GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME

JUNE 2018

MODULE 1

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
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These answers have been written by competent persons and the Institute hope that the **GUIDELINE ANSWERS** will assist the students in preparing for the Institute's examinations. It is, however, to be noted that the answers are to be treated as model answers and not as exhaustive and the Institute is not in any way responsible for the correctness or otherwise of the answers compiled and published herein.

The Guideline Answers contain the information based on the Laws/Rules applicable at the time of preparation. However, students are expected to be well versed with the amendments in the Laws/Rules made upto **six** months prior to the date of examination.

C O N T E N T S

NOTE: Guideline Answers of the last Sessions need to be updated in the light of changes and references given below:

PROFESSIONAL PROGRAMME

UPDATING SLIP

ADVANCED COMPANY LAW AND PRACTICE

MODULE – 1 – PAPER 1

Examination Session	*Question No.*	*Updations required in the answers*
All previous sessions	—	All answers are based on the notified provisions of Companies Act, 2013 and the provisions of Companies Act, 1956 which are still in force. Relevant SEBI Regulations.

UPDATING SLIP

SECRETARIAL AUDIT, COMPLIANCE MANAGEMENT AND DUE DILIGENCE

MODULE – 1 – PAPER 2

Examination Session	*Question No.*	*Updations required in the answers*
All previous sessions	—	All answers are based on the notified provisions of Companies Act, 2013 and the provisions of Companies Act, 1956 which are still in force. SEBI (SAST) Regulations, 2011 as amended from time to time. SEBI (ICDR) Regulations as amended from time to time. Consolidated FDI Policy as amended from time to time.

UPDATING SLIP

CORPORATE RESTRUCTURING, VALUATION AND INSOLVENCY

MODULE – 1– PAPER 3

Examination Session	*Question No.*	*Updations required in the answers*
All previous sessions	—	Provisions under the Companies Act, 2013 relating to mergers, winding up and valuation are already notified. Provisions of Insolvency and Bankruptcy Code relating to Insolvency Professionals, Insolvency Professionals Agency, Corporate Insolvency Resolution Process, Liquidation Process, Insolvency and Bankruptcy Board of India, Information Utilities, Voluntary Liquidation Process, Fast Track Insolvency Resolution Process etc. are already notified.

PROFESSIONAL PROGRAMME EXAMINATION

JUNE 2018

ADVANCED COMPANY LAW AND PRACTICE

Time allowed : 3 hours *Maximum marks : 100*

NOTE: *1. Answer **ALL** Questions.*

2. All references to sections relate to the Companies Act, 2013 unless stated otherwise.

Question 1

(a) Valuable Ltd. declared dividend at its 10th Annual General Meeting. Mr. Strong holding only 19% equity share had informed the Company that his dividend be paid to Mr. Weak and gave the bank account details of Mr. Weak. When the Company electronically transferred the dividend amount to Mr. Weak's bank account, the amount was returned back to the Company as that bank account was not operative. After the expiry of one month, now, Mr. Strong is contemplating to sue the Company for non-payment of dividend. With reference to provisions of Companies Act, 2013, state if his action would be in order. (5 marks)

(b) You are practicing Company Secretary and appointed as Secretarial Auditor of Prestige Industries Limited. During the course of audit, it is found that the Company has violated provisions of Companies Act, 2013 in relation to several matters. You have to issue a qualified Report or adverse remarks or even you may be unable to express an opinion. State the manner of reporting of such issues in the Secretarial Audit Report. Also state whether financial laws needs to be examined while conducting secretarial audit ? (5 marks)

(c) Holding of meeting of Board of Directors by video conferencing does not mandatorily require prior intimation from Directors at the beginning of the calendar year. Comment on the above statement. (5 marks)

(d) Discuss the difference between a person nominated in Form INC 3 and a person nominated in Form SH 3 bringing out the rights and obligations of the Nominee in both the cases. (5 marks)

Answer 1(a)

Section 127 of the Companies Act, 2013 deals with punishment for failure to distribute dividend. It states that where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues.

Para (b) of the proviso to Section 127 provides that no offence under this Section

shall be deemed to have been committed where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him.

In the instant case, the shareholder i.e. Mr. Strong has directed the company to pay dividend to Mr. Weak.

The company tried to make electronic payment to Mr. Weak but due to his bank account being inoperative the dividend could not get credited to bank account. Therefore, it is not the fault of dividend paying company who duly acted on the direction of Strong. But the company did not communicated this fact to Mr. Strong. This is a non compliance on the part of the company.

Therefore, Mr. Strong can sue the company for non - payment of dividend after one month and his action would be in order.

Answer 1(b)

A qualification, reservation or adverse remarks, if any, should be stated by the Secretarial Auditor at the relevant places in his report in bold type or in italics. If the Secretarial Auditor is unable to express an opinion on any matter, he should mention that he is unable to express an opinion on any particular matter and the reasons therefore.

If the scope of work required to be performed is restricted on account of restrictions imposed by the company or on account of circumstantial limitations (like certain books or papers being in the custody of another person who is not available or a statutory authority etc.), the Report should indicate such limitations. If such limitations are so material that the Secretarial Auditor is unable to express any opinion, the Secretarial Auditor should state that in the absence of necessary information and records, he is unable to report on compliance(s) relating to such areas by the company.

Further, the Board of Directors, in its report, shall explain in full any qualification or observation or adverse remarks or disclaimer made by the Secretarial Auditor in his Audit Report.

In case of financial laws like tax laws and Customs Act etc., Secretarial Auditor may rely on the Reports given by Statutory Auditors or other designated professionals.

Answer 1(c)

Section 173(2) read with Rule 3 provides for the procedure for convening and conducting the Board meetings through video conferencing or other audio visual means.

Rule 3(3)(c) provides that a director intending to participate through video conferencing or audio visual means shall communicate his intention to the Chairperson or the Company Secretary of the company.

Rule 3(3)(d) If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangements in this behalf.

Rule 3(3)(e) provides that any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the

calendar year and such declaration shall be valid for one year. However, such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person.

In the light of above, the statement that holding of meeting of Board of Directors by video conferencing does not mandatorily require prior intimation from Directors at beginning of the calendar year is correct. However, he needs to give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangements in this behalf.

Answer 1(d)

The memorandum of One Person Company is mandatorily required to indicate the name of the nominee with his prior written consent in the INC-3, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles

Form INC-3 is filed pursuant to section 3(1) of the Companies Act, 2013. INC- 3 is Nominee Consent Form, in case of an OPC.

Such nomination in Form No.INC-32 (SPICe) along with consent of such nominee obtained in Form No.INC-3 is required to be filed with Registrar.

The person nominated by the subscriber or member of a One Person Company may, withdraw his consent by giving a notice in writing to such sole member and to the One Person Company.

Where the sole member of One Person Company ceases to be the member in the event of death or incapacity to contract and his nominee becomes the member of such One Person Company, such new member shall nominate within fifteen days of becoming member, a person who shall in the event of his death or his incapacity to contract become the member of such company, and the company shall file with the Registrar an intimation of such cessation and nomination to Registrar within thirty days of the change in membership.

The nomination in form SH 13 is in accordance with the provisions of Rule 19 of the Companies (Share Capital and Debenture) Rules, 2014. A holder of any security can nominate a person in whom the securities shall vest in the event of his/her death (security holder').

In the event of death of the holder of securities or where the securities are held by more than one person jointly, in the event of death of all the joint holders, the person nominated as the nominee may upon the production of such evidence as may be required by the Board, elect, either-

(a) to register himself as holder of the securities ; or

(b) to transfer the securities, as the deceased holder could have done.

(Note: In the Question, the term SH-13 should have been used / printed in place of SH-3. This being a printing mistake. However, in question paper it was indicated that this is a form for nomination. So, logically, Students would be able to understand that this is typographical error)

Attempt all parts of either Q. No. 2 or Q. No. 2A

Question 2

(a) Tough Ltd. could not hold its 12th annual general meeting by 30th September, 2017 for the year ended 31st March, 2017. It did not apply for extension of time for holding the meeting. The Company filed financial statements with the Registrar of Companies after 11 months. State the consequences of such filing under Companies Act, 2013 ? (4 marks)

(b) Abhiman is a permanent employee of Y2Z Commodities Ltd. with a turnover above ₹200 crore for the year ended 31st March, 2018. He is working in India for last two years and is also a promoter of the Company. With reference to the provisions of the Companies Act, 2013, ascertain if Abhiman is eligible to obtain employee stock option. Can the Company offer shares through stock option if Abhiman is a non-independent additional Director holding 10% of equity shares of the Company is not a promoter ? (4 marks)

(c) Solar Power Limited failed to pay dividend declared in its annual general meeting. The shareholders of the Company filed a complaint against the Company to the Registrar of Companies. The Company contended that it could not pay dividend in time in view of categorical request of its financial institutions from whom the Company has taken term loan and availed working capital facilities for business purpose. Decide if the contention adopted by the Company is tenable. (4 marks)

(d) A Korea National who is on the Board of Directors of a Private Company in India informs you as Company Secretary of that Company that he has changed his residence to Seoul, Korea. What will you do on receipt of this information under the provisions of the Companies Act, 2013 ? (4 marks)

OR (Alternate question to Q. No. 2)

Question 2A

(i) The following information is available from the balance sheet of Jupiter Pvt Ltd. as on 31.3.2018 :

	₹ crore
Issued share capital	*30*
Paid up equity capital	*25*
General reserve	*2*
Profit & Loss Account	*5*
Investment fluctuation reserve	*0.75*
Fixed asset revaluation reserve	*0.25*
Unsecured loan	*1*

Compute the maximum value of Sweat Equity shares that can be issued by the Company as on 31st March, 2018 under the provisions of the Companies Act, 2013. (4 marks)

(ii) *Prince TV Channels Ltd. had ₹7 crore as securities premium in its reserves and surplus account in Balance Sheet as at 31st March, 2017. The Company has incurred significant losses in preceding years and as on 31st March, 2017 it has accumulated losses amounting to ₹8 crore in the Balance Sheet. In order to present a true and fair view of the financial results, the company wrote off the losses by reducing the amount standing to the credit of securities premium account. With reference to the provisions of the Companies Act, 2013, decide if the action of the Company is valid. ?* *(4 marks)*

(iii) *KMP Systems Pvt. Ltd. continues to retain its status as a Private Limited Company. What are restrictions which will remain imposed on it under the provisions of the Companies Act, 2013.* *(4 marks)*

(iv) *It was written in the Articles of Association that an employee shareholder after retirement has to surrender his shares. Mr. Dependable retired from the organization after serving 20 years in the Production Department. He alleged that it was a case of oppression as he was being forced to surrender his shares. Decide if the allegation has merits ?* *(4 marks)*

Answer 2(a)

In terms of section 137(2), in case, the annual general meeting of a company for any year has not been held, the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held.

By virtue of section 137(3) of the Companies Act, 2013, if a company fails to file the copy of financial statements under sub section (1) or (2), as the case may be, before the expiry of period specified in section 403, the company shall be punishable with fine of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees and the managing director and chief financial officer of the company, if any, and, in the absence of them any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

As the company Tough Ltd filed financial statements not within time limit as specified under section 403, the above mentioned provision will be applicable. However, the company can apply the financial statement with the applicable additional fee and go for compounding of offence under Section 441 of the Act.

Answer 2(b)

Section 62(1)(b) read with Rule 12 of Companies (Share Capital and Debentures) Rules, 2014 deals with issue of Employee stock options.

A company, other than a listed company, which is not required to comply with Securities and Exchange Board of India Employee Stock Option Scheme Guidelines shall not offer shares to its employees under a scheme of employees' stock option

(hereinafter referred to as "Employees Stock Option Scheme"), unless it complies with the following requirements, namely:-

(i) the Employees Stock Option Scheme has been approved by the shareholders of the company by passing a special resolution.

Employee for the purpose of Section 62(1)(b) means-

(a) a permanent employee of the company who has been working in India or outside India; or

(b) a director of the company, whether a whole time director or not but excluding an independent director; or

(c) an employee as defined in clauses (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company but does not include -

(i) an employee who is a promoter or a person belonging to the promoter group; or

(ii) a director who either himself or through his relative or through anybody corporate, directly or indirectly,holds more than ten percent of the outstanding equity shares of the company.

Applying the above provisions in the case given, Mr.Abhiman is not eligible to obtain shares under Employees' Stock Option scheme as he is a promoter though permanent employee.

In other case, the Company can issue shares can be issued under Employees' Stock Option scheme to Mr. Abhiman if he is a non-independent additional director and does not hold more than 10% of outstanding equity shares of the company.

Answer 2(c)

Section 127 deals with Punishment for Failure to Distribute Dividends.

It provides that Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues:

Provided that no offence under this section shall be deemed to have been committed:—

(a) where the dividend could not be paid by reason of the operation of any law;

(b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;

(c) where there is a dispute regarding the right to receive the dividend;

(d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or

(e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

In the present case, the contention is that the company could not pay dividend in time in view of categorical request of its financial institutions from whom the company has taken term loan.

Point (e) of the proviso provides that no offence under this section shall be deemed to have been committed where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

Hence the contention adopted by company is tenable.

Answer 2(d)

On receipt of information from the Korean national who is on the Board of Directors of the private company, we need to take the documents duly notarised and authenticated by the Ministry of Foreign Affairs of the Republic of Korea for intimating change in his address in Korea to the Ministry of Corporate Affairs in accordance with rule 12(1) of the Companies (Appointment and Qualification of Directors) Rules, 2014. As per this rule, DIR-6 is to be filed intimating therein the change in the address and other particulars, if any. DIR-6 should be filed within 30 days of change supported by documentary evidence. Further, change in address is also required to be recorded in Register of Directors and Key Managerial Personnel and all future documents should be sent at the new address.

Answer 2A(i)

Section 54 read with rule 8(4) of Companies (Share Capital & Debentures) Rules 2014 deals with issue of sweat equity shares and limits on issue of the same.

Rule 8(4) states that the company shall not issue sweat equity shares for more than fifteen percent of the existing paid up equity share capital in a year or shares of the issue value of rupees five crores, whichever is higher. The issuance of sweat equity shares in the Company shall not exceed twenty five percent, of the paid up equity capital of the Company at any time.

Applying the same in the given situation,

15% of paid up equity share capital = Rs 3.75 Crore (25 * 15%)

Now, shares of issue value of Rs 5 crore is higher than Rs 3.75 crore.

