

PAPER - 13 : CORPORATE AND ECONOMIC LAWS
SUGGESTED ANSWERS
SECTION – A

1.

- (i) (D)
- (ii) (A)
- (iii) (C)
- (iv) (B)
- (v) (B)
- (vi) (A)
- (vii) (C)
- (viii) (D)
- (ix) (B)
- (x) (A)
- (xi) (B)
- (xii) (B)
- (xiii) (A)
- (xiv) (D)
- (xv) (A)

SECTION – B

2. (a)

Class Action as per section 245 of the Companies Act, 2013 Class Action is provided under Sec245 of the Companies Act, 2013. A class action lawsuit provides a legal advantage where many people can collectively file a lawsuit against an individual or business for similar nature of damages caused. If they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for seeking orders.

A petition for Class Action can be filed to seek the following reliefs:

- (a) to restrain the company from committing an act which is *ultra vires* the Articles or Memorandum of Association of the company;
- (b) to restrain the company from committing breach of any provision of the company's memorandum or articles;
- (c) to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;
- (d) to restrain the company and its directors from acting on such resolution;
- (e) to restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;
- (f) to restrain the company from taking action contrary to any resolution passed by the members.
- (g) to claim damages or compensation or demand any other suitable action from or against—
 - (i) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;
 - (ii) the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or

- (iii) any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;
- (h) to seek any other remedy as the Tribunal may deem fit.

2. (b)

Persons who are not entitled to initiate insolvency resolution process under the IBC, 2016.

The court states that a corporate debtor (which includes a corporate applicant in respect of such corporate debtor) shall not be entitled to make an application to initiate corporate insolvency resolution process (Section 11 of Insolvency and Bankruptcy Code, 2016) in the following cases:

- (a) when undergoing a corporate insolvency resolution process; or
- (b) having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or
- (c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or
- (d) a corporate debtor in respect of him a liquidation order has been made.⁹

3. (a) Quorum of company's Board meetings

- (i) According to Section 174 of the Companies Act, 2013 the quorum for a Board Meeting shall be onethird of its total strength or two directors, whichever is higher.
Here the strength is 10. $\frac{1}{3}$ rd of total strength is 3.33 or 4.
So the quorum is 4.(any fraction rounded as one).
- (ii) The companies covered under section 8 of the Act shall constitute quorum for the Board meeting, either eight members or 25% of its total strength whichever is less. Provided that quorum shall not be less than two members. [Vide Notification G.S.R.466(E) dated 5th June 2015].
As Startup Odisha Ltd. is a section 8 company, the quorum will be decided as per above provisions.
Here $\frac{1}{4}$ th of total directors is 2. Hence the quorum is 2.
- (iii) Interested Director means any director whose presence cannot counted for the purpose of forming a quorum at a meeting of the Board, at the time of the discussion or vote on any matter.
The Act prohibits an interested director from participating in the discussion of or voting on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company in which his presence shall not be counted for the purpose of forming a quorum at the time of any such discussion or vote and if he does vote, his vote shall be void.
There is requirement of $\frac{12}{3}$ i.e., 4 directors to be quorum, However, now 8 directors are present (excluding the interested director); Hence quorum is available for a valid BOD meeting of X Ltd.

3. (b)

(a) Restriction in dealing in foreign exchange, etc. (Section 3) under FEMA

Section 3 prohibits the following transactions, namely:

- (i) dealing in or transferring any foreign exchange or foreign securities by any person not being an authorized person.
- (ii) making any payment to or for the credit of any person resident outside India in any manner.
- (iii) receiving otherwise than through an authorized person, any payment by order or on behalf of any person resident outside India in any manner.
- (iv) entering into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.

(b) Restriction in holding of foreign exchange (Section 4)

No person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India, other than those provided under the relevant Rules. Rules provide exemption as under.

- (i) Property held outside India by a foreign citizen resident in India.
- (ii) Property acquired by a person on or before 8th July, 1947 and held with the permission of Reserve Bank.
- (iii) Property acquired by way of gift or inheritance from persons referred to in above.
- (iv) Property purchased out of funds held in RFC account.

4. (a) (i) Whether RR Ltd comes within the purview of CSR Regulations

As per section 135(1) of the Companies Act, 2013, the CSR regulations will apply where any of the following conditions are fulfilled:

- Net worth of Rs. 500 crores or more, or
- Turnover of Rs.1000 or more, or
- Net profit of Rs. 5 crores

Since RR Ltd. fulfils the net profit criteria, CSR Regulations will apply.

