

MOCK TEST PAPER – 1
FINAL (NEW) COURSE: GROUP – I
PAPER 4: CORPORATE AND ECONOMIC LAWS

Time Allowed – 3 Hours

Maximum Marks – 100

DIVISION A: MULTIPLE CHOICE QUESTIONS (TOTAL OF 30 MARKS)

Instructions: All questions are compulsory.

Integrated Case Scenario 1 (8 Marks)

M/s. Sheetal Chemicals Limited (SCL) is a listed public company dealing in petrochemicals which are used in numerous household products like wax, detergents, dyes, carpeting, safety glasses, etc.

As per the latest audited balance sheet as at 31st March, 2019, company have following financial position-

Paid up share capital	Rs. 40 crore
Authorised capital	Rs. 50 crore
Turnover for FY 2018-2019	Rs. 300 crore

Composition of Board

The company has thirteen directors on its Board namely, A1, B2, C3, D4, E5, F6, G7, H8, I9, J10, K11, L12 and M13 of which A1, B2, C3, D4 and E5 are the independent directors. The Articles of Association of the company restrict the maximum number of directors to fifteen.

SCL remains ever-conscious to corporate governance and ensures compliance to legal provisions in both letter and spirit. L12 is the Managing Director of the company whereas M13 is the only woman director. The company has constituted requisite committees as per the requirements of law. The Audit Committee consists of seven directors as members *i.e.* A1, B2, C3, D4, E5, I9, J10 and K11.

Earlier, for the financial year ending 31st March, 2018, the company successfully convened and held Annual General Meeting (AGM) on 25th September, 2018 at its registered office at Pune. On the fateful day of AGM, while returning to Mumbai from Pune by road after her re-appointment at AGM, a fatal accident claimed the life of M13 thus snatching an efficient and trustworthy director from the hands of the company. Later on, a Board Meeting was held on 9th January, 2019 and N14, a finance professional and daughter of deceased woman director M13 was appointed as director to fill the vacancy of woman director so created due to the death of M13. It may be noted that before 9th January, 2019, a Board Meeting was held on 15th September, 2018.

SCL is a growing company which wants to diversify its business into the sphere of agrochemicals also and therefore, desires to bring on its Board O15 who is a chemical engineer with hands-on experience of about twenty years post his qualification in the field of agrochemicals and other petroleum products. Besides production, he is well versed in marketing of agrochemicals both in India and abroad. It is hoped that he shall prove to be a valuable asset to the company. Accordingly, a Board Meeting was held on 14th April, 2019 to appoint O15 as additional director. As the total strength of directors was well within the limit prescribed by the Articles, there was no need to alter the Articles.

Multiple Choice Questions (MCQs)

1. After the appointment of O15 as additional director on 14th April, 2019, another Board Meeting of SCL was held on 17th May, 2019. From the given options, choose the correct one which indicates the quorum for the current Board meeting.
 - (a) Nine directors
 - (b) Five directors
 - (c) Four directors
 - (d) Two directors
2. For the purpose of meeting of the Audit Committee of SCL, how many members should be present at such meeting in order to constitute the quorum.
 - (a) All the seven members
 - (b) Only five members of which minimum two should be independent members
 - (c) Only three members of which minimum two should be independent members
 - (d) Only two members of which minimum one should be independent member
3. From the case scenario, it is observed that after the death of M13, her daughter N14 was appointed at a Board Meeting held on 9th January, 2019 to fill the vacancy of woman director. Is the appointment of N14 on 9th January, 2019 justified?
 - (a) No. The appointment of N14 should have been made within three months from 25th September, 2018.
 - (b) No. The appointment of N14 should have been made within two months from 25th September, 2018.
 - (c) No. The appointment of N14 should have been made within one month from 25th September, 2018.
 - (d) Yes. The appointment of N14 made on 9th January, 2019 is justified.
4. In the above case scenario, L12 is the Managing Director of SCL. If it is assumed that there is no managing or whole-time director, then in such a situation, how much remuneration the company can pay to all the directors for the Financial Year 2019-20.
 - (a) 11% of the net profits available for the Financial Year 2019-20
 - (b) 5% of the net profits available for the Financial Year 2019-20
 - (c) 3% of the net profits available for the Financial Year 2019-20
 - (d) 1% of the net profits available for the Financial Year 2019-20

2. Integrated Case Scenario (8 Marks)

Global Trade and Securities (India) Limited (GTSIL) is a listed company having been listed at BSE and NSE. It was incorporated around four and a half years back in June, 2015 and has its registered office at Connaught Place, New Delhi. The authorised and paid-up share capital of the company is Rs. 25.00 crore.

GTSIL is duly registered with the Securities and Exchange Board of India (SEBI) for providing merchant banking services. The company offers a varied range of services including issue management, handling of buy-back of shares, debt and equity syndication, mergers and acquisitions, listing and delisting, etc. GTSIL is a well-established and reputed name among the regulatory authorities, Government Agencies, law firms, share-brokers, mutual funds, banks, etc.

