so borrowed were not properly utilised due to the weak managerial skills of the new leadership and for want of guidance from Mr. Pratap; and it caused the company to fall to such an extent that in just four years after Mr. Pratap's illness it was felt expedient to go for some kind of compromise or arrangement if the company had to survive in the near future.

The top management of the company decided to provide for the following scheme of arrangement:

*“Sale of a part of plant and machinery and also a vacant plot for appropriating the proceeds so received for repayment of 70% of the outstanding term loan availed from National Bank Limited. The remaining 30% of loan shall be rescheduled for repayment in installments spread over next five years.”*

It is noteworthy that National Bank Limited had given in-principle approval to the above repayment plan, if sanctioned.

Accordingly, TSL made an application in the specified Format along with requisite documents to the jurisdictional National Company Law Tribunal (NCLT).

The Tribunal ordered for a meeting of the shareholders to be held on 10<sup>th</sup> October, 2021 at 11.00 A.M. at the registered office of the company situated at Connaught Place, New Delhi and

the company was directed to issue a suitable notice for conducting the meeting of the shareholders. Some of the shareholders raised objections against the said arrangement.

**Multiple Choice Questions (MCQs)**

6. The Case Scenario states that some of the shareholders raised objections against the said arrangement. Since the compromise or arrangement is to be agreed in compliance to majority of persons (without considering the value) as prescribed in the Companies Act, 2013, who attend and vote at the meeting through specified modes. State the Compliance requirement of majority required for approval:
  - (a) Simple majority where votes cast in favour of compromise or arrangement exceed the votes cast against it.
  - (b) Sixty percent or more majority where votes cast in favour of compromise or arrangement are 60% or more.
  - (c) Seventy five percent or more majority where votes cast in favour of compromise or arrangement are 75% or more.
  - (d) Full majority where all the votes are cast in favour of compromise or arrangement.
7. It is observed from the above Case Scenario that the Tribunal has ordered for a meeting of the shareholders to consider the scheme of arrangement. The notice of such meeting shall provide that the persons to whom the notice is sent may vote on the scheme of compromise or arrangement:
  - (a) Only by themselves keeping in view the importance of meeting.
  - (b) By themselves or through proxies appointed by them.
  - (c) By themselves or through proxies appointed by them but any such appointed proxy must hold minimum one share in the company.
  - (d) By themselves or through proxies appointed by them or by postal ballot.
8. In the said Case Scenario some of the shareholders raised objections against the said arrangement. Since the compromise or arrangement is to be agreed by specified majority of persons (considering the value they hold) who attend and vote at the meeting through specified modes, then which kind of majority in value is required for approval of the scheme:
  - (a) Specified majority of persons who cast votes in favour of compromise or arrangement must hold fifty one percent or more in value.
  - (b) Specified majority of persons who cast votes in favour of compromise or arrangement must hold sixty percent or more in value.
  - (c) Specified majority of persons who cast votes in favour of compromise or arrangement must hold seventy five percent or more in value.

- (d) Full majority where all the votes are cast in favour of compromise or arrangement
9. A reading of the above Case Scenario reveals that some of the shareholders raised objections against the said arrangement. From the legal point of view who is eligible to raise an objection to the scheme of compromise or arrangement if he is a shareholder of the company:
- (a) Persons holding not less than 10% of the shareholding as per the latest audited financial statement.
  - (b) Persons holding not less than 5% of the shareholding as per the latest audited financial statement.
  - (c) Persons holding not less than 7.5% of the shareholding as per the latest audited financial statement.
  - (d) Persons holding not less than 15% of the shareholding as per the latest audited financial statement.