25% of paid up equity capital = Rs 6.25 crore (25 * 25%)

Thus, maximum value of sweat equity shares that can be issued by the company as on 31st March 2018 is Rs 5 crore. The amount of reserves, profit & loss account and loan are of no relevance in this aspect.

Answer 2A(ii)

The issue involved in question has been decided by Mumbai bench of NCLT in the matter of section 52 and 66 of the Companies Act 2013 with respect to Dish TV India Ltd.

Section 53(1) of the Companies Act, 2013, inter alia provides that where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.

Section 53(2) of the Companies Act, 2013, states that the securities premium account may be applied by the company—

- towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
- in writing off the preliminary expenses of the company;
- in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
- in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
- for the purchase of its own shares or other securities under section 68.

In addition to the above as per Section 53(3) of the Companies Act, 2013, the securities premium account may also be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133,—

- in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or
- in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or
- for the purchase of its own shares or other securities under section 68.

Therefore, in the given question, the utilization of securities premium account is not out the activities which are allowed under Section 53(2) and Section 53(3) of the Companies Act, 2013.

Therefore, as per Section 53(1) of the Companies Act, 2013, in order to write off accumulated losses with the securities premium account, the provisions of reduction of share capital shall be complied with by the Company and thus, provisions of Section 66 of the Companies Act, 2013 shall be complied with by the Company.

Answer 2A(iii)

Restrictions which will remain imposed on Private company are as under:

In terms of section 2(68), "private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and

(iii) prohibits any invitation to the public to subscribe for any securities of the company;

Answer 2A(iv)

It is well settled that articles of association of a company constitutes a contract between the company and its members in respect of their rights. Section 10 of the Companies Act 2013 unambiguously provides that AOA binds the company and members to the same extent as if they respectively had been signed by the company and by each member.

In the instant case, Mr. Dependable, a retired employee alleged that onhis superannuation he was compelled to surrender his shares allotted to him during his employment which according to him tantamount to oppression and mismanagement.

It was held that since AOA of the company provided that on ceasing to be an employee of company its shares had to be surrendered, the petitioner could not avoid obligation incurred by AOA to which he himself was a party. [*Ram Saroop* v. *Hindustan Thompson Associates (P) Ltd*]

Attempt all parts of either Q. No. 3 or Q. No. 3A

Question 3

(a) Mr. Jubilant, Chairman of Remuneration Committee of your Company wants to know from you as Company Secretary of the Company details to be provided in the Boards' Report under Section 197(12) of the Companies Act, 2013 read with Rule 5 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014. The Company is listed in a Stock Exchange in Mumbai. Advise Mr. Jubilant. (4 marks)

(b) Ocean Pvt. Ltd. appointed CA Randhir as statutory auditor of the Company at the last AGM held on 28.9.2016. The next AGM convened on 28.9.2017, after consideration of other business, was adjourned due to non-adoption of annual accounts for the year ended 31.3.2017. State as to whether the appointment of CA Randhir would continue to remain valid and upto which period, even if appointment of another firm of Auditor has been considered and made at the last AGM held on 30.09.2017. (4 marks)

(c) Mr. Solid was a member of Week Cricket Club, a Section 8 Company with no share capital. Mr. Solid sought a copy of the Memorandum of Association of the Club and copies of general meeting proceedings which were not provided to him. Mr. Solid filed a complaint before Additional Chief Metropolitan Magistrate of the State pursuant to the provisions of the Companies Act, 2013 for non-furnishing of documents by the Club. The Club filed a petition before the High Court of the State for quashing the complaint. Will the Club succeed ? (4 marks)

(d) ABC Ltd. in Sydney is the holding Company of Amusement Pvt. Ltd. in India. The Board of Directors of Indian Company is contemplating issuance of bonus shares. At this juncture, the Tribunal observed that the Company was incorporated by furnishing false or incorrect information. Apart from directing removal of name from the Registrar of Companies, examine what directions or orders can be issued or passed by the Tribunal. (4 marks)

OR (Alternate question to Q. No. 3)

Question 3A

Write notes on the following :

(i) Pledge of dematerialized shares.

(ii) Removal of Managing Director

(iii) Business Conduct Policy

(iv) Investor Education and Protection Fund (4 marks each)

Answer 3(a)

Section 197(12) read with Rule 5 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides for disclosure of following details in the Board's report of the listed company-

(i) the ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year; -

(ii) the percentage increase in remuneration of each director, Chief Financial Officer, Chief Executive Officer, Company Secretary or Manager, if any, in the financial year;

(iii) the percentage increase in the median remuneration of employees in the financial year;

(iv) the number of permanent employees on the rolls of company;

(v) average percentile increase already made in the salaries of employees other than the managerial personnel in the last financial year and its comparison with the percentile increase in the managerial remuneration and justification thereof and point out if there are any exceptional circumstances for increase in the managerial remuneration;

(vi) affirmation that the remuneration is as per the remuneration policy of the company.

Rule 5 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 also provides for disclosure of a statement showing the names of the top ten employees in terms of remuneration drawn and the name of every employee, who-

(i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than one crore and two lakh rupees;

(ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than eight lakh and fifty thousand rupees per month;

(iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two percent of the equity shares of the company.

Further, the above statement shall also indicate –

(i) designation of the employee;

(ii) remuneration received;

(iii) nature of employment, whether contractual or otherwise;

(iv) qualifications and experience of the employee;

(v) date of commencement of employment;

(vi) the age of such employee;

(vii) the last employment held by such employee before joining the company;

(viii) the percentage of equity shares held by the employee in the company within the meaning of clause (iii) of sub-rule (2) above; and

(ix) whether any such employee is a relative of any director or manager of the company and if so, name of such director or manager:

Provided that the particulars of employees posted and working in a country outside India, not being directors or their relatives, drawing more than sixty lakh rupees per financial year or five lakh rupees per month, as the case may be, as may be decided by the Board, shall not be circulated to the members in the Board's report, but such particulars shall be filed with the Registrar of Companies while filing the financial statement and Board Reports.

Jubilant, Chairman of the Remuneration committee is to be advised in the lines of above enabling provisions.

Answer 3(b)

Pursuant to section 139 of the Companies Act, 2013 every company shall at each annual general meeting (AGM) ratify the appointment of an auditor or auditors to hold office from the conclusion of that meeting till the conclusion of next AGM.

As per explanation to Rule 3(7) of the Companies (Audit and Auditors) Rules, 2014, if the appointment is not ratified by the members of the company, the Board of Directors shall appoint another individual or firm as its auditor or auditors after following the procedure laid down in this behalf under the Act.

In view of the above, if for any reason, the AGM is adjourned to a later date subsequent to the date, the Board shall appoint another auditor only if office of auditor is not ratified by the members at AGM and thus, he shall continue to hold office till the conclusion of the adjourned AGM.

However, if a new auditor has been appointed in the original meeting in his place, and the meeting is adjourned the, new auditor can function as statutory auditor only from the conclusion of the original meeting.

Thus, in the instant case, the office of CA Randhir shall be valid up to the date of the adjourned AGM. However, if a new auditor was appointed in his place in the AGM held on 30th September, 2017, the office of CA Randhir shall be ceased to have effect w.e.f. the appointment of new auditor.

Answer 3(c)

The facts of the case are similar to that discussed in *Madras Cricket Club* v. *M. Subbiah CRL*. In this case the respondent was a member of Madras Cricket club (petitioner company / club), a company within the meaning of Section 25 of Companies Act, 1956 (Act) with no share capital. The respondent sought a copy of the memorandum of association of the club and copies of proceedings of general meetings which were not provided to him. The respondent filed a complaint before the additional Chief Metropolitan Magistrate, Chennai pursuant to the provisions of section 196 of the Companies Act, 1956 for non furnishing of copies of minutes etc by the club. The club filed a petition before the High Court of Madras for quashing the complaint.

The High Court quashed the complaint on the ground that the petitioner company did not have a share capital, the respondent could not be considered a 'shareholder' and under Section 621 of the Companies Act, 1956, no Court can take cognizance of any offence unless it is made at the instance the Registrar of Companies, or shareholder or a person authorised by Central Government. The respondent did not fall in any of the above categories.

Section 439 of the Companies Act, 2013 is replica of Section 621 of the Companies Act, 1956, which also states that No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorised by the Central Government in that behalf.

Thus, accordingly, in the present given case, the Club will succeed.

Answer 3(d)

Pursuant to section 7(7) of the Companies Act 2013 where a company has been incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or impression in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may on an application made to it on being satisfied that the situation so warrants:-

(a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any in its MOA and AOA, in public interest or in the interest of the company and its members and creditors; or

(b) direct that liability of the members shall be unlimited; or

(c) pass an order for winding up of the company; or

(d) pass such other orders as it may deem fit

So, in the given case, the Tribunal can pass the above orders or make directions to Amusement Pvt. Ltd. that the Board is contemplating bonus issue shall not affect the powers of the Tribunal.

Answer 3A(i)

Pledge of dematerialized shares

A beneficial owner may, with the prior approval of the depository, pledge or hypothecate his shares held in a depository. Upon receipt of intimation from the beneficial owner about the pledge or hypothecation of his shares, the depository shall accordingly make entries in its records. Such an entry in the records of a depository shall be an evidence of a pledge or hypothecation [Refer Section 12 of of the Depository Act, 1996]. Both the pledger and pledgee must have a depository account.

The procedure for pledge or hypothecation of shares held in demat form is as under:-

(i) Investor shall submit the details of shares to be pledged to the Depository Participant (DP) in the prescribed format.

(ii) DP shall verify the records and on being satisfied that the shares are available for pledge, make a note in the records and forward the application to the Depository for approval.

(iii) Depository shall obtain confirmation from pledgee and the records the pledge within 15 days of application.

(iv) Depository shall send intimation to the DP of both the pledgor and pledgee who will inform the pledgor and pledgee respectively.

(v) The pledgee may invoke the pledge in accordance with the terms of pledge and on such invocation the name of pledgee is entered in the Register of Beneficial Owners by the Depository.

(vi) During the pledge is in force, the DP shall not give effect to transfer of any security without the concurrence of the pledgee.

(vii) As per the terms of the Pledge Agreement, the pledgor shall request the DP to close the pledge. The pledgee, on getting payment, shall make a request for closure of pledge to his DP.

(viii) For making hypothecation of shares held in demat form the above procedure is to be followed. However before registering the hypothecatee as a beneficial owner, the Depository should obtain the consent from the hypothecator.

Answer 3A(ii)

Removal of Managing Director

Appointment of a Managing or Whole-time director is a contract between him and the company. Removal in breach of contract will entail payment of compensation under Section 202 of the Companies Act, 2013. Further, the appointing authority can only remove him. Hence, he can be removed by the Board or the general meeting depending on whether the Board or the general meeting had appointed him.

There is no specific provision for the removal of the Managing/Whole-time director in the Act. If any provisions have been made in the Articles of Association, such provisions shall apply.

If the terms and conditions of appointment or re-appointment provide for determination of the office prior to the expiry of the period by either party giving notice of three months or so to the other party, such condition shall be applicable.

All conditions applicable to removal of director are also applicable to managing director and whole – time directors and thus Section 168 of the Companies Act, 2013 shall be complied with.

Answer 3A(iii)

Business Conduct Policy

In "Business Conduct Policy", every employee is required to review and sign the policy at the time of joining and an undertaking shall be given for adherence to the Policy.

The objective of the Policy is to conduct the business in an honest, transparent and in an ethical manner. The policy provides for anti- bribery and avoidance of other corruption practices by the employees of the Company.

This is not mandatory under law. Business Conduct policy may become part of the Board's report and to be attached with the Financial Statement of the Company for conveying the Company's Corporate Governance and transparency policy in all its dealings with the Stakeholders.

Answer 3A(iv)

Investor Education and Protection Fund

Investor Education and Protection Fund shall be governed and managed through section 125 of the Companies Act read with the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 and Investor Education

and Protection Fund Authority (Appointment of Chairperson and Members, holding of meetings and provision for Offices and Officers) Rules, 2016.

Pursuant to the provisions of Section 125(2) of the companies Act, 2013, certain specified amounts are required to be credited to the Investor Education and Protection Fund after a period of seven years from the date it became due for payment. Further, Investor Education and Protection Fund shall be utilized for the particular purpose specified in Section 125(3) of the Companies Act, 2013.

Any person claiming to be entitled to any money transferred to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed. The person can claim this amount from company only within seven years of its transfer to Unpaid Dividend Account. After this period not only his dividend amount but also shares shall be transferred to the Investor Education and Protection Fund (IEPF), in respect of shares for which dividend has not been paid or claimed for seven consecutive years or more.

Any person claiming to be entitled to an amount lying in the Investor Education and Protection Fund may apply to the authority constituted under sub-section (5) of Section 125 of Companies Act, 2013 i.e. Investor Education and Protection Fund Authority for the payment of the money claimed.

The section provides for the items to be credited to the Fund and items for which the amount for which may be utilized for.

Question 4

(a) *Certain classes of Company should include in the Report by its Board of Directors a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of the Committees and individual Directors. For this, there should be a specified methodology tool accepted in the Company for carrying out performance evaluation. Prepare a specimen model of Board performance evaluation tool.* *(4 marks)*

(b) *You are a partner of firm of practicing Company Secretaries. Peculiar Limited has issued equity shares with differential voting rights. It has approached your firm to certify the relevant e-form to be filed with the Registrar of Companies. The Managing Partner of the firm has assigned you the duty to certify the form. State the contents of the certificate you will be issuing in the e-forms required to be filed.* *(4 marks)*

(c) *Pearl Cosmetics Ltd. has not yet called remaining 33% of the face value of its equity shares. Ms. Rukmini, a reputed singer, who has paid 67% call money earlier, wants to pay full 33% to the Company as she will be going out of India for next three months. Can the Company accept such amount from Ms. Rukmini under provisions of the Companies Act, 2013 ?* *(4 marks)*

(d) *Sensible General Insurance Company Ltd, an unlisted Company is a subsidiary of Major General Insurance Company Ltd. which is listed in Stock Exchange at Mumbai. The turnover of Sensible General Insurance Company Ltd. is ₹360 crore and profit before tax is ₹30 crore. Discuss if it has to file XBRL enabled Balance Sheet with Registrar of Companies.* *(4 marks)*

Answer 4(a)

Section 134(3)(p) of the Companies Act, 2013 require a specified class of companies to disclose the criteria of performance evaluation of the Board, its committees and of individual directors has been made in its Annual Report, however, tasks of developing the criteria for and the process of evaluation have been (appropriately) left to the discretion of the companies. For this, there should a specified methodology tool accepted in the company for carrying out performance evaluation. This specimen tool is designed to assist in assessing the effectiveness of the board, its committees and individual directors. The tool takes the form of a series of assertions which should be awarded a rating on a scale by individual directors, respective committee members and by the board as a whole. Upon completion of the evaluation complete, the matters should be discussed at a board meeting. At the Board meeting, Chairman, Nomination and Remuneration Committee and one of the representatives of the Independent Directors shall brief the manner in which evaluation exercise has been carried by them. Further, an external facilitator can play a pivotal role in board evaluation.