- (ii) Formation of CSR Committee Yes, where a company comes under the purview of section 135 of the Act, CSR Committee is required to be formed.

- (iii) Minimum budget for CSR for 2023-24 Average profits for the last 3 years = $6.9+7.9+8.9=23.7/3 = 7.9$ crores Minimum budget for CSR for 2023-24= 2% of 7.9 = Rs.15.8 lakhs

(iv) Other CSR obligations

- The amount has to be spent before the end of the financial year.
- The details of the CSR spending have to be furnished in the Report of the Board of Directors.
- Form CSR 1 has to be filed.

4. (b)

Correctness of the appointment of Dinesh by the BOD of Mickinsy Ltd.

- According to section 161(1) of the Companies Act, 2013,
- the Articles of a company may provide that the Board of Directors shall have the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director
- at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.
As per the provisions of regulation 17(1C) of the SEBI (LODR) Regulations, 2015, as introduced with effect from 1.1.2022
- a listed entity shall ensure that approval of shareholders for appointment of a person on the Board of the company as a director or as a manager is taken at the next general meeting or within a time period of 3 months from the date of appointment, whichever is earlier.
- However, according to the first proviso to Regulation 17(1C), a public sector company shall ensure that the approval of the shareholders for appointment or re-appointment of a person on the Board of Directors or as a Manager is taken at the next general meeting.
- Further the second proviso to regulation 17(1C) provides that the appointment or a reappointment of a person, including as a managing director or a whole-time director or a manger, who was earlier rejected by the shareholders at a general meeting, shall be done only with the prior approval of shareholders.

In the light of above, the appointment of Dinesh as Director is not justified.

5. (a)

Insider trading under SEBI Regulations (i)

Is Ranjan an Insider?

—Insider¹ means any person who is:

- a. a connected person; or
- b. in possession of or having access to unpublished price sensitive information;

Since Ranjan was the CMD having possession of the unpublished information, he is an insider. Listed entities shall have a process for how and when people are brought ‘inside’ on sensitive transactions. Individuals should be made aware of the duties and responsibilities attached to the receipt of Inside Information, and the liability that attaches to misuse or unwarranted use of such price sensitive information.

(ii) Unpublished price sensitive information

—Unpublished price sensitive information² means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following:

- (i) financial results;
- (ii) dividends;
- (iii) change in capital structure;
- (iv) mergers, de-mergers, acquisitions, de-listings, disposals and expansion of business and such other transactions;
- (v) changes in key managerial personnel; and
- (vi) material events in accordance with the listing agreement.

In this case the cancellation of agreement is having material impact also.

(vii) Correctness of charges of SEBI

On the one hand there is clear insider trading but on the other hand the motive is important. In a case, Supreme Court held that although the information was price sensitive, Ranjan's sale was a case of —distressed Sale³ and cannot be considered as —insider trading⁴ (SEBI vs Abhijit Ranjan).

Although superficially it tantamount to violation but as per orders and derivation of court the motive of sale is considered and Ranjan is exonerated. Hence SEBI's charges will not hold good.

5. (b) Doctrine of constructive notice

In consequences of the registration of the memorandum and articles of association of the company with the Registrar of Companies, a person dealing with the company is deemed to have constructive notice of their contents. This is because these documents are construed as ‘public document’ under Section 399 of the Companies Act, 2013. Accordingly, if Mr. Paras, deals with a company in a manner incompatible with the provisions of the aforesaid documents or enters into transaction, which is ultra vires to these documents, he must do so at his peril.

Where the Articles provide that a bill of exchange must be signed by two directors, if the bill is actually signed by one director only the holder thereof cannot claim payment thereon.

However, the doctrine of constructive notice is not a positive one but a negative one like that of estoppel of which it forms parts. It operates only against the person who has been dealing with the company but not against the company itself.

Persons in charge of management cannot be prevented from wrong doing on the pretext that he did not know that the constitution of the company rendered a particular act or a particular delegation of authority ultra vires. Thus, the doctrine is a ‘cloud’ for the strangers. The doctrine of indoor management has been recognized in the case of *Royal British Bank v. Turquand* (1856) 6 E&B 327 All ER Rep (435).