**Independent MCQs**

10. A certificate of registration was granted to an NGO on the 1<sup>st</sup> January, 2018. A request for renewal of the certificate was received by the Central Government, by the 30<sup>th</sup> June, 2022. But the request was not accompanied by the renewal fee. Comment on the validity of the registration certificate issued on 1<sup>st</sup> January 2018.
- (a) A certificate of registration granted on the 1<sup>st</sup> January, 2018 shall be valid till 30<sup>th</sup> June, 2018.
  - (b) A certificate of registration granted on the 1<sup>st</sup> January, 2018 shall be valid till 30<sup>th</sup> June, 2022.
  - (c) A certificate of registration granted on the 1<sup>st</sup> January, 2018 shall be valid till 30<sup>th</sup> July, 2022.
  - (d) A certificate of registration granted on the 1<sup>st</sup> January, 2018 shall be valid till the 31<sup>st</sup> December, 2022.
11. Mr. X, a person comes to India on 1<sup>st</sup> June 2019 for visiting his parents. However, his parents fall sick and he stays till 31<sup>st</sup> March 2020. Thereafter he continues to stay in India. He decided to live in India for next 6 months by the time his parents recovers. In the light of the given case, determine the correct residential status of Mr. X from the given statements.
- (a) Mr. X is PRII as he did reside in India in the FY 2019-2020.
  - (b) Mr. X is PRII as he reside in India for more than 182 days in the FY 2019-20.
  - (c) Mr. X is PROI in the FY 2019-20, but will be treated as PRII from 1<sup>st</sup> April, 2020, as he resides in India for more than 182 days in the previous FY.



- (d) His stay in India is neither for employment, nor for business, nor for circumstances which show that his stay in India for an uncertain period. In FY 2019-20, he is a PROI as he did not reside in India for more than 182 in FY 2018-19.
12. Where a property is involved in money laundering and the said property is provisionally attached by the competent officer. State the time period within which a complaint of such attachment shall be filed before the Adjudicating Authority:
- (a) thirty days from such attachment
  - (b) Forty five days from such attachment
  - (c) sixty days from the attachment
  - (d) One eighty days from the attachment
13. State the primary legislations amongst the following that deals with alternate methods of dispute resolution:
- (a) The Code of Civil Procedure, 1908
  - (b) Arbitration
  - (c) Lok Adalat
  - (d) Judicial settlement.
14. Under the garb of cement business, some of the directors of Royal Cement Limited, a company incorporated in the year 2001 and having its factories at Rohtak and Bhiwani, were involved in several illegal activities. In such a situation, on receipt of a report of the Registrar of Companies or inspector under Section 208 or in the public interest or on request from any Department of the Central Government or a State Government, the Central Government may, by order, assign the investigation into the affairs of Royal Cement Limited to the Serious Fraud Investigation Office (SFIO). In addition to the above bases, there is one more basis which may prompt the Central Government to assign the investigation to the Serious Fraud Investigation Office (SFIO). From the following four options, choose such appropriate basis for assigning the investigation to the SFIO.
- (a) On intimation through an Ordinary Resolution passed by the shareholders of Royal Cement Limited that the affairs of the company are required to be investigated.
  - (b) On intimation through a Special Resolution passed by the shareholders of Royal Cement Limited that the affairs of the company are required to be investigated.
  - (c) On an intimation received from certain senior employees of Royal Cement Limited that the affairs of the company are required to be investigated.
  - (d) On an intimation received from certain ex-directors of Royal Cement Limited that the affairs of the company are required to be investigated.

15. Due to non-compliance of certain requirements under the Companies Act, 2013 not amounting to fraud, Shikha Super-Market Limited was required to re-state its financial statements for the financial year 2017-18 during the current year. After the financial statements were restated, it was found that Mr. Kumar, the Managing Director (MD) of that period, who is now retired, was paid excess remuneration to the extent of ₹ 5,00,000. In the given situation, choose the correct option out of those given below, which indicates whether such excess remuneration paid to ex-MD Mr. Kumar is recoverable or not.
- (a) Excess remuneration of ₹ 5,00,000 paid to Mr. Kumar, ex-MD of Shikha Super-Market Limited, cannot be recovered since such recovery after retirement is invalid.
  - (b) Excess remuneration of ₹ 5,00,000 paid to Mr. Kumar, ex-MD of Shikha Super-Market Limited, shall be recovered irrespective of his retirement from the company.
  - (c) Only ₹ 2,50,000, being 50% of excess remuneration of ₹ 5,00,000, paid to Mr. Kumar, ex-MD of Shikha Super-Market Limited, is validly recoverable because no fraud implicating him is involved.
  - (d) Only ₹ 1,25,000, being 25% of excess remuneration of ₹ 5,00,000, paid to Mr. Kumar, ex-MD of Shikha Super-Market Limited, is validly recoverable because no fraud implicating him is involved.