The company is being managed by nine directors out of which three are independent directors. Of the other six directors two are non-executive. The four executive directors *i.e.* Skand, Srishti, Rina and Rohan are

energetic, young and dynamic professionals with vast experience in the field of merchant banking. In the current Financial Year 2019-20, a chance scrutiny of accounts revealed that during the last financial year, by oversight, Rohan, who heads the new issue division of the company, had drawn remuneration in excess of the limit provided by the relevant provisions of law.

The shareholding base of the company is quite wide and therefore, the number of small shareholders having stake in the company is substantial. It so happened that some of them wished to appoint Mukund, a seasoned finance professional, as small shareholders' director on the Board of the company. After due process, Mukund was appointed by the company as director to represent small shareholders.

During the financial year 2018-19, the profits of the company rose by around Rs. 7.00 crore in comparison to the previous year and therefore, a rise in the dividend per share was expected to be approved in the AGM. Accordingly, a dividend of Rs. 6 per share was declared as against Rs. 4 per share in the preceding year.

It is a proven fact that PESTEL analysis¹ (*i.e. analysis of political, economic, social, technological, environmental and legal factors affecting organisations*) has always been a critical aspect for the success of any organisation. Keeping this crucial fact in view, the directors of the company desiring to improve political understanding, after following the due procedure of law in this respect, made one-time political contribution of certain amount in the current Financial Year to Public Vikasheel Dal which is one of the prominent political parties of the country duly registered under Section 29A of the Representation of the People Act, 1951.

Multiple Choice Questions (MCQs)

1. From the case scenario it is evident that the company made political contributions of certain amount to Public Vikasheel Dal, a prominent political party of the country. As the company is in existence for less than five years, how much amount it might have contributed to the political party in question.
 - (a) Any amount as approved by the directors.
 - (b) Any amount within the limit of 5% of the average net profits of the last three years.
 - (c) Any amount within the limit of 7.5% of the average net profits of the last three years.
 - (d) Political contribution made by the company is invalid as it is yet to complete five years of its existence.
2. The above case scenario states that Mukund was appointed as small shareholders' director on the Board of the company. To be a director of the small shareholders, what is the nominal value of shares which such director is required to own:
 - (a) Such director is required to own shares of the nominal value of Rs. 20,000 in the company prior to his appointment as small shareholders' director.
 - (b) Such director is required to own shares of the nominal value of at least Rs. 10,000 in the company prior to his appointment as small shareholders' director.
 - (c) Such director is required to own shares of the nominal value of at least Rs. 5,000 prior to his appointment as small shareholders' director.
 - (d) Such director is not required to own shares of any nominal value in the company prior to his appointment as small shareholders' director.
3. In this case scenario, the name of the company includes the word 'India'. In case a company is desirous of including the words 'British India' in its name, which of the following options is applicable:

¹ It is a marketing tool gainfully used by the marketing department of an organisation and involves analysis and monitoring of macro-environmental factors that impact the organisations.

- (a) For including 'British India' in its name, such company must be incorporated with minimum Authorised Capital of Rs. 50,00,000.
 - (b) For including 'British India' in its name, such company must be incorporated with minimum Authorised Capital of Rs. 75,00,000.
 - (c) For including 'British India' in its name, such company must be incorporated with minimum Authorised Capital of Rs. 100,00,000.
 - (d) None of the above.
4. The above case scenario reveals that Rohan, one of the directors, had drawn remuneration in excess of the limit prescribed by the relevant provisions. As regards recovery of the excess remuneration drawn by him, which of the following options is applicable:
- (a) The company shall not waive recovery of excess remuneration paid unless approved by a special resolution within one year from the date the sum becomes refundable.
 - (b) The company shall not waive recovery of excess remuneration paid unless approved by a special resolution within two years from the date the sum becomes refundable.
 - (c) The company shall not waive recovery of excess remuneration paid unless approved by the Central Government.
 - (d) The company shall not waive recovery of excess remuneration paid unless approved by a special resolution within three years from the date the sum becomes refundable.

Multiple choice questions (Total 14 marks)