Generally, Chairman, Nomination and Remuneration Committee after consultation with the Chairman of the Board decides the criteria and scaling for the purpose of evaluation. This criteria can be in the form of a questionnaire which include questions like Board composition, committee composition, board meeting frequency, board role in strategy, talent management, succession planning, corporate governance, compliance management, time commitment etc.

Answer 4(b)

The contents of the certificate which will be issued by a practising company secretary while certifying PAS-3 for issue of shares with different voting rights may be as under-

I declare that I have been duly engaged for the purpose of certification of this form. It is hereby certified that I have gone through the provisions of Section 43 of the Companies Act, 2013 and rules thereunder for the subject matter of this form and matters incidental thereto and I have verified the above particulars (including attachment(s)) from the original/certified records maintained by the Company/applicant which is subject matter of this form and found them to be true, correct and complete and no information material to this form has been suppressed. I further certify that:

The said records have been properly prepared, signed by the required officers of the Company and maintained as per the relevant provisions of the Companies Act, 2013 and were found to be in order.

All the required attachments have been completely and legibly attached to this form.

Answer 4(c)

Section 50(1) of the Companies Act, 2013 states that if authorized by its articles, a company may accept from any member the whole or part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up.

Where Section 50(2) provides that a member who has paid the whole or part of the amount remaining unpaid on shares held by him even though the company has

not made a call for it is not entitled to any voting right at a general meeting on the amount so paid till such amount has been called up.

Accordingly, if authorized by its Articles, Pearl Cosmetics Ltd. can accept from Rukmini 33% of the face value of shares which is not yet called up but she will not be entitled to exercise voting right in any general meeting unless the amount he has paid is actually called up.

Answer 4(d)

The following class of companies shall file their financial statement and other documents under section 137 of the Act, with the Registrar in e-form AOC-4 XBRL given in Annexure-I for the financial years commencing on or after 1st April, 2014 using the XBRL taxonomy given in Annexure II, namely:-

(i) all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or

(ii) all companies having paid up capital of rupees five crore or above;

(iii) all companies having turnover of rupees hundred crore or above; or

(iv) all companies which were hitherto covered under the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011:

"Provided that the companies in banking, insurance, power sector, non-banking financial companies and housing finance companies need not file financial statements under this rule."

Accordingly, if Sensible General Insurance Company Limited is also in insurance business, it need not to file financial statements in XBRL.

Question 5

(a) Quality Limited, a listed entity, with a paid up capital of ₹400 crore proposes to pay the following remuneration :

(i) Commission @ 5% of net profit to Karan, Managing Director;

(ii) Directors under than Managing Director are proposed to be paid monthly remuneration of ₹50,000/- and also commission @ 1% of net profit of the Company, subject to the condition that overall remuneration payable to each of them shall not exceed 2% of net profit of the Company. The commission is to be distributed equally amongst all the Directors.

(iii) The Company also proposes to pay suitable additional remuneration to Mr. Diligent, a Director for professional services rendered as Lawyer whenever such services are utilized. (8 marks)

(b) The Board of Directors of Fun Unlimited Ltd has met for finalization of its Prospectus, During the course of meeting, the Chairman Mr. Water wants to know from you, Secretary of the Company, what manner and report is to be disclosed in the prospectus about acquisition of a land by the Company for which advance has been paid to third party. Please answer to the Chairman with reference to the provisions of the Companies Act, 2013. (4 marks)

(c) Solar Power Generation Company Pvt. Ltd. incorporated in November, 2014 has not commenced or carried on any business since its inception. Promoters of the Company being two subscribers have decided to dissolve the Company and get the name of the Company strike off from the Registrar of Companies under the Fast Track Exit Mode. The promoters Directors seek your advice for dissolving the Company. Advise. (4 marks)

Answer 5(a)

(Note: The question tag is missing in this question. The questions tag at the end of the question should have been given as under:

State, if remuneration as above can be paid to the persons concerned under the provisions of the Companies Act 2013.

Or

Comment on the above or Discuss or Elaborate etc.)

Quality Ltd, a listed company, being managed by a managing director proposes to pay the following managerial remuneration:

(i) Commission @5% of net profits to its managing director Mr. Karan: Part I of second proviso to section 197 provides that except with the approval of the company in general meeting remuneration payable to anyone managing director or WTD or manager shall not exceed 5% of net profits of the company and if there is more than one such director then remuneration shall not exceed 10% of the net profits to all such directors and manager taken together.

In the present scenario, Quality Ltd. can pay commission @ 5% to Mr. Karan, Managing Director provided he is not withdrawing any other remuneration.The said remuneration including commission to Mr. Karan can paid up to 5% of the net profit with out obtaining the approval of the Central Government, however, pursuant to the Section 196(4) of the Act, such remuneration shall be approved by the members in the next general meeting.

(ii) Directors other than the MD are proposed to be paid monthly remuneration of Rs. 50,000 and also commission @1% of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed 2% of net profits of the company:

Para (ii) of the second proviso to section 197 provides that except with the approval of the company in general meeting remuneration payable to directors who are neither managing directors nor whole time directors shall not exceed-

(A) 1% of net profits of the company if there is a managing director or whole-time director or manager;

(B) 3% of net profits, in any other case;

In the present case, maximum remuneration allowed for directors other than managing or whole-time director is 1% of the net profits of the company because the company is having managing irector also. Hence, if Quality Limited wants to fix their remuneration at not more than 2% of net profits of the company,

the approval of the company in general meeting along with Central Government is required.

(In Question 5 (a)(ii), there is printing error that " Directors other than Managing Director should have been used instead of Directors under than Managing Director)

(iii) Quality Limited also proposes to pay suitable additional remuneration to Mr. Diligent, a director for professional services rendered as lawyer whenever such services are utilised.

Pursuant to the provisions of Section 197(4) of the Companies Act, 2013, remuneration payable to the directors of a company including any managing director or whole-time director or manager shall be determined in accordance with and subject to the provisions of this section either-

i) By articles or

ii) By resolution or

iii) If articles so require by special resolution passed by company in general meeting and Remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for services rendered by him in any other capacity.

Any remuneration for services rendered by au such director in other capacity shall not be so included if-

(i) Services are of a professional nature; and

(ii) In the opinion of the Nomination and Remuneration Committee of the company is covered under Section 178(1) or the Board of Directors in other cases the Director possesses the requisite qualification for the practice of the profession.

Hence, in the instant case additional remuneration to Mr Diligent, a director for profession services rendered as a lawyer will not be included in the maximum managerial remuneration and is allowed provided Nomination and Remuneration Committee/ the Board of Directors, as the case may be, opines that Mr. Diligent possess the requisite qualification as a lawyer.

It may be noted that the compliances of Section 177 and Section 188 shall be adhered to by the Company.

Answer 5(b)

Rule 5(1)(c) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, other matters and reports to be stated in the prospectus:-

The prospectus shall include the following other matters and reports, namely:—

(a) In purchase or acquisition of any immoveable property including indirect acquisition of immoveable property for which advances have been paid to even third parties, disclosures regarding—

(i) the names, addresses, descriptions and occupations of the vendors;

(ii) the amount paid or payable in cash, to the vendor and, where there is more

than one vendor, or the company is a sub-purchaser, the amount so paid or payable to each vendor, specifying separately the amount, if any, paid or payable for goodwill;

(iii) the nature of the title or interest in such property proposed to be acquired by the company; and

(iv) the particulars of every transaction relating to the property, completed within the two preceding years, in which any vendor of the property or any person who is, or was at the time of the transaction, a promoter, or a director or proposed director of the company had any interest, direct or indirect, specifying the date of the transaction and the name of such promoter, director or proposed director and stating the amount payable by or to such vendor, promoter, director or proposed director in respect of the transaction.

In the instant case, although Fun Unlimited Limited has given advance for acquisition of land and not purchase the land, nonetheless, this is an important information for the prospective investors, accordingly, necessary details including litigation, if any pertaining to the said piece of land should be disclosed in the prospectus.

Answer 5(c)

Within 30 days from the date of the statement of accounts, they should prepare application in Form STK 2 attaching the following documents and submit it to ROC:

(i) Indemnity bond prepared on stamp paper in Form STK 3 duly notarised - signed by each Director on a separate bond.

(ii) Affidavit in STK 4 prepared on stamp paper duly signed by each Director on two separate bond paper duly notarised.

(iii) The statement of account and the application in Form STK 2 to be certified by a Chartered Accountant. The application can also be certified by a Company Secretary or a Cost Accountant in whole time practice.

(iv) A copy of the special resolution certified by the both the directors or their consent letter with a resolution passed in a Board meeting for dissolution of the Company for getting the name of the Company struck of under section 248(2) of the Act.

(v) Statement regarding pending litigations, if any.

The Registrar will intimate to the Income Tax authorities, Central Excise, Service Tax authorities and all other regulatory authorities having jurisdiction over the company about the proposal to remove the name of the company seeking their no objection to be furnished within 30 days. In case no objection is not received, ROC will presume their no objection and may proceed to publish a notice in newspaper, official gazette.

Question 6

(a) Mr. Morning, Director of a Private Ltd. Company has been requested by the Secretary of the Company to affix his digital signature certificate in the e-form meant for filing of Annual Accounts to be filed with the Registrar of Companies, West Bengal. You, Assistant Secretary, have filled up the Form and Mr. Morning has asked you what information has been provided in the e-form with respect to

share application money, deposits, dividend and conversion of warrants in the financial parameters of the Company in the relevant cells /fields/ tabs. Answer to Mr. Morning. *(4 marks)*

(b) As a result of failure to file form for satisfaction of charge within due time, Amicable Software Limited applied to Tribunal for condonation of delay. Delay was condoned with levy of additional and minor penalty. What steps would you as Company Secretary now take to complete satisfaction of charge in record of the Registrar of Companies ? *(4 marks)*

(c) Soft Pictures Pvt. Ltd. has been struck off by the Registrar of Companies, Chennai and notice thereof was published in the Official Gazette. Brillant Industries Ltd. had some dues from Soft Pictures Pvt. Ltd. and it had filed a petition to Court for winding up of the Company. Decide if Soft Pictures Pvt Ltd being already struck off by the Registrar can be wound up under the Companies Act, 2013. *(4 marks)*

(d) Glamour Rise Ltd. wishes to change its registered office from one state to another state for which it is in the process of calling an extra ordinary general meeting and pass resolution thereat. There is no Secretary in the Company, Mr. Sumana, Deputy General Manager (Finance) of the Company has approached you, as a practicing Company Secretary, about the material facts to be set out in the statement to be annexed to the notice of the Company. Advise Mr. Sumana with reference to the provisions of the Companies Act, 2013. *(4 marks)*

Answer 6(a)

The information provided in e-form AOC-4 with respect to financial parameters of the company are stated as under:

(i) Share application money given and received during the reporting period, due for refund and interest accrued thereon, share application money pending allotment, application paid during the year, Number of person share application money paid during the year, Number of person share application money received during the year, Number of person share application money paid at the end of the year, Number of person share application money received at the end of the year;

(ii) Deposits accepted or renewed, matured and claimed but not paid during the reporting period, deposits matured and claimed but not paid, matured but not claimed, interest on deposits accrued and due but not paid;

(iii) Dividend : dividend paid, proposed dividend, Unpaid dividend; Amount of dividend remitted in foreign currency;

(iv) Number of warrants issued during the year (in Indian or foreign currency), number of warrants converted into equity shares, preference shares and debentures

Answer 6(b)

The Regional Director, Ministry of Corporate Affairs ("RD"), is empowered to condone the delay in registration of charge or for giving intimation about satisfaction of the charge or modification of the charge etc and to order that the omission or misstatement in the Register of Charges be rectified.

After orders have been passed by the RD, the company is required to pay the penalty, levied if any, and file e-form 28 with a certified copy of the order so passed and. Thereafter, e-form filed with ROC for satisfaction of Charge shall be taken on record by the ROC.

(*Note* : In question, it is wrongly written that application was made to Tribunal for condonation of delay. The power to condone the delay is with Regional Director. While checking, this point may be considered and benefit of doubt may be given to students.)

Answer 6(c)

The facts of the question are similar to the one discussed in *Real Time Interactive Media Pvt. Ltd* . vs *Metro Mumbai Infra Developer Pvt. Ltd. in the High Court of Judicature* at Mumbai ordinary original Civil jurisdiction Company Petition no, 382 of 2015.

The issue to be considered is whether the company which is struck off the register of companies under Section 248(1) of the Companies Act 2013 can be wound up. As per section 250 where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under subsection (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

Section 248 (1) empowers the Registrar to remove the name of company from the register of Companies but before he does that he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice. At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.

At the same time, nothing in Section 248 shall affect the power of the Court to wind up a company the name of which has been struck off from the register of companies. The effect of company notified as dissolved is that the company shall on and from the date mentioned in the notice under subsection (5) of Section 248 cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company. Therefore, it is clear that just because the name of the company is struck off the register under Section 248 of the Companies Act, 2013, that will not come in the way of the Court to pass an order winding up of company.

In addition to the above, Section 252(3) of the Companies Act, 2013 provides that, if a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the

company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.

Thus, in the present case,Soft Pictures Pvt. Ltd. has been struck off by the Registrar of Companies, Chennai and notice thereof was published in the Official Gazette. Brilliant Industries Ltd. had some dues from Soft Pictures Pvt Ltd and filed a petition to Court for winding up of the company.Soft Pictures Pvt. Ltd., being already struck off by the Registrar, can be wound up under Companies Act, 2013.

Answer 6(d)

As per section 102 of Companies Act 2013 in case of special business to be transacted in a meeting a statement setting out materials facts shall be annexed to the notice of calling the meeting.

Accordingly, Glamour Rise Ltd shall set out the following material facts in its notice of extraordinary general meeting:-

(I) (a) Information about the shifting of registered office from one state to another state and justification thereof.

