PAPER - 13 : CORPORATE AND ECONOMIC LAWS

SUGGESTED ANSWERS

SECTION - A

1.

(i) (C)

(ii) (B)

(iii) (C)

(iv) (B)

(v) (C)

(vi) (B)

(vii) (D)

(viii) (B)

(ix) (C)

(x) (C)

(xi) (B)

(xii) (A)

(xiii) (D)

(xiv) (D)

(xv) (D)

SECTION – B

2. (a)

Declaration and Payment of Dividend

- **Authority to Declare:**
  Dividend is declared by shareholders in the general meeting, but only on recommendation of the Board. Shareholders cannot increase the rate beyond what the Board recommends.

- **Sources of Dividend:**

❖ Out of current year profits after providing depreciation.

❖ Out of past reserves (subject to Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014).

❖ Out of both current profits and reserves.

- **Transfer to Reserves:** Optional transfer of a portion of profits to reserves before declaration.

- **Interim Dividend:** Board may declare interim dividend during the year out of surplus or profits.

- **Unpaid Dividend:** Must be transferred to "Unpaid Dividend Account" within 7 days from the date of expiry of 30 days payment period; if unclaimed for 7 years, transferred to Investor Education and Protection Fund (IEPF).

- **Accounts & Audit Link:** Dividend can be declared only after adoption of audited accounts at AGM.

2. (b)

Restrictions on Holding Office in More Than One Company by KMP

- **Applicability:** Section 203 applies to every listed company and every public company with paid-up share capital of ₹10 crore or more.

- **Restriction:** A whole-time KMP cannot hold office in more than one company at the same time, except in its subsidiary. This ensures focus and prevents conflict of interest.

- **Compliance Requirements:**

❖ Appointment must be made by Board resolution specifying terms.
❖ Disclosure of office held in subsidiary is required.
❖ Vacancy must be filled within 6 months.

- **Illustration: Example:** CFO of a holding company may also serve as CFO of its wholly-owned subsidiary. However, the same CFO cannot simultaneously serve in an unrelated company.

3. (a)

Appointment of Director other than retiring director (Section 160)

Case I – Government Company

- Proviso to Section 160(1) read with Rule 7(1) of the Companies (Appointment and Qualification of Directors) Rules, 2014: Section 160 does not apply to a Government Company where the Ministry/Department concerned has been duly intimated.

- Proposal valid even without compliance under Section 160.

Case II – Articles provide for election by ballot

The exemption from Section 160 in case of election of directors by ballot is available only to Section 8 companies. Since Alpha Ltd. is a normal limited company and not a Section 8 company, Section 160 is applicable.

In the given case, Mr. S has duly given notice in writing and deposited ₹1,00,000, thereby complying with the requirements of Section 160. Hence, the proposal is valid.

However, as per Section 152 read with Section 10, the appointment of directors is subject to the Articles of Association, which are binding on the company and its members. Since the Articles provide for election of directors by ballot, the appointment, if made, must be decided through ballot voting.

- **Conclusion:**
  The proposal is valid, but the appointment must be made by ballot in accordance with the Articles of Association.

Case III – Advertisement only in vernacular newspaper

- Section 160(2) read with Rule 13 requires publication in two newspapers: (i) one in English, and (ii) one in vernacular language of the district.

- In the given case, only vernacular publication done → partial compliance.

- Hence candidature notice invalid, election irregular.

3. (b)

Appointment of Statutory Auditor (Sections 139–141, Companies Act, 2013)

(i) Appointment of First Auditor

- Section 139(6): First auditor of a company (other than Government company) shall be appointed by the Board within 30 days of incorporation.
- If Board fails → Members at an EGM within 90 days.

Appointment of Subsequent Auditors

- Section 139(1): At the first AGM, company shall appoint an auditor to hold office till conclusion of 6th AGM.
- Thereafter, appointment at every 6th AGM.

(ii) Tenure and Rotation of Auditors

- Section 139(2): Listed companies and certain classes of public companies must rotate auditors.
- Individual auditor: maximum one term of 5 years.
- Audit firm: maximum two terms of 5 years each.
- Cooling-off period: 5 years before reappointment.