#### Descriptive Questions

16. ABC Limited (wholly owned government company), failed to file its financial statements for the financial years 2018-2019, 2019-2020 and 2020-2021 with the ROC. However the annual returns for the financial years 2018-2019 and 2019-2020 have been filed by the company. The company appointed Mr. Pratham as its non-executive director with effect from 1<sup>st</sup> May 2021. In the meantime, Mr. Pratham received an offer of directorship from AK Ltd. in the month of September, 2021 which he is willing to accept. Referring to the provisions of the Companies Act, 2013, examine whether Mr. Pratham is qualified to be appointed as director in AK Ltd.
17. The Tribunal has made an order for winding-up of LTR Private Limited. Consequently, considering the report of the Liquidator stating that Mr. Tejas has committed the fraud in formation of the company, the Tribunal directed him to present himself for examination. However, Mr. Tejas defended the order on the ground that he was never a promoter, director, officer or employee of the Company, Examine the tenability of the stand taken by Mr. Tejas to defend the order of the Tribunal and enlighten him of the rights available to the person to be examined in light of the provisions of the Companies Act, 2013.
18. Maharaja Limited proposed to appoint Mr. Mantri as its Managing Director for a period of 5 years with effect from 1st May, 2022. Mr. Mantri fulfils all the conditions as specified under Schedule V to the Companies Act, 2013.

The terms of appointment are as under:

- (i) Salary. 1 lakh per month;

(ii) Commission, as may be decided by the Board of Directors of the company;

(iii) Perquisites;

Free Housing,

Medical reimbursement upto 10,000 per month,

Leave Travel concession for the family,

Club membership fee,

Personal Accident Insurance 10 lakh,

Gratuity, and Provident Fund as per Company's policy.

You being the Secretary of the said Company are required to draft a resolution to give effect to the above, assuming that Mr. Mantri is already the Managing Director in a Limited company.

19. Charming Limited, a Listed Company, has constituted Nomination and Remuneration Committee (NRC) which was consisting of 5 members. The Chairman of the Committee is an independent director and 3 other independent director are the members. Besides, the Chairman of the company, who is a whole-time director, has also been adopted as a member of the committee. Based on the given information and referring to the provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, examine the following:
- (i) Compliance requirement of the composition of NRC.
  - (ii) Quorum for the meeting of NRC.
20. S & M Private Limited, classified as a small enterprise (a Corporate Debtor), has made an application to the Adjudicating Authority (the Tribunal) for initiating Pre-Packaged Insolvency Resolution Process (PPIRP). The requirement for filing an application being satisfied the Adjudicating Authority, by an order, has admitted an application commencing the PPIRP. Referring to the provisions of the Insolvency and Bankruptcy Code, 2016 explain the following:
- (i) An external agency of which an approval would be sought to base resolution plan prior to making an application to the Adjudicating Authority.
  - (ii) Circumstances causing invitation for submission of resolution plan or plans.
  - (iii) Consequences of not approving the selected resolution plan by the Committee of Creditors (CoC).
21. EDC Computer Hardware Limited received an advance payment for export of high-tech hardware to a business concern in Abu Dhabi (UAE) by entering into an export agreement to supply the hardware within 14 months from the date of receipt of advance payment. Examine under the provisions of the Foreign Exchange Management Act, 1999 and decide:
- (i) Whether it is permissible to receive advance payment in the above scenario?