(b) the nature of contract or interest, financial or otherwise, if any, in respect of each item of every director and the manager, if any; every other key managerial personnel; and relatives of persons mentioned above

(c) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decisions thereon.

Where any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, if any and of every other key managerial personnel of the first mentioned company shall, if the extent of shareholding is not less than 2% of the paid share capital of that company, also be set out in the statement.

(II) Where any item of business refers to any document, which is to be considered at the meeting, the time and place where such document can be inspected.

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SECRETARIAL AUDIT, COMPLIANCE MANAGEMENT AND DUE DILIGENCE

Time allowed : 3 hours *Maximum marks : 100*

NOTE: *Answer **ALL** Questions.*

PART A

(Attempt all parts of either Q.No. 1 or Q.No. 1A)

Question 1

(a) *Anil Kumar, Practicing Company Secretary of ABC Ltd. while conducting the Secretarial Audit of the Company, has found that a fraud involving ₹2 crore has been committed against the company by one of its officers. The said officer has made dummy account identity in the SAP while making entries. Enumerate the procedure for reporting of fraud by Secretarial Auditor.*

(b) *Vivek Goel, one of the Shareholders of J.K. & Company Ltd., an unlisted public company, holds 100 Equity Shares in the Company bearing Share Certificate No. 17 having distinctive number from 1101 to 1200. During the settlement of financial claim in the family, it was decided that these shares will be transferred to his younger brothers Animesh Goel and Sudhesh Goel equally. The fair market value of the Share is ₹156 each share. Draft the checklist for Secretarial department of J.K. & Company Ltd. while ensuring the approval of this transfer.*

(c) *M/s Sagar Tripathi & Co., Company Secretaries, a Practicing Company Secretary Firm, is selected by NFSL Transportation Ltd. (BSE Listed Company) on basis of giving lowest bid in the Express of Interest. One of the Partners, Mrs. Neha S. Agrawal, while conducting Secretarial Audit for Financial Year 2017-18, gone through various Registers maintained under Companies Act, 2013. She also checked the non-statutory, but statistical in nature, Registers. List out these types of any 3 Registers which may require the comments of the Secretarial Auditors, though giving qualification for non-compliance may be at her discretion.*

(d) *SAI Shradha Technology Ltd. called its 51st Annual General Meeting on 8th August, 2017. Total Members of the Company were 213. The Shareholders present in the Annual General Meeting were 7 out of which 4 were proxies. The Chairman adjourned the Meeting wants of quorum. All shareholders present objected the decision of the Chairman. As a Company Secretary, list out the checklist for adjournment of meeting as per Secretarial Standard 2.*

(e) *Shrandhanjali Hotels (India) Ltd., a NSE Listed Company, wants to raise the fund of USD 800 Million for spreading its business in all over India. Arnave Sodi, Chairman of the Company, suggested for External Commercial Borrowing. The Company Secretary has opined that the same requires the Approval of the RBI under Approval Route. Describe, whether the fund can be raised under Automatic Route or not ? Also enumerate the Check point for arrangement of the fund through External Commercial Borrowing in this case.* *(5 marks each)*

OR (Alternate question to Q. No. 1)

Question 1A

(i) Vishesh Sewa Aayog, a NGO for promoting professionalism in India invites you to make a presentation on objectives and functions of Secretarial Standard Board (SSB). Prepare a brief note on captioned topic. (5 marks)

(ii) You are appointed as a Secretarial Auditor of Vikram Coal & Gas Ltd., a BSE Listed Company, for conducting Secretarial Audit for Financial Year 2017-18. During the Audit, you find that few resolutions were passed through postal ballot. What is the Website disclosures requirement under the Companies Act, 2013 in such case ? (5 marks)

(iii) The dynamic demand of business environment necessitates the changes in the contents of basis and internal charters of the Company, the Articles of Association and the Memorandum of Association. When there is such a change, indicate the documents to be checked by the Secretarial Auditor in this regard. (5 marks)

(iv) As a gesture of democratic management concept, the shareholders have a right to remove a director from his office. If done so by the shareholders, enumerate the steps to be undertaken by a Company Secretary to check the removal of a Director. (5 marks)

(v) The Chairman of the Board of Directors of AQR Ltd. has desired to call a Board Meeting in the next week. Accordingly, the Notice and Agenda Notes were sent to all Directors 9 days prior to the date of the Board Meeting. The Company Secretary, in the morning when the Board Meeting is scheduled, informed the Chairman that due to serious accident, he is unable to attend the Board Meeting. KS Das, the Dy. Company Secretary, who recently joined, is asked to conduct the Board Meeting. KS Das has successfully conducted the Board Meeting. The Company Secretary joins the office 32 days after the Board Meeting. Till date, KS Das has finalized the Minutes.

List out the check points to be observed in the Minutes by Company Secretary as per Secretarial Standard 1 with respect to following :

(a) Contents

(b) Recording in the Minutes

(c) Finalization

(d) Entry

(e) Signing and dating (5 marks)

Answer 1(a)

Section 143(14) provides that the provisions of Section 143 shall mutatis mutandis apply to a Company Secretary in practice conducting Secretarial Audit under section 204 of the Companies Act, 2013.

Section 143(12) read with rule 13 of the Companies (Audit and Auditors) Rules, 2014 as amended, provides that if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud which involves or

is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government.

The auditor shall report the matter to the Central Government immediately but not later than 60 days of his knowledge after following the procedure as under:-

(a) the auditor to report the matter to the Board/ Audit Committee, as the case may be, immediately but not later than 2 days of his knowledge of the fraud, seeking their reply or observations within 45 days;

(b) on receipt of such reply, the auditor to forward his report and the reply of the Board/Audit Committee along with his comments to the Central Government within 15 days from the date of receipt of such reply or observations;

(c) in case the auditor fails to get any reply or observations from the Board/ Audit Committee within 45 days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations;

(d) the report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same;

(e) the report shall be on the letter head of the Auditor containing postal address, email address and contact telephone numbers or mobile numbers and be signed by the auditor with his seal and shall indicates his membership numbers; and

(f) the report shall be in the form of a statement as specified in Form ADT-4.

Answer 1(b)

Ensure that:

1. The requirements contained in the Articles of Association have been followed.
2. A request for split of the share certificates has been obtained and the same is approved by the Board.
3. The prescribed instrument of share transfer (SH-4) has been duly completed and stamped as per prevailing stamp duty.
4. The share transfer deed must be dated and executed by or on behalf of the transferor and by the transferee, and specifying the name, address and occupation of the transferee have been delivered to the company within 60 days from the date of execution, along with the original share certificate.
5. Ensure that the company receives physical instrument of transfer in Form SH-4 in respect of the shares.
6. The Board approves the transfer of shares and the Memorandum of transfer is updated on the back of the share certificate by the authorised person of the company.

7. The company has delivered the share certificates within a period of one month from the date of receipt by the company of the instrument of transfer.

8. Entries in the register of transfers have been made all transfers have been properly included in the Annual Return.

9. The Register of Members is duly updated by debiting and crediting the shares to the transferor and the transferee accounts respectively.

Answer 1(c)

The following registers are generally maintained by the company though non statutory which are statistical and form part of evidence during the meetings. The secretarial auditor is advised to comment about the maintenance of these registers though he need not qualify his report in case of non compliance. These are:

1. Attendance Register of Board Meetings and General Meetings

The company has maintained a register of shareholders' attendance at the general meetings or has kept the attendance slips collected from the members at the meeting.

2. Register of Proxies

(1) The register of proxies containing details of proxies lodged in respect of every general meeting is maintained.

(2) All proxies received by the company are recorded chronologically in a register kept for that purpose, in compliance of the Secretarial Standards.

(3) The reasons for rejection of Invalid Proxies are to be mentioned in the remarks column.

3. Register of Transfers and Transmission

(1) Register of Transfers containing details of transfer of every security serially numbered and tabulated with authentication as per the procedure in compliance with the requirements of section 56 read with rule 11 of the Companies (Share Capital and Debentures) Rules, 2014.

(2) All transmissions received are to be dealt as approved by the Board.

(3) All transfer of securities held in physical form are in Form SH-4.

4. Register of Documents, where common seal was affixed

(1) If the company has common seal, a register of Common Seal Affixed is need to ne maintained in which the following details and date of affixation of Common Seal on documents are entered.

(2) The register contains the following:

(a) Number and date of the minutes authorising the use of the seal.

(b) Date of sealing.

(c) Persons in whose presence the seal was affixed.

(d) Document sealed.

(e) Location of document.

Answer 1(d)

As per section 103 of the Companies Act, 2013, the quorum of the general meeting of a public company shall be 5 members personally present if the numbers of the members are less than 1000, as the number of members present personally (excluding proxies) is less than 5, the meeting shall be adjourned.

Checklist for Adjournment of Meetings as per para 15 of the Secretarial Standards -2

1. If a Meeting, other than a requisitioned Meeting, stands adjourned for want of Quorum, the adjourned Meeting shall be held on the same day, in the next week at the same time and place or on such other day, not being a National Holiday, or at such other time and place as may be determined by the Board.

2. If a Meeting is adjourned for want of a Quorum to the same day on the next week, at the same time and place or with a change of day, time or place, the company shall give not less than three days' Notice specifying the day, date, time and venue of the Meeting, to the Members either individually or by publishing an advertisement in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district.

3. If, at an adjourned Meeting, Quorum is not present within half an hour from the time appointed, the Members present, being not less than two in number, will constitute the Quorum.

In the given case, since the meeting is being adjourned want of quorum, the above procedure to be followed and since the same day in the next week happens to be National holiday, (15th August 2017), the meeting gets adjourned to 16th August 2018. The Company has to comply with the notice requirement as provided in point 2 above.

Answer 1(e)

Shrandhanjali Hotels India Limited is a listed entity. The amount proposed to be raised through ECB based on sectoral cap provided, is over the permissible limit. Hence the same needs prior approval of the Reserve Bank of India under the extant regulations.

As the individual limits of ECB that can be raised by eligible entities under the automatic route per financial year is up to USD 750 million or equivalent for the companies in infrastructure sector, the proposed ECB is more than permissible limit under the automatic route, therefore, the prior approval of the RBI required and fund can only be raised under Approval Route.

The following check points should be considered while raising the ECB:

1. Check if the borrowings conform to the ECB Guidelines.

2. Check the Eligibility of borrower

3. Check the recognition of lender.

4. Check the All in cost Ceiling.
5. Check the permitted end use requirements.
6. Check the individual limit of ECB.
7. Check the Hedging Requirements.
8. Check the requirement of the Creation of Charge.
9. Check whether total outstanding stock of ECBs (including the proposed ECBs) from a foreign equity lender should not exceed seven times the equity holding, either directly or indirectly of the lender (in case of lending by a group company, equity holdings by the common parent would be reckoned).
10. Check whether the parking of ECB funds is as per the norms.
11. Check whether RBI permission is obtained for Pre-payment of ECB for amounts exceeding USD500 million, if necessary.
12. Check the provisions regarding refinancing/rescheduling of ECB if any.

Answer 1(A)(i)

The Institute of Company Secretaries of India (ICSI), recognising the need for integration, harmonisation and standardisation of diverse secretarial practices, has constituted the Secretarial Standards Board (SSB) with the objective of formulating Secretarial Standards.

The Secretarial Standards Board (SSB) formulates Secretarial Standards taking into consideration the applicable laws, business environment and the best secretarial practices prevalent. Secretarial Standards are developed:

— in a transparent manner;

— after extensive deliberations, analysis, research; and

— after taking views of corporates, regulators and the public at large.

The SSB comprises of eminent members of the profession holding responsible positions in well-known companies and as senior members in practice, as well as representatives of major Industry Associations viz, FICCI, CII and ASSOCHAM, representatives of regulatory authorities, such as the Ministry of Corporate Affairs, Securities & Exchange Board of India, Reserve Bank of India, Bombay Stock Exchange, National Stock Exchange of India Ltd. and the sister professional bodies viz. the Institute of Chartered Accountants of India and the Institute of Cost Accountants of India.

The scope of SSB is to identify the areas in which Secretarial Standards need to be issued by the Council of ICSI and to formulate such Standards, taking into consideration the applicable laws, business environment and best secretarial practices. SSB will also clarify issues arising out of such Standards and issue guidance notes for the benefit of members of ICSI, corporates and other users.

The main functions of SSB are:

(i) Formulating Secretarial Standards;

(ii) Clarifying issues arising out of the Secretarial Standards;

(iii) Issuing Guidance Notes; and

(iv) Reviewing and updating the Secretarial Standards/Guidance Notes at periodic intervals.

Answer 1(A)(ii)

As per section 110 read with rule 22 of the Companies (Management and Administration) Rules, 2014, following are to be checked in case of postal ballot disclosure requirement on website:

1. Where any resolution is being passed by postal ballot, notice of postal ballot to be uploaded on the website of the company, if any, and it shall remain on the website till the last date for receipt of the postal ballot from members.
2. Where any resolution is being passed by postal ballot, the result declared along with the scrutinizer's report shall be uploaded on the website of the company, if any.

Answer 1(A)(iii)

Indicative list of documents to be checked:

1. Notice convening general meeting with relevant explanatory statement.
2. Check if the Alteration is being sought for Memorandum of Association or the Articles of Association.
3. Compliances with the requirement of Special Resolution for alteration of Memorandum and Articles of Association except for the increase in the Share Capital under the capital clause.
4. Central government approval for amendment of Name or the Objects clause.
5. Minutes of General Meeting.
6. Balance Sheet and Annual Return.
7. Paper publications cuttings for change in Objects clause.
8. Memorandum of Association.
9. Articles of Association.
10. INC23, INC24, INC25, INC26, INC27, INC28, MGT14 (along with attachments).

Answer 1(A)(iv)

Check whether:

1. A special notice as required under sub-section (2) of Section 169 was given to the company to remove a director;
2. The special notice was signed by member(s) holding not less than one percent of total voting power or holding shares on which an aggregate sum of more than five lakh rupees has been paid up;

3. The company has sent forthwith a copy thereof to the director concerned and the director was provided opportunity to be heard on the resolution at the meeting;
4. The representation, if any, made by concerned director was notified to the members on the request of the director along with the notice of the resolution.
5. If the copy of the representation was not sent because the same was received too late or because of company's default, it was read out at the meeting.
6. The director who was removed from office was not reappointed as a director by the Board of directors;
7. On removal updated Register of Directors including his shareholding if any.