(iii) Disqualifications under Section 141

- Auditor indebted to company > ₹5 lakh.
- Auditor holding security/Interest in company, provided that Relatives may hold security upto ₹1 Lakh
- Relative is director or key managerial personnel.
- Business relationship with company.
- Conviction for fraud (10 years not elapsed).

4. (a)

Conversion of Private Company into Public Company

- **Board Resolution:** The Board must approve the proposal for conversion and call a general meeting.

- **Special Resolution:** Shareholders must pass a special resolution to alter Articles of Association (removing restrictions applicable to private companies).

- **Filing with Registrar:**
  - ❖ File Form MGT-7 (annual return) and Form MGT-14 (filing of resolution).
  - ❖ File Form INC-27 with prescribed fees for conversion.

- **Alteration of Articles:** Articles must be amended to comply with requirements of a public company (minimum directors, removal of restrictions on transfer, etc.).

- **Certificate of Incorporation:** Registrar issues a fresh certificate of incorporation reflecting the new status as a public company.

- **Effect:** The company becomes a public company from the date of issue of the new certificate.

4. (b)

Compromise and Arrangements

- **Initiation of Scheme:**
- ❖ Application may be made to the Tribunal (NCLT) by the company, any creditor, member, or liquidator.
- ❖ The application must disclose all material facts, including latest financial position, auditor's report, and details of any investigation.

- **Tribunal's Role:**
- ❖ Tribunal orders meetings of creditors or members as it considers appropriate.
- ❖ It supervises the conduct of meetings and ensures compliance with statutory requirements.
- ❖ Tribunal sanctions the scheme only if it is fair, reasonable, and not contrary to law or public interest.

- **Approval Requirements:**
- ❖ Majority in number representing three-fourths in value of creditors or members present and voting must approve the scheme.
- ❖ The scheme must be filed with the Registrar within 30 days of Tribunal's order.

- **Filing and Implementation:**
- ❖ Certified copy of Tribunal's order must be filed with the Registrar in Form INC-28.
- ❖ Once filed, the scheme becomes binding on all creditors, members, and the company.
- ❖ Implementation must follow the terms approved, and Tribunal may monitor compliance.

5. (a)

Board's Report — Section 134

- Board's Report must be attached to every financial statement laid before the AGM
- Contents: extract of annual return, number of Board meetings, Directors' Responsibility Statement, details of frauds reported by auditors, CSR policy, declarations by independent directors, etc.

Authentication of Financial statements [Sections 134 (1), (2) & (7)]

- The financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the following:
- — The chairperson of the company where he is authorised by the Board, or
- — By two directors out of which one shall be managing director and other the Chief Executive Officer, if he is a director in the company,
- — The Chief Financial Officer, wherever he is appointed, and
- — The company secretary of the company, wherever he is appointed.

- In the case of a One Person Company, the financial statement shall be signed by only one director, for submission to the auditor for his report thereon.
- The auditors' report shall be attached to every financial statement [Section 134(2)].
- A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of
- — Any notes annexed to or forming part of such financial statement.
- — The auditor' report. and
- — The Board's report. [Section 134(7)]

Copy of Financial Statements to be filed with Registrar (Section 137)

- Every company shall file the financial statements with Registrar together with Form AOC-4 and the consolidated financial statements, if any, with form AOC-4 CFS with such fees or additional fees as may be prescribed.
- Where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents shall be filed with the Registrar within 30 days of the date of annual general meeting.
- The Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose.
- If the financial statements are adopted in the adjourned annual general meeting, then they shall be filed with the Registrar within 30 days of the date of such adjourned annual general meeting with such fees or such additional fees as may be prescribed within the time specified under Section 403 (i.e. within 270 days from the date by which it should have been filed with additional fees).

5. (b)

Corporate Insolvency Resolution Process (CIRP)

- **Initiation of CIRP:** Under the Insolvency and Bankruptcy Code, 2016, CIRP may be initiated by:
  - ❖ A financial creditor (Section 7),
  - ❖ An operational creditor (Section 9), or
  - ❖ The corporate debtor itself (Section 10). The application is filed before the National Company Law Tribunal (NCLT).

- **Role of Tribunal (NCLT):**
  - ❖ Examines the application and, if satisfied, admits it.
  - ❖ Declares a moratorium under Section 14 (suspending recovery actions).
  - ❖ Appoints an Interim Resolution Professional (IRP).