3. Infra Ltd. was wound up by an order of Tribunal dated 10th March, 2019 by the Tribunal. The appointed official liquidator of the company noticed that the MD of the Infra Ltd. had sold certain properties belonging to the company to a Supra Pvt. Ltd. in which his brother was interested on 15th October, 2018. This caused loss to the Infra Ltd. to the extent of INR 60 lakhs. Examine the course of action, the official liquidator can take in this matter.
- (1) The official liquidator can recover the sale of assets of the company as per the Section 328 of the Companies Act, 2013
 - (2) The transaction made will be regarded as invalid and restore the position of the company.
 - (3) This transaction made will be regarded as valid as being made under ordinary course of its business.
- (a) Only statement (1) is correct
 - (b) Only statement (2) is correct
 - (c) Only statement (3) is correct
 - (d) Statements (1) & (2) are correct **(2 Marks)**
4. The Registrar of Companies has reasonable cause to believe that XYZ Ltd, registered as 'dormant company' under his jurisdiction has been functioning. State course of action that can be taken by the Registrar against XYZ Ltd. –
- (a) Registrar may serve the notice stating that it is a dormant company and so cannot function, so all its acts will be considered as void.
 - (b) Registrar may initiate proceedings thereby making the company and its officers liable to be punished for the functioning of the company under the status of dormant company.
 - (c) Registrar may initiate enquiry and if found that XYZ Ltd. has actually been functioning, the Registrar may remove the name of such company from register of dormant companies and treat it as an active company.

- (d) Registrar may initiate enquiry under section 206, if found to be functioning, for non compliance with the Companies Act, 2013. **(1 Mark)**
5. Ram and Shyam, two brothers, are professionally qualified Chartered Accountants. They are engaged in working as recovery agents for different types of loans and advances given by banks to different customers. They were also involved in arrangement of short terms funds for their client's. Their business was doing well and they were making a good amount of money. While dealing with banks they came to know about Asset reconstruction Companies (ARC'S). Both the brothers wanted to expand their business, so they decided to register themselves as an ARC. From the following tick the correct option; which is incorrect in respect of their beginning of ARC business---
- (a) Chartered Accountants are not eligible to commence on the business of securitisation or asset reconstruction.
- (b) The requirement of minimum of net owned fund of One hundred crore rupees
- (c) After registered as an ARC they will no longer be eligible to continue their business of arranging short term funds for their clients.
- (d) They will be required to raise funds only from qualified buyers. **(2 Marks)**
6. Mr. A. Mr. B and Mr. C are partners in XYZ partnership firm. The firm made an agreement in writing to refer a dispute between them in business to an arbitrator. In spite of this agreement Mr. B files a suit against Mr.A and Mr. C relating to the dispute in a magisterial court. Advise on the admission of the suit filed by Mr. B in the court in the light of the Arbitration and Conciliation Act, 1996.
- (a) Yes, it can be admitted by the Magisterial court , as the said court has jurisdiction over the matter and it overpowers arbitration agreement
- (b) Yes, it can be admitted by the Magisterial court, only in the case of challenge to the arbitral award in appeal
- (c) Yes, it can be admitted by the court, if Mr. A and Mr. C mutually agrees.
- (d) No, it cannot be admitted by the court, as the jurisdiction of court is ousted because of existence of a valid arbitration agreement **(2 Marks)**
7. If committee of creditors of corporate debtors was constituted on 17.3.2020 under the Insolvency and Bankruptcy Code. Identify the time limit, within which the first meeting of committee of creditors should be held.
- (a) Latest by 20.3.2020
- (b) Latest by 22.3.2020
- (c) Latest by 24.3.2020
- (d) Latest by 31.3.2020 **(1 Mark)**
8. Videshi Ltd., a foreign company established with a principal place of business at Kolkata, West Bengal. The company delivered various documents to Registrar of Companies. State the number of days and place where the said company shall deliver such documents:
- (a) Within 15 days to the Central Government
- (b) Within 15 days to the Registrar having jurisdiction over New Delhi
- (c) Within 30 days to the Registrar having jurisdiction over West Bengal
- (d) Within 30 days to the Registrar having jurisdiction over New Delhi **(1 Mark)**

9. Mr. Z was appointed as representative of ABC Company for a 10days corporate programme organized in USA. During the said period in USA, he was diagnosed with the severe kidney disease, so decided to have a treatment done in USA. State the maximum amount that can be drawn by Mr. Z as foreign exchange for the medical treatment abroad.
- (a) USD 1,25,000
 (b) USD 2,25,000
 (c) USD 2,50,000
 (d) As estimated by a medical institute offering treatment **(1 Mark)**
10. P Ltd. was holding 35% of the paid up equity capital of X Stock Exchange. The company appoints M Ltd. as its proxy who is not a member of the X Stock Exchange, to attend and vote at the meeting of the stock exchange. State the correct statement as to the appointment of M Ltd. as a proxy for P Ltd. and on the voting rights of P Ltd. in the X Stock Exchange:
- (a) X Stock Exchange can restrict the appointment of M Ltd., as proxy, and his voting rights in the Stock Exchange.
 (b) Central Government can restrict appointment of proxies and voting rights of P Ltd. in the X Stock Exchange.
 (c) Both (a) & (b)
 (d) X Stock Exchange can restrict the voting rights of P Ltd. if rules of the exchange so provides or otherwise can restrict the voting rights of P Ltd. & appointment of proxies through amendment in rules. **(2 Mark)**
11. Central Government for providing of speedy trial of offences under the Companies Act, 2013, shall establish/ designate such numbers of special courts in an area-
- (a) Only 1
 (b) Not more than 2
 (c) More than 2
 (d) As many as may be necessary **(1 Mark)**
12. When can an application be made to Tribunal for constitution of a winding up committee to assist and monitor the progress of liquidation proceedings by the Company Liquidator in carrying out the function?
- (a) Within two weeks from the date of passing of winding up order
 (b) Within three weeks from the date of passing of winding up order
 (c) Within four weeks from the date of passing of winding up order
 (d) None of the above. **(1 Mark)**

DIVISION B: Descriptive questions (70 Marks)

Question No. 1 is compulsory. Out of remaining five questions attempt any four.