Indicative list of documents to be checked:

- Special notice received
- Notice and minutes of Annual General Meeting/EGM, Report of General Meeting
- Proof of sending such notice to the Director
- Representations, if any, received from the Director
- Board's Report
- DIR-2, DIR-6, DIR-8, DIR-9, DIR-10 (if any), DIR-12

Answer 1(A)(v)

(a) Contents

1. Check whether
   a. Minutes begin with the number and type of the Meeting, name of the company, day, date, venue and time of commencement and conclusion of the meeting and record of presence of quorum.
   b. Minutes record the names of the Directors present physically or through electronic mode, the company secretary in attendance at the Meeting and invitees, if any.
   c. Minutes contain a record of all decisions taken including re-constitution and appointments made at the Meeting.
   d. Leave of absence if any whether granted and if so recordings were made properly on request for leave of absence.
2. Check whether Minutes mention the brief background of all proposals and summarise the deliberations thereof. In case of major decisions, check whether the rationale thereof are also mentioned.
3. Check whether the minutes recorded the fact that a resolution was passed pursuant to the casting vote of Chairman of the Meeting.

(b) Recording

1. Each item of business taken up at the Meeting was numbered. The minutes

contain a reference to the identification of papers including report or notes laid before the meeting.

2. Minutes of the preceding Board/Committee Meeting were noted at the next Meeting held immediately following the date of entry of such minutes in the Minutes Book.

3. Where an earlier resolution or decision is superseded or modified, the Minutes contain a reference to the earlier resolution or decision.

4. Record of dissenting director's views and record of manner of voting of interested Directors.

(c) Finalisation

1. Check whether the requirements of the Standard in respect of circulation of draft minutes within fifteen days from the date of conclusion of the meeting, for comments and finalisation thereafter were duly complied with.

(d) Entry

1. Check whether the requirements of the Standards in respect of entry of minutes in the Minutes book within thirty days from the date of conclusion of the meeting and alterations thereafter were duly complied with.

(e) Signing and dating

1. Whether the draft Minutes were circulated and thereafter discussed in the next Board Meeting before being dated and signed by the Chairman as required by the Standard.

PART B

Attempt all parts of either Q. No. 2 or Q. No. 2A

Question 2

(a) List out any 5 (five) features of Depository Receipts Scheme, 2014. (5 marks)

(b) The funds collected through public issue cannot be kept in Bank Account forever, without intended allotment. Comment. (5 marks)

(c) M/s S.Core Advisory Services Pvt. Ltd. has submitted its bid invited through International Bidding Process by RE Textiles & Yarns Ltd. Being a lowest bid, the letter of award was issued in favour of M/s S.Core Advisory Services Pvt. Ltd. for providing consultancy services to set up a Knitting Fabric Plant at Maharashtra. M/s S.Core Advisory Services Pvt. Ltd. is already providing consultancy services to various organizations in India and outside India. RE Textiles & Yarns Ltd. asks M/s S.Core Advisory Services Pvt. Ltd. to enter into a Non Disclosure Agreement. The Agreement is proposed to be signed at Mumbai. The Management of RE Textiles & Yarns Ltd. wants to include the following clauses in the Agreement :

(1) No Title to Use

(2) No Obligation to Disclose, No Representations

Prepare a brief note on above two clauses required to be included in the Non-Disclosure Agreement. *(5 marks)*

OR (Alternate question to Q. No. 2)

Question 2A

(i) *The SEBI (ICDR) Regulations, 2009 have various provisions on the aspects and activities of a Public Issue by a Company. As a Secretarial Auditor, how will you verify the Time Limits followed by the Company in regard to opening the issue to the Public.* *(5 marks)*

(ii) *The scope of Due Diligence Process is wider than a Financial Audit Process. Elucidate.* *(5 marks)*

(iii) *In the process of issue of the Indian Depository Receipts (IDRs), various Agencies are required to be engaged. Prepare a brief note.* *(5 marks)*

Answer 2(a)

Some of the features of Depository Receipts Scheme, 2014:

1. The Scheme applies only to GDR issue and not FCCB issue which is governed under issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India thereunder from time to time.

2. Any Indian company whether listed or otherwise, whether public or private, any other issuer of permissible securities and any person holding permissible securities can issue GDRs as long as they are not specifically prohibited from accessing capital market or dealing in securities.

3. As per the definition of Depositary Receipt, it covers only those DRs issued by a foreign depository in permissible jurisdiction. Permissible jurisdiction means a foreign jurisdiction which is a member of the Financial Action Task Force on Money Laundering; and the regulator of the securities market in that jurisdiction is a member of the International Organisation of Securities Commissions. Schedule 1 to this Scheme provides for a list of 34 nations under permissible jurisdiction.

4. The aggregate of permissible securities which may be issued or transferred to foreign depositories for issue of depository receipts, along with permissible securities already held by persons resident outside India, shall not exceed the limit on foreign holding of such permissible securities under the Foreign Exchange Management Act' 1999.

5. The permissible securities shall not be issued to a foreign depository for the purpose of issuing DRs at a price less than the price applicable to corresponding mode of issue to domestic investors.

6. The foreign depository is entitled to voting rights if any, associated with those permissible securities whether pursuant to voting instructions from the holders of depository receipts or otherwise.

7. GDR issue does not require any approval from Government authority if it is as per this scheme. However, if any approval is necessary for issue or transfer of permissible securities to a person resident outside India (under FEMA 1999), then it shall be taken before issue of GDRs.

Answer 2(b)

Regulation 18 of the SEBI (issue of Capital and Disclosure Requirements) Regulations 2009 relating to Time limit for allotment or refund of Subscription money provides that the securities are allotted and the excess amounts are refunded within 15 days from the closure of the offer.

Further In the case of an initial public offer, the minimum subscription to be received shall be subject to allotment of minimum number of specified securities, as prescribed in sub-clause (b) of clause (2) of rule 19 of Securities Contracts (Regulation) Rules, 1957.

In case the allotment is not made or refund is not made as mentioned above within the prescribed period, the issuer shall pay interest at such rate and within such time as disclosed in the offer document.

Answer 2(c)

The Model contents of the clauses to be included in the Non-Disclosure Agreement are as under:

(1) No title of Use

Nothing contained in this Agreement shall be construed as conferring upon the Receiving Party any right of use in or title to Confidential Information received by it from the Disclosing Party, other than as expressly provided herein:-

(2) No Obligation to Disclose, No Representations

Nothing in this Agreement shall be construed as-

(i) creating an obligation on any of the Parties to disclose particular information; or

(ii) creating an obligation on the parties to negotiate; or

(iii) as a representation as to the accuracy, completeness, quality or reliability of the information.

Answer 2(A)(i)

Under Regulation 11 of SEBI (ICDR) Regulations, 2009 provides the following check which should be observed with respect to time limitation in opening of issue.

Ensure that subject to compliance with the Companies Act, 2013, public/rights issue is opened within:

1. Twelve months from the date of issuance of observations from the SEBI on draft offer document or;
2. Within three months from the latter of the following dates if there are no observations.
   a. Date of receipt of draft offer document by SEBI;

b. Date of receipt of satisfactory reply from the lead merchant bankers, where the SEBI has sought for any clarification/information;

c. Date of receipt of clarification or information from any regulator or agency, where the SEBI has sought for any such clarification/information;

d. Date of receipt of a copy of in-principle approval letter issued by the recognized stock exchanges;

3. In case of Fast Track issues the issue shall be opened within 90 days from the registration of prospectus with ROC;

4. In case of shelf prospectus, the first issue may be opened within 3 months from the date of observation of SEBI.

5. An issue shall be opened after at least three working days from the date of registering the red herring prospectus with the Registrar of Companies.

Answer 2(A)(ii)

An audit is concerned with historical financial statements only and provides an opinion as to whether the financial statements represent a "true and fair" view of the company's operations. whereas the Due diligence, on the other hand, review not only look the historical financial performance of a business but also consider the forecast financial performance for the company under the current business plan. The following table describes the difference between Due Diligence and Financial Audit Process.

Particulars	*Audit*	*Due diligence*
Scope	Limited to financial analysis	Includes not only analysis of financial statements, but also business plan, sustainability of business, future aspects, corporate and management structure, legal issues etc.
Data	Based on historical data	Covers future growth prospects in addition to historical data.
Mandatory	Mandatory	Mandatory based on the transaction.
Assurance	Positive assurance i.e. true and fairness of the financial statements	Negative assurance. i.e. identification of risks, if any
Type	Post mortem analysis	It is required for future decision
Nature	Always uniform	Varies according to the nature of transaction
Repeti-tiveness	Recurring event	Occasional event

Answer 2(A)(iii)

The following agencies are involved in the process of issue of the Indian Depository Receipt :

a. “Indian Depository Receipt” (means any instrument in the form of a depository receipt created by a Domestic Depository in India and authorized by a company incorporated outside India making an issue of such depository receipts.

b. “Domestic Depository” means custodian of securities registered with the Securities and Exchange Board of India and authorized by the issuing company to issue IDRs.

c. “Merchant Banker" means a Merchant Banker as defined in sub-regulation (cb) of regulation 2 of the Securities and Exchange Board (Merchant Bankers) Regulations, 1992.

d. "Overseas Custodian Bank” means a banking company which is established in a country outside India and which acts as custodian for the equity shares of Issuing Company, against which IDRs are proposed to be issued, by having a custodial arrangement or agreement with the Domestic Depository or by establishing a place of business in India.

Question 3

(a) UB Power Inc., a Company registered in United Kingdom, through its Indian Subsidiary, is proposing to set up a Thermal based Power Plant at Angul, in state of Odisha. The local people are protesting the proposed plant which may be injurious to their health and Environment. The Company engaged various professionals to submit the Draft Feasibility Report. In this report, the Risk Analysis is one of the important aspects. Prepare a Risk Analysis Matrix for the project. (8 marks)

(b) The Report of the Official Liquidator in a Scheme of Amalgamation is the route map in any Amalgamation process, which requires ample information from the parties involved in a Corporate Amalgamation. Provide the list of information to be furnished by them respectively to Auditor appointment by the Official Liquidator. (7 marks)

Answer 3(a)

Preparation of Risk Analysis matrix includes the following aspects:

1. Nature of Business

It covers the nature of industry, amount of air/water/noise pollution in the process, period of its existence, background of promoters, number of subsidiaries, stakeholders involved, turnover, profit from operations, contribution to CSR activities, business acquisition history etc.

2. Area of Operations

It covers location of site operations, Degree of diversification of products, location of sites of subsidiaries etc.

3. Identification of potential issues

It covers aspects of interaction with internal stakeholders such as employees, contractual labourers and with external stakeholders such as local community, shareholders, regulators, NGOs etc. A questionnaire may be evolved for each stakeholder for identifying the potential hidden issues.

4. Potential issues may be

— Regulatory non-compliance.

— Health hazard due to the operations to local community.

— Location of industry near agricultural land.

— Amount of noise.

— Impact of effluents on the rivers etc.

— Lack of disaster planning.

— Inadequate safety systems.

— Lack of sustainability initiatives.

— Lack of occupational or safety measures.

— Improper water disposal systems.

5. Impact analysis

It covers cost of regulatory non-compliance, low level of employee morale, degree of reputation risk, agitation of local community, degree of threat to long term sustainability, impact of potential issues on the financial health of the company.

6. Suggestions and mitigation measures

It covers compliance management system, proper disposal of wastes including e-waste, strong safety management systems, updated technology for manufacturing process, conservation in usage of water, energy, educating and training employees of environmental issues, frequent interaction with local community, sustainability initiatives and its reporting in the Annual Report.

Model Risk Analysis Matrix for UB Power Inc.

1. Nature of Business: Thermal Power Plant
2. Location: Odisha
3. Potential Issue and Effect

Consequence		Likelihood				
	Potential issue	*Very likely*	*Likely*	*Possible*	*Unlikely*	*Highly unlikely*
	Regulatory non-compliance					
	Health hazard due to the operations to local community					
	Location of industry near agricultural land					
	Amount of noise					
	Impact of effluents on the rivers etc.					
	Lack of disaster planning					
	Inadequate safety systems.					
	Lack of sustainability initiatives					
	Lack of occupational or safety measures					
	Improper water disposal systems					

4. Impact Analysis :
5. Suggestion and Mitigation measure :

Answer 3(b)

The Following Information is required to be furnished to the Auditors Appointed by the Official Liquidator.

From the transferor company

1. Certified true copy of the scheme of amalgamation alongwith the petition.
2. Certified true copy of the Memorandum and Articles of Association of the company.
3. List of shareholders of the company with their shareholding. Any changes during the last five years to be indicated.
4. Accounts of the company made upto the appointed day of amalgamation.
5. Address of the registered office of the company.
6. Present authorised and paid-up share capital of the company.

7. Changes in the Board of directors during the last five years alongwith list of present Board of directors.
8. Auditors reports for the last 5 years.
9. List of associated concern in which directors are interested.
10. List of various appeals pending under Income-tax, Sale Tax, Excise Duty, Custom Duty, FEMA, etc.
11. Details of loans and advances given to the associated concern/companies under the same management during the last five years.
12. Details of revaluation of assets.
13. Details of any allegations and/or complaints against the company.
14. Details of amount paid to the managing director, directors or any relative of the directors during the last five years.
15. Comparative statement of profit and loss account and balance sheet for the last five years.
16. Details of bad debts written off during the last five years.
17. Statutory Register and List of all charges registered with the Registrar of Companies and the amount secured against the same.
18. Copy of the latest annual return filed with the Registrar of Companies along with Annexures.
19. Details of all the subsidiary companies as under:
    a. Authorised and paid-up share capital of the company.
    b. List of present shareholders alongwith details of changes in the shareholding patterns during the last five years.
    c. Shareholding details.

The following information of the transferee company is required by the auditor

1. Names of the existing directors of the company.
2. List of common shareholders of the companies involved in the amalgamation with individual shareholding.
3. Authorised and paid up capital of the company.
4. Copy of latest audited balance sheet.

The auditors may also require the following records of the transferor company for examination

1. Books of accounts and relevant records for the last five years.
2. Minutes book of Board and General Meetings.
3. Statutory Registers.