- Duties of Resolution Professional (RP):
  - ❖ Takes over management of the corporate debtor.
  - ❖ Collects claims and constitutes the Committee of Creditors (CoC).
  - ❖ Prepares an Information Memorandum.
  - ❖ Invites and examines resolution plans.

- **Approval of Resolution Plan:**
  - ❖ Resolution plan must be approved by at least 66% voting share of the CoC.
  - ❖ The approved plan is submitted to NCLT.
  - ❖ Once sanctioned under Section 31, it becomes binding on all stakeholders.

- **Implementation:**
  - ❖ The plan may involve restructuring debt, infusion of capital, or change in management.
  - ❖ If no plan is approved within the prescribed time, the company proceeds to liquidation under Section 33, with distribution of assets as per Section 53.

6. (a)

Applicability of CSR Committee (Section 135)

Under Section 135(1) of the Companies Act, 2013, every company must constitute a Corporate Social Responsibility (CSR) Committee of the Board if it meets any of the following financial thresholds during the immediately preceding financial year

- Net worth of ₹ 500 crores or more; or
- Turnover of ₹ 1,000 crores or more; or
- Net profit of ₹ 5 crores or more.

Core Functions/Duties of the CSR Committee

The CSR Committee is mandated to perform the following statutory functions

- **Formulate CSR Policy**: Formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII of the Act.
- **Recommend Expenditure:** Recommend the exact amount of expenditure to be incurred on the activities referred to in the CSR Policy.
- **Monitor the Policy:** Institute a transparent monitoring mechanism and monitor the Corporate Social Responsibility Policy of the company from time to time.
- **Formulate Annual Action Plan:** Formulate and recommend to the Board an annual action plan in pursuance of its CSR policy, including the list of CSR projects, manner of execution, modalities of fund utilization, and impact assessment.

6. (b)

Cyber Fraud under the IT Act, 2000

- **Statutory Basis:** The Information Technology Act, 2000 provides a legal framework to address cyber fraud and cyber crimes. Key provisions include:
- ❖ **Section 43:** Penalty for unauthorized access, downloading, introducing viruses, or damaging computer systems.
- ❖ **Section 66:** Treats such acts as offences when done dishonestly or fraudulently.
- ❖ **Section 66C:** Punishes identity theft (fraudulent use of another person's password, digital signature, or electronic signature).
- ❖ **Section 66D:** Punishes cheating by personation using computer resources (e.g., online fraud, phishing).

- **Role of Adjudicating Authorities:**
- ❖ The Adjudicating Officer (appointed under Section 46) has powers to inquire into contraventions relating to unauthorized access, data theft, or damage to computer systems.
- ❖ The Cyber Appellate Tribunal hears appeals against orders of the Adjudicating Officer.
- ❖ Criminal offences are tried by courts with jurisdiction under the Code of Criminal Procedure.

- **Penalties:**
- ❖ For contraventions under Section 43: liable to pay damages by way of compensation to the person so affected.
- ❖ For offences under Sections 66: imprisonment up to 3 years and/or fine up to ₹5 lakh.
- ❖ For offences under Sections 66C, 66D: imprisonment up to 3 years and fine up to ₹1 lakh.

7. (a)

Insider Trading under SEBI Regulations

- **Statutory Framework:** The SEBI (Prohibition of Insider Trading) Regulations, 2015 were enacted to curb misuse of unpublished price sensitive information (UPSI) and ensure transparency and fairness in securities markets.
- **Definition of Insider:** An insider means:
  - ❖ A connected person (directors, officers, employees, professionals associated with the company), or
  - ❖ Any person in possession of or having access to UPSI.

- **Prohibition on Communication and Trading:**
  - ❖ **Regulation 3:** Prohibits communication of UPSI to any person except for legitimate purposes, performance of duties, or discharge of legal obligations.
  - ❖ **Regulation 4:** Prohibits trading in securities while in possession of UPSI.

- **Compliance Requirements:**
  - ❖ Companies must frame a Code of Conduct to regulate, monitor, and report trading by employees and connected persons.
  - ❖ Maintain a structured digital database of persons with whom UPSI is shared.
  - ❖ Appoint a Compliance Officer to oversee adherence.