- (ii) If so, what are the conditions to be complied with in the relation to the advance payment against export in the above scenario?
22. Health Care Foundation has submitted an application of the Central Government for granting prior permission for receipt of foreign contribution. The value of such foreign contribution, on the date of final disposal of the application, is ₹ 3.00 crores. Referring to the provisions and relevant rules of the Foreign Contribution (Regulations) Act, 2010 advise on the following:
- (i) Can permission for receiving the foreign contribution of ₹ 3.00 crores in instalments be granted by the Central Government?
- (ii) Compliance requirement for obtaining the next instalment, if answer of (i) is affirmative.
23. Mr. Manoj managed to transfer the proceeds of crime to his son, abroad (a contracting state). His son then converted the proceeds into immovable properties in his name. If that property would have been situated in India. It would have been liable for confiscation. Will Mr. Manoj succeed in escaping the investigation proceedings and the property situated abroad not being subjected to confiscation? Explain, referring to the provisions of the Prevention of Money Laundering Act, 2002.
24. Answer the following in the light of the Arbitration and Conciliation Act, 1996:
- (i) How important are the ideas of independence and impartiality in arbitration in the below given context?
- (a) Is the arbitrator required to disclose anything to the parties?
- (b) Is membership of the same sports club as one of the parties problematic?
- (ii) Can an arbitrator resign on their own account? Do they have to give reasons for their resignation? Could an award be challenged on the ground that the arbitrator had resigned without giving any proper justifications?
25. B. Pharma Ltd. is a company registered in India for last 5 years. Since last 2 financial years, it has not been carrying on any business or operations and has not filed financial statements and annual returns saying that it has not made any significant accounting transaction during the last two financial years.
- Considering the current situation, Directors of the Company is contemplating to apply to Registrar of Companies to obtain status of dormant or inactive company. Advise them on:
- (i) Whether B. Pharma Ltd. is eligible to apply to Registrar of Companies to obtain dormant status for the company?
- (ii) What will be your answer, if B. Pharma Ltd is continuing payment of fees to Registrar of Companies and payment of rentals for its office and accounting records for last two financial years?

**SUGGESTED ANSWERS****DIVISION A: ANSWERS TO CASE SCENARIO/ MULTIPLE CHOICE QUESTIONS****Case Scenario1**

1. (a)
2. (b)
3. (d)
4. (b)
5. (a)

**Case Scenario 2**

6. (a)
7. (d)
8. (c)
9. (a)

**Independent Mcqs**

10. (d)
11. (d)
12. (a)
13. (a)
14. (b)
15. (b)

**Descriptive Answers**

16. Section 164(2) of the Companies Act, 2013, prescribes dis-qualifications which get attached to a person, if he is or has been a director of a Company which has committed default, as under.
  - (i) his Company has not filed financial statements or annual returns for any continuous period of 3 financial years; or
  - (ii) his Company has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for 1 year or more.

In both the cases of default, the director concerned shall not be eligible to be re-appointed as a director of such defaulting Company or appointed in some other Company for a period of 5 years from the date on which the said Company has committed default.

However, in case a person is appointed as a director of a Company which has committed default as per clause (i) or (ii) above, he shall not incur the dis-qualification for a period of six months.

Further in the light of the Notification No. GSR 582 (E), dated 13th June, 2017, Section 164(2) of the Act is not applicable to a Government Company provided it has not committed a default in filing its Financial Statements under Section 137 or Annual Return under Section 92 of the Act with the Registrar.

**Conclusion:** In the given problem, ABC Limited, a wholly owned Government Company, has not filed its financial statements for a continuous period of three financial years and hence, it is not entitled for an exemption under Section 164 (2) of the Act. Mr. Pratham, who is appointed as a Non-Executive Director in the defaulting Company shall not incur dis-qualification for a period of six months from the date of his appointment. The six month period will expire on 31.10.2021.

Hence, he is qualified to be appointed as a Director of AK Limited in the month of September, 2021.