Question 4

(a) You are engaged by a Bank for conducting the due diligence on behalf of the bank and submission of Diligence Report. What are the check points to be observed which may be concluded as Suggested alerts. (4 marks)

(b) The significant of the Competition Law lies in aiming at promoting competition rather than focusing on curbing monopolies. Explain. (6 marks)

(c) Competition is one of the major factors for merging of business besides to sustain and excel, though such merger is not free from its own negatives with reference to competition. Highlight the factors to be considered while evaluating the appreciable adverse effect on competition of Combination of Business. (5 marks)

Answer 4(a)

The following check points should be observed which can be concluded as Suggested alerts:

1. Disproportionately large cash payments in relation to normal requirements in a company of its size.
2. Frequent circular transactions between various bank accounts.
3. Inordinate delay in submission of stock statements/book debts/quarterly filings to the Bank(s).
4. Large differences between MSOD/QIS2/FFR etc. with stock statements and inventory regularly and particularly as on date of balance sheet.
5. Delay/default in meeting statutory payments.
6. Frequent delays and non compliances with both legal and financial.
7. Any apparent unrelated payment(s) that come to notice.
8. Disproportionate holding of Work-in-progress (WIP).
9. Regular on account payments to creditors.
10. Regular on account payments from debtors.
11. Any differential pricing system to associates.
12. Any attachment of bank accounts from statutory authorities (input from bank).
13. Borrowings from unconventional sources.
14. Dishonour of cheques.
15. Unduly large sales returns/return of bills.
16. Lack of tie ups in project finance resulting in diversion of short term funds.
17. Winding-up cases if any filed against the company.
18. Insolvency proceedings against any of the promoter(s)/director(s).

Answer 4(b)

The significance of the Competition law can be illustrated as follows:

Business community needs to be fully aware that while anti-competitive business practices may bring about short-term profits to individual corporations, in the long run they in fact become less competitive. Genuine business competitiveness is demonstrated through fierce competition in individual markets, and only competitiveness that survives market competition can sustain itself in the long term.

All businesses have a duty to act lawfully, but there are more practical reasons why compliance with competition law is particularly important. On a broad level, the main aim of competition law is to ensure that markets remain competitive. Compliance ensures that this aim is achieved to the benefit of both business and consumers. At an individual level, businesses that comply with the law could avoid the various consequences of non-compliance. The process is aimed to result in social justice and consumer satisfaction.

Further, compliance with competition law is more than just good corporate governance, as it reduces the risk of the company being subject to an investigation by the Competition authorities. In the event of violation of competition law, business can face significant financial penalties, third party actions and loss of reputation and goodwill.

In an era of global competition, voluntary compliance with competition law is becoming a global standard led by the world's most prominent international corporations. This is due to the growing recognition that breach of competition law brings about managerial burdens rather than market benefits to individual companies.

Corporations are thus obliged to firmly build up a business philosophy of abiding by established rules of fair market competition. In recognition of these facts, it becomes essential that all companies strive for voluntary observance of fair market discipline, and in the process help lay a cornerstone for a mature culture of corporate compliance.

Answer 4(c)

The following factors are considered by the Commission while evaluating appreciable adverse effect of Combinations on competition in the relevant market:

a. actual and potential level of competition through imports in the market;

b. extent of barriers to entry into the market;

c. level of concentration in the market ;

d. degree of countervailing power in the market;

e. likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;

f. extent of effective competition likely to sustain in a market;

g. extent to which substitutes are available or are likely to be available in the market;

h. market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;

i. likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;

j. nature and extent of vertical integration in the market;

k. possibility of a failing business;

l. nature and extent of innovation;

m. relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;

n. whether the benefits of the combination outweigh the adverse impact of the combination, if any.

Question 5

(a) Write short notes on the following :

(i) Breaking legal due diligence hurdles

(ii) Charges requiring Registration

(iii) Compliance Risk (3 marks each)

(b) Define the following terms :

(i) Level I ADRs

(ii) Corporate Compliance Committee (3 marks each)

Answer 5 (a)(i)

Breaking legal Due diligence Hurdles: The following points are considered as hurdles while under taking due diligence:

1. Non availability of information
2. Unwillingness of target company's personnel in providing the complete information
3. Providing of incorrect information
4. Complex tax policies and hidden liabilities
5. Multiple Regulations and its applicability
6. Process in providing data
7. Absence of proper MIS.

Actions to break hurdles in due diligence:The following actions may break the aforesaid hurdles:

- Focus follow up questions.
- Ask several people the same questions and utilise appropriate professional skepticism.
- Polite persistence may help to overcome this attitude.
- Independent check with regulatory authorities
- Strategised proper planning and timing of the due diligence such as, preliminary discussion.

Answer 5 (a)(ii)

The followings are the list of charges which is required to be registered with the Registrar of Companies:

1. a charge for the purpose of securing any issue of debentures;
2. a charge on uncalled share capital of the company;
3. a charge on any immovable property, where-ever situate, or any interest therein;
4. a charge on any book debts of the company;
5. a charge, not being a pledge, on any movable property of the company;
6. a floating charge on the undertaking or any property of the company including stock-in-trade;
7. a charge on calls made but not paid;
8. a charge on a ship or any share in ship;
9. a charge on goodwill, or on a patent or a license under a patent, or on a trade-mark, or on a copyright, or a license under a copyright;
10. Charges on properties acquired subject to any charge thereon.

Answer 5(a)(iii)

Compliance Risk

Compliance risk is the current and prospective risk to earnings or capital arising from violations of, or non-conformance with, laws, rules, regulations, prescribed practices, internal policies, and procedures, or ethical standards. This risk exposes the institution to fines, civil money penalties, payment of damages, and the voiding of contracts. Compliance risk can lead to diminished reputation, reduced expansion potential and an inability to enforce contracts.

Answer 5 (b)(i)

Level 1 ADR (unlisted, OTC traded/Pink Sheets)

Level 1 ADR is the least expensive and lowest level to provide for issuance of shares in ADR form in the US. The company issuing ADRs has to comply with the SEC registration requirements but can be exempted from full SEC reporting requirements under certain circumstances. The company is not required to issue quarterly or annual reports in compliance with U.S. GAAP. These ADRs can only be traded over-the counter and cannot be listed on a national exchange in the US. The electronic OTC markets are also called pink sheets which is a centralized quotation service that collects and publishes market maker quotes for OTC securities in real time. This is the most convenient way for a foreign company to have its equity traded in the United States. Companies with shares trading under a Level 1 program may decide to upgrade their program to a Level 2 or Level 3 program for better exposure in the United States markets.

Answer 5 (b)(ii)

Corporate Compliance Committee

Constitution and Members

To be constituted under the authority of the Board of the company. The committee members may be selected from the professional directors and senior management in the field of finance and law.

Terms of Reference

The primary responsibility of the Corporate Compliance Committee is to oversee the company's Corporate Compliance Program with respect to:

i. Compliance with the laws, rules and regulations applicable to the company including Industry Specific Laws and other laws.

ii. Compliance with the Company's Code of Conduct;

iii. Compliance with Company's policies and procedures;

iv. Compliance with established standards;

v. Compliance with prevention and detection of fraud, misappropriation etc.;

vi. Oversight of the risk management activities of the Company and the protection of stakeholders;

vii. Making recommendation to revise the compliance management programme.

Question 6

(a) Merger and Amalgamation aims at stability, development and expansion of business prospects, the decision being based on a prudent Due Diligence process. Draft a Due Diligence Process in a tabular form involving buyer and seller. *(5 marks)*

(b) What are the Auditing Limited Review to be disclosed by a Listed Entity who has listed its Indian Depository Receipts as per Part B of Schedule IV of SEBI (LODR) Regulations, 2015 ? *(5 marks)*

(c) X Ltd. received a quotation from the brokers contemplating for ₹10 Crore of Commission to procure a subscription for its public issue of Equity Shares with a nominal value of ₹100 Crore at an issue price of ₹150 Crore. The Articles of Association of X Ltd. permits to pay only 4% commission for the same. As a Company Secretary, advise on the issue. Would your answer differ, if the issue price is ₹250 Crore ?

(5 marks)

Answer 6(a)

Due Diligence Process in the M&A

Stages	*For Buyer*	*For seller*
Preparation Stage	• M&A Strategy formulation • Preparation of List of potential targets • Appoint external advisor for evaluation of targets • Short list targets • Create Due diligence team	• Structure a Business plan • Preparation of list of potential buyers • Appoint external • Advisor • Shortlist buyers
Pre diligence	• Approach targets • Negotiation of initial terms • Execute Non Disclosure Agreement Compilation of list of data required	• Approach buyers • Negotiate initial terms • Execution of Non Disclosure agreement • Creation of Data room
Due diligence	• Inspection of Data room • Analysis of private documents • Evaluation of risk and return • Structure the terms and conditions • Assistance in data room • Setting deadlines for offer	
Negotiations	• Make final offer • Negotiate and agree on terms	• Compile final offers • Select best offer • negotiations
Post diligence	• Post merger integration and cultural adjustments	• Termination of data room and ownership exchange

Answer 6(b)

The listed entity shall comply with the following requirements while preparing the financial results:

Auditing/Limited Review

(1) In case the listed entity prepares and discloses the financial results as per

Indian GAAP, the listed entity shall ensure that the annual, half yearly and/or quarterly results, as required under the laws, rules or regulations of home country, shall be audited or subject to limited review by a Chartered Accountant in accordance with Auditing ad Assurance Standards.

(2) In case the listed entity prepares and discloses the financial results as per US GAAP or IFRS, the listed entity shall ensure that the annual, half yearly and/or quarterly results, as required under the laws, rules or regulations of home country shall be audited or subject to limited review by professional accountant or certified public accountant in accordance with the International Standards on Auditing. The auditor's report shall also be prepared in accordance with the International Standards on Auditing.

The listed entity shall disclose the audit qualifications or reservations along with the financial results and the manner the company has addressed the same pertaining to the previous accounting year.

The listed entity shall disclose financial information in its functional currency and the reporting currency shall be restricted to Sterling Pound/Euro/Yen/USD and shall provide convenient translation to Indian rupees of the latest year's statement of the consolidated financial position as at the closing rate of exchange as on the date on which the financial information is presented.

The Listed entity shall provide convenient translations in English and other notes such that the IDR holders are able to understand such financial statements.

Answer 6(c)

As per Rule 13(c) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, the rate of commission paid or agreed to be paid shall not exceed:

a. 5% of the price at which shares are issued or

b. A rate authorised by articles of Association whichever is less.

Therefore, the payment of commission by the company shall not exceed the following:

5% of issue price (150 Crore *5%):	₹7.5 Crore
4% of issue price as authorised by articles:	₹6.0 Crore

Whichever is less, i.e. ₹6 Crore can be paid

However, in case, the issue price is ₹250 Crore, the commission can be paid up to ₹10 Crore (₹ 250 crore *4%)

***

CORPORATE RESTRUCTURING, VALUATION AND INSOLVENCY

Time allowed : 3 hours *Maximum marks : 100*

NOTE: *1. Answer ALL Questions.*

2. All references to sections relate to the Companies Act, 2013 unless stated otherwise.

PART A

Question 1

(a) "Global competition drives enterprises to become globally fit to face global challenges prompting them for corporate restructuring". Elucidate. (5 marks)

(b) "Inorganic growth provides an organisation with an avenue for attaining accelerated growth as compared to the organic growth in general". Comment on the statement. (5 marks)

(c) ABC Ltd. intends to delist its shares from Delhi Stock Exchange (DSE) for which it made required public announcement. Surewin Ltd., a substantial shareholder in the said Company made a counter offer.

Advise Board with a short note in accordance with the relevant and applicable regulations of Securities and Exchange Board of India (SEBI). (5 marks)

(d) "Inability to pay debts was generally a ground for moving an application for winding up of a Company under the Companies Act, 1956. But such a ground no longer exists under the Companies Act, 2013". State the circumstances which compel a company to be wound up under the Companies Act, 2013. (5 marks)

Answer 1(a)

An enterprise considering an exercise for restructuring its activities, has to take a wholesome view of the entire activities so as to exercise a Scheme of Restructuring at all levels. Competition drives technological development. Competition from within a country is different from cross country competition. Cost cutting and value addition are the inputs that get highlighted in a competitive world. Thus, innovations and inventions happen out of necessity to meet challenges of competition.

Globalization leads to increased competition. This competition can be related to product and service cost and price, target market, technological adaptation, quick response, quick production by companies, etc. Monies flow into the stream of production in order to be able to face competition and deliver the best possible goods at the convenience and affordability of the consumers. Global competition drives people to think big and it makes them fit to face global challenges. In order to become a competitive force Corporate Restructuring exercise could be taken-up. Thus to be globally fit and survive in the business with surplus, an enterprise need to restructure with inventions and innovations.

Answer 1(b)

Growth may be organic growth or inorganic growth. It improves economic prospects of a firm and is ascertained using different parameters, it may be total sales revenue, increase in market share, increased profit margin, etc.

Organic growth implies improvement in cost cutting techniques, financial restructuring within the organization, finding ways to capture more market share, optimum utilisation of resources. Organic growth is derived from internal competencies and capabilities of a business.

Inorganic growth strategies like mergers, acquisitions, takeovers and spin-offs are regarded as important engines that help companies to enter new markets, expand customer base, cut competition, consolidate and grow in size quickly, employ new technology with respect to products, people and processes. Thus, the inorganic growth strategies are regarded as fast track corporate restructuring strategies for growth. Inorganic growth provides an organisation with an avenue for attaining accelerated growth enabling it to skip few steps on the growth ladder. Restructuring through mergers, amalgamations, and takeovers, etc. constitute one of the most important methods for securing inorganic growth.

Answer 1(c)

Board Note

For the purpose of delisting of shares in a stock exchange the provisions of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 need to be complied with. In the public announcement made pursuant to regulations 3, 4 or 5 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011, the acquirer need to publish intention of delisting in case approval of:

(i) shareholders could not be got for delisting or offer for sale is not accepted by the shareholders as per threshold limit of ninety percent in terms of Regulation 17 of Delisting Regulations; or

(ii) the acquirer rejected the discovered price determined by the book building process.

Such of failures need to be publicly announced by the acquirer. In case any counter offer is made, the acquirer is not entitled to delist and not liable to pay any interest for delay due to counter offer but should make a Public announcement within 2 working days.

Answer 1(d)

One of the salient features of the winding-up provisions of the Companies Act, 1956 was the power of the Court to wind-up the company being "unable to pay its debts" under section 433(e) of the said Act. There is a significant departure in Companies Act, 2013 in which Section 272 is amended by the Insolvency and Bankruptcy Code, 2016. Accordingly, a company may be wound-up by National Company Law Tribunal under Section 271:

(a) if the company has, by special resolution, resolved that the company be wound-up by the Tribunal;

(b) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;

(c) if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound-up;

(d) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or

(e) if the Tribunal is of the opinion that it is just and equitable that the company should be wound-up.