1. (a) Prince Ltd. desires to appoint an additional director on its Board of directors. The Articles of the company confer upon the Board to exercise the power to appoint such a director. As such Mr. Mantri is appointed as an additional director. In the light of the provisions of the Companies Act, 2013, examine:

- (i) Whether Mr. Mantri can continue as director if the annual general meeting of the company is not held within the stipulated period and is adjourned to a later date?
- (ii) Can the power of appointing additional director be exercised at the Annual General Meeting by the members?
- (iii) As the Company Secretary of the company what checks would you make after Mr. Mantri is appointed as an additional director? **(6 Marks)**
- (b) Mr. Silencer was appointed as Managing Director of Freebird Industries Ltd. for a period of five years with effect from 1.4.2016 on a salary of Rs. 12 lakh per annum with other perquisites. The Board of Directors of the company came to know about certain questionable transactions entered into by Mr. Silencer and therefore, terminated his services as Managing Director from 1.3.2019. Mr. Silencer termed his removal as illegal and claimed compensation from the company. Meanwhile the company paid a sum of Rs. 5 lakh on ad hoc basis to Mr. Silencer pending settlement of his dues. Discuss on the following issues:
- (i) Whether the company is bound to pay compensation to Mr. Silencer and, if so, how much.
- (ii) Whether the company can recover the amount of Rs. 5 lakh paid on the ground that Mr. Silencer is not entitled to any compensation, because he is guided by corrupt practices. **(8 Marks)**
2. (a) (i) A group of members of XYZ Limited has filed a petition before the Tribunal alleging various acts of oppression and mismanagement by the majority shareholders of the company. The Petitioner group holds 12% of the issued share capital of the company. During the pendency of the petition, some of the petitioner group holding about 5% of the issued share capital of the company wish to disassociate themselves from the petition and they along with the other majority shareholders have submitted before the Tribunal that the petition may be dismissed on the ground of non-maintainability. Examine their contention having regard to the provisions of the Companies Act, 2013. **(3 Marks)**
- (ii) ABC Limited is a wholly owned subsidiary company of XYZ Limited. The Company wants to make application for merger of Holding and Subsidiary Companies under Section 232. The Company Secretary of the XYZ Limited is of the opinion that company cannot apply for merger as per section 232. The company shall have to apply for merger as per section 233 i.e. Fast Track Merger. Examine on the validity of the contention made by Company Secretary as per law? **(5 Marks)**
- (b) Examine the given situations in the light of the respective laws:
- (i) Toy Ltd. is a Japanese company having several business units all over the world. It has a robotic unit with its head quarter in Mumbai and has a branch in Singapore. Headquarter at Mumbai controls the branch of robotic unit. Determine the residential status of robotic unit in Mumbai and that of the Singapore branch in reference to FEMA, 1999?
- (ii) Apex Limited failed to repay the amount borrowed from the banker, ACE Bank Limited, which is holding a charge on all the assets of the company. The Bank took over management of the company in accordance with the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by appointing four persons as directors. The company was managed by a Managing Director, Mr. X. Referring to the provisions of the said Act, examine whether Mr. X is entitled to compensation for loss of office. **(3+3= 6 Marks)**
3. (a) Pioneer Ltd. filed an application to the registrar for removal of the name of company from the register of companies after passing special resolution. On the complaint of certain members, Registrar came to know that already an application is pending before the Tribunal for the approval of proposed compromise or arrangement scheme. The application was filed two months before the filing of this application to the Registrar.

Determine the given situations in the lights of the given facts as per the Companies Act, 2013:

- (i) Legality of filing an application by Pioneer Ltd. Before the Registrar.
 - (ii) Consequences if Pioneer Ltd. files an application in the above given situation.
 - (iii) In case Registrar notifies Pioneer Ltd as dissolved under section 248 in compliances to the required provisions, what remedy will be available to the aggrieved party? **(8 Marks)**
- (b) Mr. Fraudulent, a 16 years old, has been arrested for a cognizable and non-bailable offence punishable for a term of imprisonment for more than three years under the Prevention of Money Laundering Act, 2002 for money laundering of amount of 70 lakh. Advise, in the given situation whether Mr. Fraudulent can be released on bail in this case? **(6 Marks)**
4. (a) (i) PQR Ltd., is a listed entity with its subsidiary, Twig Ltd. State the Corporate Governance requirements with respect to the subsidiary of Listed Entity as per the SEBI (LODR) Regulations, 2015. **(4 Marks)**
- (ii) Mr. Vijay is having 400 shares of Travel Everywhere Limited and the current price of these shares in the market is Rs. 100. Vijay's goal is to sell these shares in 6 months' time. However, he is worried that the price of these shares could fall considerably, by then. At the same time, Vijay doesn't want to sell off these shares today, as he conjectured that the share price might appreciate in the near future. Determine how should Mr. Vijay protect his security and reduce the risk of loss on the share price under the Securities Contract (Regulation) Act, 1956? **(4 Marks)**
- (b) Answer the following given situations:
- (i) Mr. Indian received foreign contribution of amount 1.10 lakh from his relative residing abroad. Examine whether foreign remittances received by Mr. Indian to be treated as foreign contribution as per the FCRA, 2010. **(3 Marks)**
 - (ii) Ms. Rajkumari launch her boutique. She contacted with M/s Shyamlal merchants for supply of dress materials. The communications between the parties were over email. There was a term of service between the parties containing that "any disputes regarding quality or delivery shall be submitted to arbitration conducted under the guidance of Indian Clothes Manufacturers Association. Please place your order if the above terms and conditions are agreeable to you." Ms. Rajkumari placed an order. Comment on the validity of the such arbitration agreement according to the Arbitration and Conciliation Act, 1996. **(3 Marks)**
5. (a) Determine the legal positions in the given situations:
- (i) Excel Ltd. committed an offence under the Companies Act, 2013. The offences falls within the jurisdiction of a special court of Bundi district in which the registered office of Excel Ltd was situated. However in that Bundi district, there were two special courts one in X place and other in Y place. Identify the jurisdiction of special court for trial of an offences committed by Excel Ltd. **(3 Marks)**
 - (ii) As per provisions of the Companies Act, 2013, what is the status of XYZ Ltd., a Company incorporated in London, U.K., which has a share transfer office at Mumbai? **(2 Marks)**
 - (iii) Abroad Ltd. a foreign company without establishing a place of business in India, issued prospectus for subscription of securities in India. Being a consultant of the company, advise on the validity of such an issue of prospectus by Abroad Ltd. **(3 Marks)**
- (b) Mr. Mediator was proposed to be appointed as a resolution professional for the corporate insolvency resolution process initiated against BMR Ltd. Mr. R, a relative of director of BMR Ltd. is a partner in the insolvency professional entity in which Mr. Mediator is partner. In the light of the given facts, examine the nature of the proposal of the appointment of Mr. Mediator for the conduct of the CIRP as per the Insolvency and Bankruptcy Code, 2016. **(6 Marks)**

6. (a) Out of the powers exercisable by the Board under Section 179 of the Companies Act, 2013, the Board of MN Limited wants to delegate the power to borrow monies otherwise than on debentures to the Managing Director. Advise whether such a delegation is possible? Would your answer be different, if the delegation is made to the manager or any other principal officer including a branch officer of the company? **(8 Marks)**
- (b) (i) Mr. Ram, an operational creditor filed an application for corporate insolvency resolution process. He does not proposed for appointment of an interim resolution professional in the application. State the provisions given by the Code in the given situation. State the term of such appointed IRP **(3 Marks)**
- (ii) Explain the meaning of the term "Money Laundering". Mr. X, a known smuggler was caught in transfer of funds illegally exporting narcotic drugs from India to some countries in Africa. State the maximum punishment that can be awarded to him under Prevention of Money Laundering Act, 2002. **(3 Marks)**

MOCK TEST PAPER – 1
FINAL (NEW) COURSE: GROUP – I
PAPER 4: CORPORATE AND ECONOMIC LAWS

ANSWERS

DIVISION A: MULTIPLE CHOICE QUESTIONS (TOTAL OF 30 MARKS)

1. Integrated Case Scenario

- (1) Option (b)
- (2) Option (c)
- (3) Option (d)
- (4) Option (c)

2. Integrated Case Scenario

- (1) Option (a)
- (2) Option (d)
- (3) Option (d)
- (4) Option (b)

Multiple choice questions

- 3. Option (d)
- 4. Option (c)
- 5. Option (a)
- 6. Option (d)
- 7. Option (d)
- 8. Option (d)
- 9. Option (d)
- 10. Option (d)
- 11. Option (d)
- 12. Option (b)

DIVISION B: Descriptive questions (70 Marks)

1. (a) Section 161(1) of the Companies Act, 2013 provides that the articles of association of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director at the general meeting, as an additional director at any time and such director will hold office upto the date of the next annual general meeting or the last date on which such annual general meeting should have been held, whichever is earlier.