7. (b)

Foreign Direct Investment (FDI) under FEMA

- **Statutory Basis:** FDI in India is regulated by the Foreign Exchange Management Act, 1999 (FEMA), along with the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 and the consolidated FDI policy issued by the Government of India.
- **Routes of Investment:**
  - ❖ Automatic Route: No prior approval required; investment permitted up to sectoral caps.
  - ❖ Government Route: Prior approval required from the Government/concerned ministry for specified sectors.
- **Sectoral Caps:**
  - ❖ 100% permitted in most manufacturing sectors.
  - ❖ 74% in private sector banking.
  - ❖ 74% in insurance.
  - ❖ Sensitive sectors such as defence, media, and multi-brand retail have lower caps or require government approval.

- **Note -** The Foreign Direct Investment (FDI) limit in the insurance sector was increased from 49% to 74% pursuant to the Insurance (Amendment) Act, 2021 and the corresponding amendments to the FDI Policy. Subsequently, the Union Budget 2025–26 announced an increase of the FDI limit to 100%, which was formally incorporated into the FDI Policy through DPIIT Press Note No. 1 (2026 Series) dated 9 February 2026, permitting 100% FDI in Insurance Companies under the Automatic Route.
- **Reporting Requirements:**
  - ❖ Indian companies must file Form FC-GPR with RBI within 30 days of issue of shares to foreign investors.
  - ❖ Transfer of shares between residents and non-residents must be reported in Form FC-TRS.
  - ❖ Annual return on foreign liabilities and assets must also be filed.

8. (a)

Competition Act, 2002

- **Objectives of the Act:** The Competition Act, 2002 was enacted to:
- ❖ Prevent practices having adverse effect on competition.
- ❖ Promote and sustain competition in markets.
- ❖ Protect the interests of consumers.
- ❖ Ensure freedom of trade carried on by other participants in markets in India.

- **Key Provisions:**

(i) Anti-Competitive Agreements (Section 3):

- Prohibits agreements that cause or are likely to cause appreciable adverse effect on competition (AAEC).
- Includes cartels, price-fixing, bid-rigging, and market allocation.

(ii) Abuse of Dominant Position (Section 4):

- Prohibits unfair or discriminatory conditions or prices imposed by enterprises in a dominant position.
- Examples: predatory pricing, denial of market access.

(iii) Regulation of Combinations (Sections 5 & 6):

- Mergers, acquisitions, or amalgamations crossing prescribed thresholds must be notified to CCI.
- CCI may approve, modify, or prohibit combinations that adversely affect competition.

- **Role of the Competition Commission of India (CCI):**
- ❖ Established under Section 7 of the Act.
- ❖ Functions include inquiry into anti-competitive agreements, abuse of dominance, and regulation of combinations.
- ❖ Can impose penalties, issue cease-and-desist orders, and direct modification of agreements.

8. (b)

SARFAESI Act, 2002

- **Objectives of the Act:**
- ❖ To empower banks and financial institutions to recover non-performing assets (NPAs) efficiently.
- ❖ To allow enforcement of security interests without the need for lengthy court proceedings.
- ❖ To facilitate securitisation and asset reconstruction.

- **Applicability:**

(i) Applies to secured creditors such as banks and financial institutions.

(ii) Not applicable to agricultural land.

- **Enforcement of Security Interest (Section 13):**

(i) If a borrower defaults and the account is classified as NPA, the secured creditor may issue a notice of 60 days demanding repayment.

(ii) On failure, the creditor may:

- Take possession of secured assets.
- Take over management of the borrower's business.
- Appoint a manager to manage secured assets.
- Require third parties to pay monies due to the borrower directly to the creditor.

- **Rights of Secured Creditors:**
  - Enforce security interest without court intervention.
  - Transfer or assign financial assets to ARCs.
  - Recover dues by sale of secured assets.

Measures

Section 15 of the SARFAESI Act provides for the manner and effect of takeover of management. When the management of business of a borrower is taken over by an asset reconstruction company it can appoint as many persons as it thinks fit to be the directors, where the borrower is a company, or the administrators of the business of the borrower, in any other case. The secured creditor is required to publish a notice in a newspaper published in English language and in a newspaper published in an Indian language in circulation in the place where the principal office of the borrower is situated.

Where the management of the business of a borrower had been taken over by the secured creditor, the secured creditor shall, on realization of his debt in full, restore the management of the business of the borrower.