Attempt all parts of either Q. No. 2 or Q. No. 2A

Question 2

(a) XYZ Ltd. and ABC Ltd. filed applications before National Company Law Tribunal (NCLT) for amalgamation of both the companies to form a new Company PQR Ltd. Regional Director by an affidavit pointed out the following inconsistencies in the application(s) :

(i) Main objects of XYZ Ltd. are not similar to that of ABC Ltd; and

(ii) Authorized capital of PQR Ltd. is not sufficient to cover the total consideration.

As a Company Secretary, you are requested to brief the facts and background, along with the judicial precedents, to the counsel enabling him to proceed in the matter. (5 marks)

(b) "Mergers, Demergers or Reverse Mergers are resorted to enhance, utilise or protect the brand value already earned by an enterprise". Explain how the reputation and goodwill associated with a brand name of the Company could be advantageously exploited. (5 marks)

(c) "Anti-trust laws world over believe that the free trade benefits the economy and at the same time, the legislations are formulated to forbid several types of restraints of trade and monopolisation". Justify the statement in the context of the provisions of Competition Act, 2002 with respect to mergers, demergers or reverse mergers. (5 marks)

OR (Alternate Question to Q. No. 2)

Question 2A

(i) A Ltd. was a listed Company with Kanpur Stock Exchange but got delisted in 2012. In the year 2017, the Board passed a resolution approving a scheme of

arrangement and petitioned before the National Company Law Tribunal (NCLT). Subsequent to that, scheme was placed before the members which the NCLT ordered. Two (2) shareholders holding 80% shares opposed the scheme.

As a Company Secretary, advise the Board on the next course of action(s) pursuant to the provisions of the Companies Act, 2013. (5 marks)

(ii) Progression Ltd. is a listed Company with a paid up capital of ₹200 Crore divided into 20 crore shares of ₹10 each. R, S, T and U are the promoters of the said company holding 2 crore, 5.40 crore, 0.80 crore and 2.20 crore shares respectively.

The following situations occurred at different times :

Situation 1 : T transfers 0.30 crore shares each to R & U

Situation 2 : S transfers 0.22 crore shares to T

Situation 3 : R transfers 0.20 crore shares each to T and U

As a Company Secretary, you need to advise on the required compliances, if any, under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 for the above three situations respectively. (5 marks)

(iii) "While standard parameters plays a crucial role, funding/borrowing for takeover should be organized in such a way that best suits the facts and circumstances of the specific case and should also meet the immediate needs and objectives of the management". Elucidate the statement with emphasis on the demerits of borrowing from the financial institutions and banks. (5 marks)

Answer 2(a)

The Counsel in the matter can be briefed with the following judicial precedents to the objections or observations made by the Regional Director before the National Company Law Tribunal:

(a) It was held in the matter of *Re. Rangkala Investments Ltd. (1996) 1 Comp LJ 298 (Guj)* that Court will sanction the scheme if alteration of the memorandum is by reshuffling of the Objects Clause by shifting Other Objects to Main Objects as per procedure prescribed under the Act;

(b) Bombay and Calcutta High courts have even held that there need not be unison or identity between objects of transferor and transferee companies. Companies carrying entirely dissimilar businesses can amalgamate. May refer to *Re: PMP Auto India Ltd. (1994) 80 Comp Cas 291 (Bom); Re: Mcleod Russel (India) Ltd. (1997) 13 SCL 126 (Cal)*.

(c) On approval of the scheme, transferee company can increase its authorized capital as was held in *Mahavir Weaves Pvt. Ltd. (1985) 83 Comp Cas 180*.

Answer 2(b)

Acquiring a new product is different from acquiring a brand name. Same is the case

to get rid of a product that adversely affects the brand name. At times symbols are sold to generate sufficient funds. Citibank sold the umbrella look symbol. Hotmail, WhatsApp are also one sort of brands that are sold for hefty amounts. In a related field companies think of introducing another product so that reputation and goodwill associated with a brand name could be advantageously exploited. The combination of the ability of the company to take over the manufacturing facility and build the said product with the company's brand name develops a great market for the company.

Brands/marks are a class of assets like human resource, knowledge, etc. They create a value premium for the goods and services. Mergers and acquisitions help utilize or protect the brand value already earned by an enterprise. For example, Tata Motors acquired Jaguar and Land Rover British motor car brands to exploit automobiles market worldwide.

Answer 2(c)

In India, antitrust law was formulated in the name of Monopolies and Restrictive Trade Practices Act, 1969 that has been subsumed to the Competition Act, 2002.

Section 6 of the Competition Act, 2002 prohibits any person or enterprise from entering into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and if such a combination is formed, it shall be *void*.

Section 6(2) of Competition Act, 2002 envisages that any person or enterprise, who or which proposes to enter into any combination, shall give a notice to the Commission disclosing details of the proposed combination in the form prescribed together with prescribed fee within 30 days of (a) approval of merger or Amalgamation referred to in Section 5(c) by the Board of Directors or (b) execution of any agreement or document for acquisition and Commission can deal it to investigate through Director General.

Competition Act, 2002 is enacted with a view to promote the economic development of the country, to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interest of consumers and to ensure freedom of trade carried on by other participants in market in India.

Answer 2A(i)

As per section 230(6) of the Companies Act, 2013 read with Rules made thereunder, compromise or arrangement would require approval by a majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be.

Since the proposed scheme was opposed by two shareholders holding 80% shares, hence it does not fulfill requirement of section 230(6) and will not be approved by the Tribunal based upon the reports received from Scrutinizer and Chairman of the meeting.

Moreover, it is given that A Ltd. was delisted in 2012 and hence it was not required to submit the scheme with SEBI, so observations, if any, from SEBI or stock exchanges were not required.

The Board of A Ltd. may review the said scheme of arrangement and prepare a revised scheme of arrangement considering the observations of shareholders, if any, and present it for shareholder's approval upon NCLT directions.

Answer 2A(ii)

In the instant case R, S, T and U being promoters are to be considered as Persons Acting in Concert as per the definition in Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. In terms of Regulation 29(1) of the said Regulations any person together with persons acting in concert crosses 5% of shares or voting rights needs to disclose to the Target Company and concerned Stock Exchanges within 2 working days in the prescribed format and in a similar way, Sub-regulation (2) requires such persons holding more than 5% acquires or sells more than 2% require compliance of the same. As per given case R, S T & U are holding 10%, 27%, 4% and 11% shares respectively.

In all the 3 situations, disclosures in the prescribed formats need to be made to the company and concerned stock exchanges as per Regulation 29(2) although transfers involve mere 1.5%, 1.1% & 1% respectively.

Answer 2A(iii)

While discussing mode of acquisition, certainly there would be a planning for organizing the necessary funding for takeover of an enterprise. Funding of a merger or takeover with the help of loan from financial institutions, banks, etc. has its own merits and demerits. If borrowing from domestic Banks or Financial Institutions has been identified as a choice, all the financial and managerial information must be given to the Banks and Financial Institutions for the purpose of getting necessary finance.

Justice P N Bhagawati Committee on Takeovers, in its report of 2002 has recommended that Banks and Financial Institutions are to be encouraged to consider for financing of takeovers. The advantage of funding through this route is that the period of such funds is definite. But the flaw is that the interest burden is quite high and the merged or target Company must generate adequate returns to make timely repayments of interest and installments. There is a risk of acquirer becoming defaulter and it may become case of non-performing assets triggering insolvency proceedings as per Insolvency and Bankruptcy Code, 2016.

Question 3

(a) What corrective measures a Company can take to restructure its internal finance having noticed symptoms of either under capitalization or over capitalization ? (3 marks)

(b) "Consequent to restructuring, more particularly through mergers, amalgamations or takeovers, the management needs to be sensitive to employees' morale". Briefly comment on the validity of the statement.(3 marks)

(c) What is the purpose of observation letter issued by Stock Exchange(s) under SEBI (Obligations and Disclosure Requirements) Regulations, 2015 ? (3 marks)

(d) Several Credits Finance Company Ltd., a Non-Banking Finance Company (NBFC) is in the process of merging with Hatke Bank Ltd, a Scheduled Bank. Recommend

the steps/actions to be undertaken by Hatke Bank Ltd with respect to the relevant statutory provisions as may be applicable in this case. *(3 marks)*

(e) "Demerger is not expressly defined under the Companies Act, 2013". How does an application move before the National Company Law Tribunal (NCLT) for Demerger under the said Act ? *(3 marks)*

Answer 3(a)

On identifying symptoms of under-capitalisation, the company should resort to one or more of the following corrective measures:

(a) Injecting more capital either through right/preferential or public issue;

(b) Issuing bonds and debentures;

(c) Inviting and accepting deposits from directors, shareholders, relatives, business associates or public;

(d) Reducing the dividend per share split up at the shares;

(e) Issuance of bonus share will reduce both the dividend per share and earnings per share.

And in case of over-capitalisation, following corrective measures may be resorted to:

(a) Buy-back of own shares;

(b) Reduction of capital by paying surplus capital to shareholders;

(c) Repaying loans to financial institutions, banks, etc.;

(d) Repaying fixed deposits taken from public, etc.;

(e) Redeeming its debentures, bonds, etc.;

(f) Preference shares may be redeemed through capital reduction scheme;

(g) Reducing face value and paid up value of equity shares;

(h) Initiating merger with well managed profit making companies interested in taking over ailing company.

Answer 3(b)

A merger can join two cultures, two sets of procedures and protocols, two sets of policies and change the employment environment and prospects of several hundreds of employees, who have been the bed rock of past successes and the key to future value.

Companies need to be sensitive with regard to terms and conditions of employment specifically at senior levels in order to ward off high labour turnover. Usually, Courts would uphold terms of employment to be no less favourable than existing terms and conditions. Post-acquisition, parent company may want the acquired to adopt compensation structure of the parent entity. The Company needs to carefully handle such sensitive areas to ensure employee satisfaction and comfort, which pays in the

long run in building an image apart from preventing or reducing employee turnout. At times, in support functions, allocation becomes a challenge for senior positions like CFO, HR Head, etc. A careful planning is needed to avoid overlapping, underutilization.

Answer 3(c)

A listed entity desirous of undertaking a scheme of arrangement or involved in a scheme of arrangement shall under Regulation 37 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 file the draft scheme of arrangement, proposed to be filed before any Tribunal under Sections 230-234 and section 66 of Companies Act, 2013, whichever applicable, with the stock exchange(s) for obtaining Observation Letter or No-objection letter (letter with the comments of the stock exchange and SEBI on the draft scheme), before filing such scheme with any Tribunal, in terms of requirements specified by the Board or stock exchange(s) from time to time.

The listed entity shall place the Observation letter or No-objection letter of the stock exchange(s) before the Tribunal at the time of seeking approval of the scheme of arrangement.

Answer 3(d)

In case of scheme of merger by the Non-Banking Financial Company (NBFC), approval needs to be obtained from National Company Law Tribunal, whereas the scheme by Banks needs approval from Reserve Bank of India. As per paragraphs 15 and 16 of the Master Direction issued by RBI, the Banking Company needs to ensure:

(a) The NBFC has not violated any RBI/SEBI norms;

(b) The NBFC complied with KYC norms of all its accounts which will become accounts of banking company after amalgamation;

(c) If it is found that the NBFC has any credit facilities from Banks or Financial Institutions, whether the loan agreements mandate the NBFC to seek consent of the Lending Bank/FI for merger/amalgamation.

Answer 3(e)

'Demerger', 'merger', or 'amalgamations' are not expressly defined under Companies Act, 2013. However explanation to Section 230(1) gives a clue about the word demerger.

Applications are filed in accordance with sections 230 to 234 of the Companies Act, 2013 with the National Company Law Tribunal because such applications involve compromise or arrangement with creditors and members. As per the same arrangement, a reorganization of the company's share capital by consolidation of shares of different classes or by the division of shares into shares of different classes or both. Thus, said explanation indicates appropriateness to move the Tribunal.

PART B

Question 4

(a) "Fair value of shares is in fact not precisely fair but a compromise effort for bringing the parties to an agreement, just like providing extra play time in a Hockey or Football match especially in case of a tie". Justify the statement with your views. *(5 marks)*

(b) Fast Growth Ltd. gave the following information with a request to calculate the value of each of its equity shares :

(i) Subscribed capital consists of fully paid up shares as follows :
10 lakh 13% Preference shares of ₹10 each and
20 lakh Equity shares of ₹10 each

(ii) Profit after depreciation but before taxation is ₹180 lakh

(iii) Transfer to general reserve ₹34.50 lakh

(iv) Provision for taxation is 30%

(v) Expected dividend is 20% for the relevant industry. (5 marks)

(c) Simran Simple Synthetics Ltd. is contemplating to issue Sweat equity shares for their staff in R&D department. Shares are listed on both the exchanges i.e., BSE and NSE. As a Company Secretary, you are tasked with enlightening the Board on the manner of fixing price per Sweat equity share in line with the SEBI regulations. (5 marks)

Answer 4(a)

There is no mathematically accurate formula of valuation. An element of guesswork or arbitrariness is involved in valuation though it is possible to calculate book value, market value averaging quoted prices for a period. The following four factors have to be kept in mind in the valuation of shares:

(1) Capital cover,

(2) Yield,

(3) Earning capacity, and

(4) Marketability

However, efforts are made to ascertain fair value just like extension of play time in Hockey or Football in case of tie even in extra time. Valuation based on fair value is appropriate when market value of a company is independent of its profitability. Dividing the aggregate of values obtained through net assets method and yield method is the process to arrive at fair value. In another way the following well-known methods are applied to get fair value:

(a) The manageable profits basis method or the earning per share method;

(b) The net worth method or the break-up value method; and

(c) The market value method.

The fair value of a share is the average of the value of shares obtained by the net assets method and the one obtained by the yield method. This is, in fact not a valuation, but a compromise formula for bringing the parties to an agreement.

Answer 4(b)

		₹
(i)	Profit after depreciation but before taxation	1,80,00,000
	Less : provision for tax @ 30%	54,00,000
	Profit before transfer to General Reserve	1,26,00,000
	Less : transfer to general Reserve	34,50,000
(ii)	Divisible profits for dividend	91,50,000
	Less : Dividend for preference shares @ 13%	13,00,000
(iii)	Divisible profits available for equity shares	78,50,000

Rate of dividend per equity share = 78,50,000 / 2,00,00,000 x 100 = 39.25%

Dividend rate in the industry = 20%

Hence, value of each equity share: 39.25/20x10 = ₹ 19.63 against face value ₹10

Answer 4(c)

To

The Board of Directors
Simran Simple Synthetics Ltd.