Accordingly, following are the answers-

- (i) Mr. Mantri cannot continue as director till the adjourned annual general meeting, since he can hold the office of directorship only up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier. Such an additional director shall vacate his office latest on the date on which the

annual general meeting should have been held under Section 96 of the Companies Act, 2013. He cannot continue in the office on the ground that the meeting was not held or it could not be called within the time prescribed.

- (ii) The power to appoint additional directors vests with the Board of Directors and not with the members of the company. The only condition is that the Board must be conferred such power by the articles of the company.
- (iii) As a Company Secretary, I would put the following checks in place in respect of Mr. Mantri's appointment as an additional director:
 - (a) He must have got the Directors Identification Number (DIN).
 - (b) He must furnish the DIN and a declaration that he is not disqualified to become a director under the Companies Act, 2013.
 - (c) He must give his written consent in Form DIR-2 on or before his appointment as director and such consent stands filed with the Registrar within 30 days of his appointment.
 - (d) His appointment is made by the Board of Directors.
 - (e) His name is entered in the statutory records as required under the Companies Act, 2013.
- (b) According to Section 202 of the Companies Act, 2013, compensation can be paid only to a Managing Director, Whole-time Director or Manager. Amount of compensation cannot exceed the remuneration which he would have earned if he would have been in the office for the unexpired term of his office or for 3 years whichever is shorter. No compensation shall be paid, if the director has been found guilty of fraud or breach of trust or gross negligence in the conduct of the affairs of the company.

In light of the above provisions of law, following are the answers-

- (i) W.r.t. this part of the question, the company is not liable to pay any compensation to Mr. Silencer, if he has been found guilty of fraud or breach of trust or gross negligence in the conduct of affairs of the company. But, it is not proper on the part of the company to withhold the payment of compensation on the basis of mere allegations. The compensation payable by the company to Mr. Silencer would be Rs. 25 Lakh calculated at the rate of Rs.12 Lakh per annum for unexpired term of 25 months.
 - (ii) In respect to this part of the question, ad-hoc payment made of Rs.5 Lakh, will not be possible for the company to recover from Mr. Silencer in view of the decision in case of *Bell vs. Lever Bros. (1932) AC 161* where it was observed that a director was not legally bound to disclose any breach of his fiduciary obligations so as to give the company an opportunity to dismiss him. In that case, the Managing Director was initially removed by paying him compensation and later on it was discovered that he had been guilty of breaches of duty and corrupt practices and that he could have been removed without compensation.
2. (a) (i) The argument of the majority shareholders that the petition may be dismissed on the ground of non-maintability is not correct. The proceedings shall continue irrespective of withdrawal of consent by some petitioners. It has been held by the Supreme Court in *Rajmundhry Electric Corporation vs. V. NageswarRao, AIR (1956) SC 213* that if some of the consenting members have subsequent to the presentation of the petition withdraw their consent, it would not affect the right of the applicant to proceed with the petition. Thus, the validity of the petition must be judged on the facts as they were at the time of presentation. Neither the right of the applicants to proceed with the petition nor the jurisdiction of Tribunal to dispose it of on its merits can be affected by events happening subsequent to the presentation of the petition.

- (ii) As per section 233 (1), notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered between,

2 or more small companies

a holding company and its wholly-owned subsidiary company. If 100% of its share capital is held by the holding company, except the shares held by the nominee or nominees to ensure that the number of members of subsidiary company is not reduced below the statutory limit as provided in section 187.

such other class or classes of companies as may be prescribed.

The provisions given for fast track merger in the section 233 are in the optional nature and not a compulsion to the company. If a company wants to make application for merger as per section 232, it can do so.

Hence, here the Company Secretary of the XYZ limited has erred in the law and his contention is not valid as per law. The company shall have an option to choose between normal process of merger and fast track merger.

- (b) (i) Toy Ltd. being a Japanese company would be a person resident outside India. [Section 2(w)]. Section 2(u) defines 'person'. Under clause (vii) of section 2(u), thereof person would include any agency, office or branch owned or controlled by such 'person'. The term such 'person' appears to refer to a person who is included in clauses (i) to (vi). Accordingly, robotic unit in Mumbai, being a branch of a company, would be a 'person'.

Section 2(v) defines 'person resident in India'. Under clause (iii) 'person resident in India' would include an office, branch or agency in India owned or controlled by a person resident outside India. Robotic unit in Mumbai is owned or controlled by a person 'resident outside India'. Hence, it would be 'person resident in India'.

However, robotic unit in Mumbai, though not 'owned' controls Singapore branch, which is a person resident in India. Hence *prima facie*, it may be possible to hold a view that the Singapore branch is 'person resident in India'.

- (ii) Apex Limited failed to repay the amount borrowed from the banker, ACE Bank Limited, which is holding a charge on all the assets of the company. The bank took over management of the company in accordance with the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by appointing four persons as directors. The company was managed by a Managing Director, Mr. X.

Here, Apex Limited is a borrower and ACE Bank Limited is a secured creditor.