While an ordinary person dealing with a company is bound to assume that the requisite compliance or delegation of powers to the person dealing on behalf of the company has been made, he need not probe beyond what is ostensible and evident from the actions.

Exceptions to Doctrine of Indoor Management:

The aforementioned rule of Indoor Management is important to persons dealing with a company through its directors or other persons. They are entitled to assume that the acts of the directors or other officers of the company are validly performed, if they are within the scope of their apparent authority. So long as an act is valid under the articles, if done in a particular manner, an outsider dealing with the company is entitled to assume that it has been done in the manner required.

The above mentioned doctrine of Indoor Management has limitations of its own. The law will assume that those information which an outsider has reasonable access to and should have known with minimal efforts before dealing, cannot be a basis of indoor management case in his favour.

6. (a) Business intelligence in the context of cyber security

Business Intelligence (BI) is a technology-driven process for analyzing data and delivering actionable information that helps executives, managers and workers make informed business decisions.

As part of the BI process, organizations collect data from internal IT systems and external sources, prepare it for analysis, run queries against the data and create data visualizations, BI dashboards and reports to make the analytics results available to business users for operational decision-making and strategic planning.

Benefits of business intelligence

A successful BI program produces a variety of business benefits in an organization. For example, BI enables C-suite executives and department managers to monitor business performance on an ongoing basis so they can act quickly when issues or opportunities arise. Analyzing customer data helps make marketing, sales and customer service efforts more effective. Supply chain, manufacturing and distribution bottlenecks can be detected before they cause financial harm. HR managers are better able to monitor employee productivity, labor costs and other workforce data.

Overall, the key benefits that businesses can get from BI applications include the ability to:

- (i) speed up and improve decision-making;
- (ii) optimize internal business processes;
- (iii) increase operational efficiency and productivity;
- (iv) spot business problems that need to be addressed;
- (v) identify emerging business and market trends;
- (vi) develop stronger business strategies;
- (vii) drive higher sales and new revenues; and (viii) gain a competitive edge over rival companies.

BI initiatives also provide narrower business benefits -- among them, making it easier for project managers to track the status of business projects and for organizations to gather competitive intelligence on their rivals. In

addition, BI, data management and IT teams themselves benefit from business intelligence, using it to analyze various aspects of technology and analytics operations.

6. (b)

Powers of the Competition Commission of India to order division of enterprise enjoying dominant position.

The Commission may, direct division of an enterprise to ensure that such enterprise does not abuse its dominant position because of its size. The order may provide for all or any of the following matters, namely:—

- (a) the transfer or vesting of property, rights, liabilities or obligations;
- (b) the adjustment of contracts;
- (c) the creation, allotment, surrender or cancellation of any shares, stocks or securities;
- (d) the formation or winding up of an enterprise
- (e) amendment of the memorandum of association or articles of association

6. (c) Process of Money Laundering

- (i) **Placement:** The Money Launderer introduces the illegal funds into the financial systems. This might be done by breaking up large amount of cash into less conspicuous smaller sums which are deposited directly into a Bank Account or by purchasing a series of instruments such as Cheques, Bank Drafts etc., which are then collected and deposited into one or more accounts at another location.
- (ii) **Layering:** In this stage, the Money Launderer typically engages in a series of continuous conversions or movements of funds, within the financial or banking system by way of numerous accounts, so as to hide their true origin and to distance them from their criminal source. The Money Launderer may use various channels for movement of funds, like a series of Bank Accounts, sometimes spread across the globe, especially in those jurisdictions which do not co-operate in anti Money Laundering investigations.
- (iii) **Integration:** The Launderer moves to this third stage in which the funds reach the legitimate economy, after getting inseparably mixed with the legitimate money earned through legal sources of income. The Money Launderer may invest the funds into real estate, business ventures & luxury assets, etc. so that he can enjoy the laundered money, without any fear of law enforcement agencies.

7. (a)

Indemnity and Subrogation

Most kinds of insurance policies other than life and personal accident insurance are contracts of indemnity whereby the insurer undertakes to indemnify the insured for the actual loss suffered by him as a result of the occurring of the event insured against. The happening of the event is neither in the control of the event the insurance company or the indemnified. Even within the maximum limit, the insured cannot recover more than what he establishes to be his actual loss [Vania Silk Mills (P) Ltd. v. CIT (1991) 4 SCC 22]. A contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the insured to the extent agreed upon.