Sub: Manner of fixing the price of sweat equity shares issued by Simran Simple Synthetics Ltd.

The shares of the company are listed on BSE and NSE respectively. As the company wants to issue sweat equity shares it has to comply with the Securities and Exchange Board of India (Issue of Sweat Equity) Regulations, 2002. SEBI has specified various norms including the provisions relating to fixation of price in case of issuance of sweat equity shares by a listed company.

In calculating the price for sweat equity shares one need to follow the Securities and Exchange Board of India (Issue of Sweat Equity) Regulations, 2002. As per these Regulations, price is determined as per higher of the following as on the relevant date:

(a) Average of weekly high and low closing prices during last six months;

(b) Average of weekly high and low closing prices during last 2 preceding weeks

"Relevant date" for this purpose means the date which is thirty days prior to the date on which the meeting of the shareholders is convened, in terms of the provisions of the Companies Act, 2013.

1. If the shares are listed on more than one stock exchange, but quoted only on one stock exchange on the given date, then the price on that stock exchange shall be considered.

2. If the share price is quoted on more than one stock exchange, then the stock

exchange where there is highest trading volume during that date shall be considered.

3. If shares are not quoted on the given date, then the share price on the next trading day shall be considered.

Hence, in the instant case trading volumes are to be compared in addition to quoted price in both BSE and NSE stock exchanges. The Regulations also require valuation of intellectual property that creates value addition.

Question 5

(a) Despite having a statutory warning by Mutual Fund Companies as "Past performance may or may not sustain in future", past share market price data is quite often used in equity valuation while investing/acquiring equity and SEBI regulations also take into account weekly highs and lows of such market prices as litmus test. However, there may be certain inherent flaws and/or limitations while going by such market based valuation(s). Highlight to your Board of directors certain possible flaws and limitations in such market price based valuation(s) which may be misleading. (5 marks)

(b) Explain the following methods of valuation :

(i) Net Realisable Value Method

(ii) Valuation in case of Slump Sale (5 marks)

(c) From the following data noticed from published financials, ascertain intrinsic value of equity shares :

Goodwill	*₹ 56,400*
Market value of other assets	*₹18,00,000*
Debentures	*₹10,00,000*
Trade payables	*₹2,50,000*
Preference capital	*₹2,00,000 and*

Equity capital consists of 10,000 shares of ₹10 each fully paid up.

(5 marks)

Answer 5(a)

While ascertaining the value of an organisation, normally market price of its shares is taken into consideration for the purpose of valuation. In many of the SEBI regulations too weekly high or low prices of 26 weeks (amounting to 6 months) or some other period is taken into account in fixing prices for ESOPs, substantial acquisitions, etc.

Market based approach suffers from certain flaws where the shares are not listed or are thinly traded. It is unsuitable for valuation of a division. If there is an intention to liquidate and distribute assets, market based valuation is not applicable. In cases of merger and amalgamations, if one of the companies is not a listed company, market data is not available for valuation.

If the period involves abnormal events like bonus or rights issue, the valuer need to marshal out the results. Political factors, natural calamities, cyclical fluctuations may also adverse the data collected that need to be properly adjusted.

Answer 5(b)

(i) Net Realisable Value Method

This valuation method is generally used in case of liquidation, where assets have to be valued as if they were individually sold and not on a going concern basis. Liabilities are deducted from the liquidation value of the assets to determine the liquidation value of the business. One should also consider liabilities which will arise on closure such as retrenchment compensation, termination of critical contracts, etc. Tax consequences of liquidation should also be considered. Any distribution to the shareholders of the company on its liquidation, to the extent of accumulated profits of the company is regarded as deemed dividend. Dividend Distribution tax will have to be captured for such valuation.

(ii) Valuation of Slump Sale

Slump sale is transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities.

The undertaking has to be transferred as a result of sale. If an undertaking is transferred otherwise than by way of sale, say, by way of exchange, compulsory acquisition, extinguishment, inheritance by will, etc., the transaction may not be covered by section 2(42C) of the Income-tax Act, 1961. The consideration for transfer is a lump sum consideration. This consideration should be arrived at without assigning values to individual assets and liabilities.

As per Section 50B of the Income-tax Act, 1961, capital gains arising on slump sale are calculated as the difference between sale consideration and the net worth of the undertaking. Net worth is deemed to be the cost of acquisition and cost of improvement for the purpose of calculation of capital gains tax.

Answer 5(c)

		₹
Assets		
Goodwill		56,400
Other assets		18,00,000
Total		18,56,400
Less:		
Debentures	10,00,000	
Trade payables	2,50,000	
Preference capital	2,00,000	14,50,000
Net worth available for equity shareholders		4,06,400

Equity share capital consists of 10,000 shares

Hence, intrinsic value per equity share : 4,06,400 / 10,000 = ₹ 40.64

PART C

Attempt all parts of either Q. No. 6 or Q. No. 6A

Question 6

(a) *"Default by debtor was a crime punishable with imprisonment or death". This forgotten perception with respect to the laws of bankruptcy has now got transformed giving opportunity to a bankrupt or insolvent for revival. Express the views in the current context of evolution of Insolvency Laws in Britain and U.S.A and now even in India.* *(5 marks)*

(b) *"Vasudev Kutumbakam or one world one family is the motto of any business entity in addition to political and cultural togetherness. This has prompted to the formation of United Nations Organisation (UNO) to ensure smooth universal trade". Comment on the statement with special emphasis on efforts being made with respect to Cross Border Insolvency.* *(5 marks)*

(c) *"More and more banks are embarking on forming of Asset Reconstruction Companies such that they can manage their risks better and can concentrate on lending". Explain the salient features and functions of an Asset Reconstruction Company in the context of the above statement.* *(5 marks)*

(d) *Unlike Companies Act, 1956 winding up can be resorted to only when resolution plan either could not be finalised or failed within 30 days of approval by adjudicating authority as per Insolvency and Bankruptcy Code, 2016. Are there any exceptions to such perception ? Who all are entitled to move petitions for winding up ?* *(5 marks)*

OR (Alternative question to Q. No. 6)

Question 6A

(i) *"Banks and financial institutions do have free hands to take possession of assets of a defaulting debtor under Securities and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002". Are there any exceptions to the statement under the Act ? Explain.* *(5 marks)*

(ii) *Progress of enforcement of Insolvency and Bankruptcy Code, 2016 depends on four pillars apart from the adjudicating authorities. State briefly the role of such pillars.* *(5 marks)*

(iii) *UNCITRAL Model Law is binding on member countries but at the best obiter dicta for Courts of the member countries dealing in disputes relating to cross border insolvency and international trade. Elucidate.* *(5 marks)*

(iv) *M/s Speed Airways Pvt Ltd. a borrower, filed a case before a civil court that Diligent Bank, a secured creditor, has not issued any letter to the company for demanding of repayment of loan and stating its intention to enforce the secured interest. Rather, fraudulently transferred the funds from its account to another*

company only to classify it as NPA as per the provisions of SARFAESI Act, 2002. In the light of the decided case, state whether the case is maintainable. *(5 marks)*

Answer 6(a)

First Bankruptcy Law was enacted in England in 1542 in which debtor was looked upon as in a sense an offender, and the Law was mainly for the benefit of creditors. Said law was providing equal distribution of debtor's assets among creditors yet not relieving the debtor for punishment. But at present Insolvency Act, 1986 in UK is prevalent to deal with insolvencies of individuals and companies.

Opportunity is given to revive the company to emulate the 'rescue' culture that characterised the corporate sector in U.S.A. Early bankruptcy laws in USA were draconian as were in England and were only available to merchants and generally involved imprisonment until debts were paid or until property was liquidated or creditors agreed to release of the debtor. Bankruptcy Abuse Prevention & Protection Act, 2005 in USA attempts to overhaul earlier Codes with specific reference to consumer protection, restoring personal responsibilities and integrity in the bankruptcy system.

In India also with promulgation of Insolvency and Bankruptcy Code, 2016, debtor is given revival opportunity before liquidation.

Answer 6 (b)

United Nations Commission on International Trade Law (UNCITRAL) was formed in 1966 as on organ of UNO with a mandate to further the harmonization and unification of the law relating to International Trade. Commission has developed a Model Law on Cross-Border Insolvency (the Model Law) in order to create and maintain harmony in regulatory aspects of insolvency mechanism across countries. The Model Law respects the differences among national procedural laws and does not attempt a substantive unification of insolvency law. It offers solutions that help in several significant ways to have harmony among regulatory frameworks. Its Motto is harmonization of legislations across countries.

Model Law aims co-operation between the courts and competent authorities, greater legal certainty for trade and investment, fair and efficient administration to protect the interests of creditors, stakeholders including the debtor, protection, maximisation of the value of the debtor's assets and facilitation of the rescue of financially troubled businesses thus protecting investment and preserving employment. Key provision of Model Law aims at access, recognition, relief assistance and co-operation.

Answer 6(c)

It may not be straight yes or no because many banks and financial institutions do have Recovery Cells in addition to Asset Recovery Companies (ARC) to tackle menace of non-performing assets (NPAs). 21st Century gave recognition to outstanding loans with banks and financial institutions upgrading assets to tradeable asset. Doubtful and bad loans have to be termed as NPA as per RBI mandate that make Balance Sheets look dirty.

ARC is a company registered with Reserve Bank of India under section 3 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 for the purposes of carrying on the business of asset reconstruction or securitisation, or both. ARC buys NPAs, obviously discounted, to make bank balance sheet cleaner and encourage them to use their time, energy and funds for development. ARC can mix acquired good and bad assets to make them saleable. Practically, ARC acts as an agent for any bank or financial institution for the purpose of recovering their dues, mange borrower's assets, act as Receiver and other ancillary business exclusively.

Answer 6(d)

Difference between Companies Act, 1956 and Companies Act, 2013 in terms of winding-up is that in the former "inability to pay debts" is to be proved but in latter in terms of Insolvency and Bankruptcy Code, 2016 occurrence of "default" in payment of installment whether principal or interest or both is to be established. The general perception is failure of Resolution Plan that triggers winding-up. But in case of voluntary winding-up Resolution Plan does not arise.

Section 271 of the Companies Act, 2013 includes grounds for winding-up against companies that are run against sovereignty, integrity or with fraudulent action. Like under the 1956 Act, the company, any contributory, the Registrar, Officer of Union or State Government as authorised can present petition before National Company Law Tribunal for the winding-up of a company. State Government may authorize its officer, in case, anyone is found formed against the security of the concerned State or against public policy.

Answer 6A(i)

It is true that there are certain exceptions to the applicability of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by banks and financial institutions. As per section 31, the provisions of this Act do not apply in the following instances:

(a) A lien on any goods, money or security given as per Indian Contracts Act, 1872, Sale of Goods Act, 1930 or any other law for the time being in force;

(b) A pledge of moveable goods;

(c) Creation of any security in an Aircraft registered under the Aircraft Act, 1934;

(d) Creation of security interest in a vessel in terms of the Merchant Shipping Act, 1958;

(e) Rights of unpaid seller under section 47 of the Sale of Goods Act, 1930;

(f) Properties not liable for attachment or sale under the first proviso to sub-section (1) of section 60 of the Civil Procedure Code, 1908;

(g) Any security interest for securing repayment of any financial asset not exceeding one lakh rupees;

(h) Any security interest created in agricultural land; and

(i) Any case in which the amount due is less than twenty per cent of the principal amount and interest thereon.

Answer 6(A)(ii)

It is true to state that Insolvency and Bankruptcy Board of India (IBBI), Insolvency Professional Agencies (IPAs), Insolvency Professionals (IPs) and Information Utilities (IUs) are the four pillars for the progress and implementation of the Insolvency and Bankruptcy Code, 2016 apart from the adjudicating authorities, i.e., NCLT and DRT.

IBBI functions with a Chairman, 3 Central Government, 1 RBI ex-officio and five members including 3 whole-time members as nominated by Central Government. IBBI is entrusted with framing regulations for insolvency and bankruptcy related matters, setting eligibility and registering intermediaries i.e. IPA, IP and IU as well as monitoring those intermediaries.

IPAs are registered bodies to enroll IPs before registration with IBBI. IPs will assist in completion of insolvency resolution, liquidation and bankruptcy proceedings envisaged in the Code. IP is entrusted with corporate debtor to frame Resolution Plan for revival through Committee of Creditors within 180/270 days.

IU is to keep records of liabilities relating to debtors, creditors electronically. These would collect, collate, authenticate and disseminate financial information to facilitate insolvency proceedings.

Answer 6(A)(iii)

Obiter dicta refer to opinion expressed in a Court by the Judge but not essentially to the decision and hence not binding. Thus the statement emphasises to adopt the law as legislation in member countries but not binding on Courts unless incorporated in a legislation. Framing of UNCITRAL Model Law was necessitated due to certain reasons:

(a) global expansion of trade and investment;

(b) inadequate and inharmonious legal approaches due to differences in regulatory platform across countries that hampers the rescue of financially troubled businesses and impede the protection of the assets of the insolvent debtor against dissipation;

(c) increasing incidences of cross border insolvency due to integration of trade across countries;

(d) National insolvency laws of different countries have by and large not kept pace with the trend.

Main thrust of Model Law is to achieve fair and efficient administration of cross border insolvencies protecting the interest of every stakeholder.

Answer 6(A)(iv)

Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2OO2, provides that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

The facts of present case are similar to case of *M/s Golf Technologies (P). Ltd. & Anr* v. *Axis Bank Ltd. & Ors (Del)* where the issue was that the company stated that the letter dated 31st December, 2012 was not issued and that it was fraudulently created by the bank, hence the transfer of monies from the plaintiffs' account to M/s Tulip Telecom Limited was wrong and the said amount was depleted from their account only to classify it as an NPA. This according to the plaintiff amounts to fraud and would form the basis of the maintainability of the present suit.

The ground alleged in the suit is fraud by the bank played upon the plaintiff. Suit was dismissed on the ground that civil court has no jurisdiction to decide the case which Debt Recovery Tribunal has power except in case of fraud. Court was of the view that the ground of fraud raised by the plaintiff can be duly addressed in proceedings under Section 17 of the Act.

Accordingly, the case of M/s Speed Airways Pvt. Ltd. will not be maintainable in the court. It can approach Debt Recovery Tribunal.

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