Compensation to Managing director (Mr. X) for loss of office: According to section 16 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, irrespective of anything contained in any contract or in any other law for the time being in force, no managing director or any other director or a manager or any person in charge of management of the business of the borrower shall be entitled to any compensation for the loss of office or for the premature termination under this Act. However any such managing director or any other director or manager or any such person in charge of management has the right to recover from the business of the borrower, moneys recoverable otherwise than by way of such compensation.

Therefore, Mr.X is not entitled for any compensation for loss of office in the given case.

3. (a) According to the Section 248(2) of the Companies Act, 2013, a company may, after extinguishing all its liabilities, by a special resolution, or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in

section 248(1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner.

Further Section 249 provides restrictions on making application under **section 248** .

An application under **section 248** on behalf of a company shall not be made if, at any time in the previous three months, the company—

- (a) has changed its name or shifted its registered office from one State to another;
- (b) has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;
- (c) has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;
- (d) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or
- (e) is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.

Violation of above conditions on filing of application: If a company files an application in violation of restriction given above, it shall be punishable with fine which may extend to one lakh rupees.

Rights of registrar on non-compliance of conditions by the company: An application filed under above circumstances, shall be withdrawn by the company or rejected by the Registrar as soon as conditions are brought to his notice.

Aggrieved person to file an appeal against the order of registrar: As per section 252(1), any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies. However a reasonable opportunity is given to the company and all the persons concerned.

According to the above provisions, following are the answers:

As per the restrictions marked in the Section 249(d) stating that an application under section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded.

As per the facts application to the registrar for removal of the name of company from the register of companies, was filed by the Pioneer Ltd. within three months to the filing of an application to the Tribunal for approval of compromise or arrangement proposal. Therefore filing of such an application by Pioneer Ltd. is not valid.

- (i) If a company files an application in above situation, it shall be punishable with fine which may extend to one lakh rupees. An application so filed, shall be withdrawn by the company or rejected by the Registrar as soon as conditions are brought to his notice.
- (ii) According to the provision given in section 252(1), a person aggrieved by an order of the Registrar, notifying Pioneer Ltd. as dissolved under section 248, may:

- file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar, and
 - if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the Pioneer Ltd. in the register of companies.
 - A reasonable opportunity is given to the Pioneer Ltd. and all the persons concerned.
- (b) Section 45 provides that the offences under the Act shall be cognizable and non-bailable. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence under this Act shall be released on bail or on his own bond unless-
- (i) The Public Prosecutor has been given an opportunity to oppose the application for such release and
 - (ii) Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

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

As in the given case, Mr. Fraudulent, a 16 year old person was accused of money laundering a sum of 70 lakh, Accordingly, as per above provision, though he is not under 16 years but accused of money laundering of amount of Rs. 70 Lakh, so will be released on bail on the direction of special court.

4. (a) (i) **Regulation 24: Corporate Governance Requirements with respect to Subsidiary of Listed Entity.**

The Board: At least one Independent Director on Board shall be a Director on Board of Unlisted Material Subsidiary. The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary.

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 **50%** 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 IBC and such an event is disclosed to the recognised stock exchange within one day of the resolution plan being approved.

Selling, disposing and leasing of assets amounting to more than 20% of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal/ duly approved resolution plan.

- (ii) In this case, Mr. Vijay may opt for 'Option' derivative contract, which is an agreement to buy or sell a set of assets at a specified time in the future for a specified amount. However, it is not obligatory for him to hold the terms of the agreement, since he has an 'option' to exercise the contract. For example, if the current market price of the share is Rs. 100 and he buy an option to sell the shares to Mr. X at Rs. 200 after three-month, so Vijay bought a put option.

Now, if after three months, the current price of the shares is Rs. 210, Mr. Vijay may opt not to sell the shares to Mr. X and instead sell them in the market, thus making a profit of Rs. 110. Had the market price of the shares after three months would have been Rs. 90, Mr. Vijay would have obliged the option contract and sold those shares to Mr. X, thus making a profit, even though the current market price was below the contracted price. Thus, here, the shares of Travel Everywhere Limited is the underlying asset and the option contract is a form of derivative.

- (b) (i) No. As per Section 4(e) of FCRA, 2010 read with Rule 6 of FCRR, 2011, even the persons prohibited under section 3, i.e., persons not permitted to accept foreign contribution, are allowed to accept foreign contribution from their relatives. However, in terms of Rule 6 of FCRR, 2011, 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 in prescribed Form within thirty days from the date of receipt of such contribution.

So, Mr. Indian shall inform the Central Government of his receiving of the foreign contribution of 1.10 lakh from his relative due to receiving of foreign contribution in excess of 1 lakh rupees.

- (ii) As per the Arbitration and Conciliation Act, 1996 an agreement must be in writing. There is however no requirement for the same to be in writing in one document. There is also no particular form or template for an arbitration agreement. The communication over email of the term of services is proper valid agreement and the same have been stood affirmed by reason of their conduct. This would be an arbitration agreement in writing contained in correspondence between the parties.