**17. Power of the Tribunal to order the person to attend and be examined before the Tribunal:**

As per Section 300 of the Companies Act, 2013 (the Act) where an order has been made for the winding up of a Company by the Tribunal, and the Company Liquidator has made a report to the Tribunal under this Act, stating that, in his opinion, a fraud has been committed by any person in the promotion, formation, business or conduct of affairs of the Company since its formation, the Tribunal may, after considering the report, direct that-

- (i) such person or officer shall attend before the Tribunal on a day appointed by it for that purpose, and
- (ii) be examined as to promotion or formation or the conduct of the business of the Company or as to his conduct, and
- (iii) dealings as an officer thereof.

Hence, Mr. Tejas is bound to appear before the Tribunal for examination even if he was not a promoter, director, officer or employee of the Company as the Tribunal has powers to direct any person to appear for examination. Hence, his stand is not tenable,

**Rights available to the person to be examined:**

A person ordered to be examined under this Section:

- (i) shall, before his examination, be furnished at his own cost with a copy of the report of the Company Liquidator; and

- (ii) may at his own cost employ Chartered Accountants or Company Secretaries or Cost Accountants or legal practitioners entitled to appear before the Tribunal under Section 432 of the Act, who shall be at liberty to put to him such questions as the Tribunal may consider just for the purpose of enabling him to explain or qualify any answers given by him. He may exercise the rights conferred on him as above.

18. Resolution passed at the meeting of board of directors of Maharaja Limited held at its registered office situated at .....on .....(day), the\_\_\_\_\_ (date) at .....A.M.

“Resolved that consent of all the directors present at the meeting be and is hereby accorded to the appointment of Mr. Mantri, who is already the Managing Director of another limited company, and fulfils the conditions as specified in Schedule V of the Companies Act, 2013, as the Managing Director of the company for a period of 5 years effective from 1st May, 2022 subject to approval by a resolution of shareholders in a general meeting and that Mr. Mantri may be paid remuneration as follows:

- (i) Salary of ₹ 1 Lakh per month  
(ii) Commission  
(iii) Perquisites: Free Housing, Medical reimbursement upto ₹ 10,000 per month, Leave Travel Concession for the family, Club membership fee, Personal Accident Insurance of ₹10 Lakhs, Gratuity, Provident Fund etc.

Resolved further that in the event of loss or inadequacy of profits, the salary payable to him shall be subject to the limits specified in Schedule V.

Resolved further that the Secretary of the company be and is hereby authorize to prepare and file with the Registrar of Companies necessary forms and returns in respect of the above appointment.”

Sd/

Board of Directors

Maharaja Limited

19. As per Regulation 19 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the Board of Directors shall constitute the Nomination and Remuneration Committee (NRC) as follows:

**(i) Compliance requirement of the composition of NRC**

- (a) The Committee shall comprise of at least 3 directors  
(b) All directors of the Committee shall be Non-Executive Directors; and

(c) At least 2/3rd of the directors shall be independent directors.

The Chairperson of the listed entity, whether executive or non-executive, may be appointed as a member of the NRC and shall not chair such Committee. The NRC of Charming Limited meets all these requirements and hence the composition requirement of the NRC is in compliance with Regulation 19 of SEBI (LODR) Regulations, 2015.

**(ii) Quorum for the meeting of NRC**

The quorum for a meeting of NRC shall be either two members or one third of the members of the Committee, whichever is greater, including at least one independent director in attendance.

**20. (i) Approval of External Agency to base Resolution Plan**

S & M Private Limited, the Corporate Debtor, shall seek the approval of the financial creditors to base the Resolution Plan as required under Section 54A (4) of the IBC, 2016.

**(ii) Circumstances causing invitation for submission of resolution plan or plans are as below:**

- (a) Where the Committee of Creditors does not approve the base resolution plan or
- (b) the base resolution plan impairs any claims owed by the corporate debtor to the operational creditors.