Although the insured is to be placed in the same position as if the loss has not occurred, the amount of indemnity may be limited by certain conditions:

- (i) Injury or loss sustained by the insured has to be proved.
- (ii) The indemnity is limited to the amount specified in the policy.
- (iii) The insured is indemnified only for the proximate causes.
- (iv) The market value of the property determines the amount of indemnity.

7. (b) Restrictions on loans and advances by banks

Section 20 lays down the restrictions on banking companies on granting any loan to any of its director or to any firm in which a director is interested or to any individual or whom a director stands as a guarantor. Further the banking companies are prohibited from granting loans or advances on the security of its own shares. RBI is also empowered to control advances by any bank, on public interest.

Under Section 21, the RBI has been empowered to determine the policy to be followed by the banks in relation to advances. Thus, RBI gives directions to banking companies on the following matters:

- (a) The purposes for which an advance may or may not be granted.
- (b) The margins to be maintained in case of secured advances.
- (c) The rate of interest charged on advances, other financial accommodation and commission on guarantees.
- (d) The maximum amount of advance or other financial accommodation that a bank may make to or guarantee that it may issue for, a single party, having regard to the paid-up capital, reserves and deposits of the concerned bank.

7. (c) Delayed payments to micro and small enterprises

The payments to MSME units shall exceed 45 days from the date of acceptance or the day of deemed acceptance. In case of failure to do so, the buyer shall be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be; from the date immediately following the date agreed upon by the parties.

The interest shall be payable at three times of the bank rate notified by the Reserve Bank. Where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of accounts, namely:- (1) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year; Interest not to be allowed as deduction from income.

8. (a)

Investments of Company to be held in its own name [Section 187]

Section 187 lays down the norms in this regard.

- (a) All investments made or held by a company in any property, security or other asset shall be made and held by it in its own name: Provided the company may hold any shares in its subsidiary company in the name of any nominee or nominees of the company, if it is necessary to do so, to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.

Example: ABC Ltd. holds 100% of XYZ Ltd. which is a private limited company, where at least two members shall be there. ABC Ltd. is one member. ABC Ltd can, therefore, nominate someone as shareholder but only one, since this is the minimum requirement of members which it will fall below to statutory limit of two members.

- (b) Nothing in this Section shall be deemed to prevent a company:
 - (1) from depositing with a bank, any shares or securities for the collection of any dividend or interest payable thereon.
 - (2) from depositing with, or transferring to, or holding in the name of, the State Bank of India or a scheduled bank, being the bankers of the company, shares or securities, in order to facilitate the transfer thereof:
 - (3) from depositing with, or transferring to, any person any shares or securities, by way of security for the repayment of any loan.

- (4) from holding investments in the name of a depository when such investments are in the form of securities held by the company as a beneficial owner.
- (c) Where any shares or securities in which investments have been made by a company are not held by it in its own name, the company shall maintain a register which shall contain such particulars as may be prescribed and such register shall be open to inspection by any member or debenture-holder of the company without any charge during business hours.

8. (b)

Sustainability reporting Annual Business Responsibility Report (ABRR) has been made compulsory by the Securities and Exchange Bureau of India (SEBI) based on NVGs. It contains a set of useful references and resources which businesses may consult as part of their implementation efforts.

National Guidelines on Responsible Business There are nine thematic pillars of business responsibility which are called Principles. Each Principle is introduced as a statement and followed by a narration of the essential aspects of the Principle, referred to as the brief description. A reading of each Principle and brief description should provide a clear idea of the essential spirit and intent of the Principle. Each Principle is accompanied by Core Elements. The information sought in Annexure 3 of the Guidelines (Business Responsibility Reporting Framework) is derived from the Core Elements. The Principles are interdependent, interrelated and non-divisible, and businesses are urged to address them holistically.

Annexure 1 of the Guidelines provides guidance to all businesses on the adoption and implementation of the Principles. Furthermore, businesses impact different stakeholders in different ways. Therefore, while applying these principles, businesses need to be sensitive to characteristics, such as caste, creed, sex, race, ethnicity, age, colour, religion, disability, socio-economic status or sexual orientation. Though this has not been specifically mentioned in the Principles and Core Elements, businesses are expected to keep this in mind. Most importantly, the ultimate responsibility for adoption of the Principles rests with the highest governance structure of the business.