5. (a) (i) All offences which are punishable in this Act with imprisonment of 2 years or more, shall be triable only by the special court established for the area in which the registered office of the company in relation to which the offence is committed. According to section 436 of the Companies Act, 2013 where there are more special courts than one for such area, by such one of them as may be specified in this behalf by the high court concerned.

Accordingly in the given case, there are more than one special court in Bundi district where registered office of Excel Ltd. is situated. The jurisdiction for trial in special court will be specified by High Court of the State (i.e.Rajasthan).

- (ii) In terms of the definition of a foreign company under section 2 (42) of the Companies Act, 2013 a “foreign company” means any company or body corporate incorporated outside India which:

(a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) Conducts any business activity in India in any other manner

According to section 386 of the Companies Act, 2013, for the purposes of Chapter XXII of the Companies Act, 2013 (Companies incorporated outside India), “Place of business” includes a share transfer or registration office.

From the above definition, the status of XYZ Ltd. will be that of a foreign company as it is incorporated outside India, has a place of business in India and it may be presumed that it carries on a business activity in India.

- (iii) As per section 389 of the Companies Act, 2013, no person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the

chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed under *Rule 11 of the Companies (Incorporated outside India) Rules, 2014*.

Accordingly in the given situation, issue of prospectus by the Abroad Ltd., a foreign company will be valid if done in compliance with the above stated section 379 of the Act.

- (b)** As per Regulation 3 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, an insolvency professional shall be eligible to be appointed as a resolution professional for a corporate insolvency resolution process of a corporate debtor if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor.

Explanation– A person shall be considered independent of the corporate debtor, if he:

- (a) is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013, where the corporate debtor is a company;
- (b) is not a related party of the corporate debtor; or
- (c) is not an employee or proprietor or a partner:
 - (i) of a firm of auditors or secretarial auditors in practice or cost auditors of the corporate debtor in the last three financial years.
 - (ii) of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to five per cent or more of the gross turnover of such firm, in the last three financial years.

As per the given facts, Mr. Mediator was proposed to be appointed as a resolution professional for the insolvency resolution process initiated against BMR Ltd. Whereas, Mr. R, a relative of director of BMR Ltd. is a partner in the insolvency professional entity in which Mr. Mediator is partner.

Since, Mr. R is the partner in insolvency professional entity in which Mr. Mediator is a partner, so, Mr. Mediator is not eligible for appointment as Resolution Professional as he is not independent of the corporate debtor, being a relative of director of BMR Ltd. (Corporate debtor).

- 6. (a)** Under section 179(3) of the Companies Act, 2013, the Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board:
- (a) To make calls on shareholders in respect of money unpaid on their shares;
 - (b) To authorise buy-back of securities under section 68;
 - (c) To issue securities, including debentures, whether in or outside India;
 - (d) To borrow monies;
 - (e) To invest the funds of the company;
 - (f) To grant loans or give guarantee or provide security in respect of loans;
 - (g) To approve financial statement and the Board's report;
 - (h) To diversify the business of the company
 - (i) To approve amalgamation, merger or reconstruction;
 - (j) To take over a company or acquire a controlling or substantial stake in another company;
 - (k) Any other matter which may be prescribed.

Provided that the Board may, by a resolution passed at a meeting, delegate to any Committee of Directors, the Managing Director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify.

In respect of a company covered under Section 8 of the Companies Act, 2013, which has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar, the matters referred to in clauses (d), (e), and (f) of Section 179 (3) may be decided by the Board by circulation instead of at a meeting. This modification is permitted by Notification No. GSR 466 (E), dated 5th June, 2015 as amended by Notification No. GSR 584 (E), dated 13th June, 2017.

From the foregoing provisions, it is clear that the Board of MN Limited shall be perfectly in order if it delegates the power to borrow monies under clause (d) of Section 173 (3) to the Managing Director or to the manager or any other principal officer.

- (b) (i) **Appointment of IRP:** As per Section 16 of the Code where the application for corporate insolvency resolution process is made by an operational creditor and no proposal for an interim resolution professional is made in the said application. The Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional.

The Board shall recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending, within ten days of the receipt of a reference from the Adjudicating Authority.

Period of appointment of IRP: The term of the interim resolution professional shall continue from his appointment till the date of appointment of the resolution professional by CoC in first meeting of CoC under section 22 of the Insolvency & Bankruptcy Code.

- (ii) **Money Laundering:** 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 and projecting it as untainted property shall be guilty of offence of money laundering. [Section 3 of the Prevention of Money Laundering Act, 2002]

Paragraph 2 of Part A of the Schedule to the Prevention of Money Laundering Act, 2002, covers Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985. Whereby, illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances (section 23) is covered under paragraph 2 of Part A.

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