**(iii) Consequences of not approving the selected resolution plan by the Committee of Creditors (CoC)**

If selected resolution plan is not approved by the Committee of Creditors (CoC), the resolution professional shall file an application for termination of the pre-packaged insolvency resolution process and the Adjudicating Authority shall, within 30, days of the date of such application, by an order, terminate pre-packaged insolvency resolution process. (Section 54N of the Code).

**21. Advance payment against exports under Regulation 15 of the FEM (Export of Goods & Services) Regulation 2015.**

- (1) Where an exporter receives advance payment (with or without interest), from a buyer/ third party named in the export declaration made by the exporter, outside India, the exporter shall be under an obligation to ensure that-
  - (i) the shipment of goods is made within one year from the date of receipt of advance payment;
  - (ii) the rate of interest, if any, payable on the advance payment does not exceed the rate of interest London Inter-Bank Offered Rate (LIBOR)+ 100 basis points, and



- (iii) the documents covering the shipment are routed through the authorised dealer through whom the advance payment is received;

Provided that in the event of the exporter's inability to make the shipment, partly or fully, within one year from the date of receipt of advance payment, no remittance towards refund of unutilized portion of advance payment or towards payment of interest, shall be made after the expiry of the period of one year, without the prior approval of the Reserve Bank.

- (2) Exemption: An exporter may receive advance payment where the export agreement itself duly provides for shipment of goods extending beyond the period of one year from the date of receipt of advance payment.

In view of the above provisions EDC Computer Hardware Limited can receive the advance payment for export of high-tech hardware to business concern in Abu Dhabi, complying the above conditions.

**22. (i) Permission from the Central Government**

As per Rule 9A of the Foreign Contribution (Regulation) Rules, 2011, if the value of foreign contribution on the date of final disposal of an application for obtaining prior permission is over rupees one crore, the Central Government may permit receipt of foreign contribution in such instalments, as it may deem fit.

Hence, the Central Government may grant permission to Health Care Foundation for receiving foreign contribution of ₹ 3.00 crores in instalments, as it may deem fit.

**(ii) Compliance requirement for obtaining the next instalment:**

It is further provided in Rule 9A that the second and subsequent instalment shall be released after submission of proof of utilization of seventy-five per cent of the foreign contribution received in the previous instalment and after field inquiry of the utilization of foreign contribution. Health Care Foundation may get next instalment, if this requirement is fulfilled.

- 23.** According to Section 57 of the Prevention of Money Laundering Act, 2002, (the Act) a Special Court, if satisfied, may issue a letter of request to a Court or an Authority in the Contracting State abroad competent to deal with such request to examine facts and circumstances of the case, take such steps as the Special Court may specify in such letter of request, and forward all the evidence so taken or collected to the Special Court issuing such letter of request.

According to Section 60 of the Act where a Special Court has made an order of confiscation relating to a property found to be involved in money laundering under sub-section (5) of Section 8, and such property is suspected to be in a contracting State, the Special Court, on an application by the Director or the Administrator appointed under sub-section (1) of Section 10, as the case may be, may issue a letter of request to a Court or an Authority in the Contracting State for execution of such order.

Mr. Manoj has transferred the proceed of crime into the Contracting State, a Special Court by order confiscate the property situated abroad and take steps to enforce his order by following the due procedure as explained above. Thus, Mr. Manoj will not succeed in escaping the process of investigation and property being confiscated.

24. (i) (a) The arbitrator are under a duty of disclose any relations with parties or their lawyers that might give rise to justifiable doubts as to their independence and impartiality.
- (b) Such an association is too remote to count as a relation that might lead to doubts of bias.
- (ii) An arbitrator can resign when they want, without giving reasons for their resignation. This action does not affect the validity either of the arbitration proceedings or the arbitral award.
25. (i) According to section 455 of the Companies Act, 2013, an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

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

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

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

Thus, B. Pharma Ltd. is still eligible to apply to the Registrar of Companies to obtain the status of Dormant company even if it has continued 'payment of fees to Registrar of Companies and payment of rentals for its office and accounting records' for last two years, as these transactions have been kept outside the purview of significant accounting transactions.